

No. _____

SUPREME COURT OF THE UNITED STATES

BRIAN L. SAULSBERRY,

Petitioner,

v.

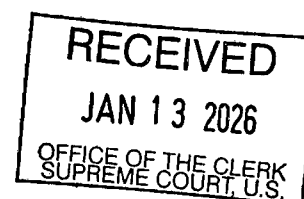
UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit

APPENDIX

Brian L. Saulsberry
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UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

No. 24-5900

FILED: Aug 28, 2025

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BRIAN L. SAULSBERRY,
Defendant-Appellant.

Before: BOGGS, NORRIS, and MURPHY, Circuit Judges.

JUDGMENT

THIS MATTER came before the court upon consideration of the government's motion to dismiss.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the motion to dismiss is GRANTED.

ENTERED BY ORDER OF THE COURT

In: S/ Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 24-5900

FILED: Aug 28, 2025

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.) ORDER
BRIAN L. SAULSBERRY,)
Defendant-Appellant.)

Before: BOGGS, NORRIS, and MURPHY, Circuit Judges.

Brian L. Saulsberry appeals his conviction for money laundering, in violation of 18 U.S.C. § 1957, arguing that the district court abused its discretion in denying his motion to withdraw his guilty plea. The government argues that the appeal-waiver provision in Saulsberry's plea agreement forecloses his appeal. The government thus moves to dismiss Saulsberry's appeal. We agree with the government and grant its motion to dismiss for the reasons below.

Saulsberry submitted false loan applications to the Small Business Administration (SBA) on behalf of his business, The DSG Group (DSG), to obtain COVID-relief funds. The SBA approved a loan for \$149,900 and transferred that amount into DSG's checking account. Saulsberry then transferred \$100,000 from the DSG account to his personal investment account and used those funds for unauthorized purposes.

Based on this conduct, a federal grand jury indicted Saulsberry on two counts of wire fraud, in violation of 18

U.S.C. § 1343, and two counts of money laundering, in violation of section 1957. After protracted plea negotiations with the government, and shortly before his trial was to begin, Saulsberry signed a Federal Rule of Criminal Procedure 11 plea agreement in which he agreed to plead guilty to one count of money laundering. In addition to waiving his constitutional trial rights, Saulsberry also agreed and understood that “he [gave] up the right to appeal [his] conviction” and that he “waive[d] his rights to appeal his sentence” unless it exceeded the statutory maximum. Further, except for ineffective-assistance-of-counsel and prosecutorial-misconduct claims, Saulsberry “waive[d] his right to challenge the sufficiency or the voluntariness of his guilty plea or any non-jurisdictional errors . . . on direct appeal or in any collateral attack.”

The district court then held a Rule 11 change-of-plea hearing. The hearing, as the district court later found, was “suboptimal,” principally because Saulsberry would not forthrightly admit in open court that he was guilty of the criminal conduct described in his plea agreement. Eventually, however, Saulsberry admitted that he was guilty, and the court found that his guilty plea was knowing and voluntary.

During the hearing, both the Assistant United States Attorney (AUSA) and the district court discussed the plea agreement’s appeal-waiver provisions. The district court advised Saulsberry of the various rights that he would be giving up by pleading guilty, including the right to appeal his conviction. Saulsberry said that he understood that he was giving up that right. Later, the AUSA stated, “The plea agreement explains many of the rights that Your Honor’s been going over, including a waiver of his right to appeal; although, we always include you could appeal based on ineffective assistance of counsel or prosecutorial misconduct.” After that statement, the district court asked Saulsberry whether he had gone over the plea agreement with his attorney and whether he had had “a chance to read and discuss

all the parts of this agreement” with his attorney. Saulsberry responded, “I did,” to both questions. Later in the hearing, the court addressed the appeal waiver more specifically, stating:

Defendants have a right to appeal a sentence. That right’s often given up as part of the plea deal. Here, do you understand you’ve given up your right to appeal, unless I sentence you to something more than the statute allows me to? If I do that, you’ve kept your right to appeal. You’ve kept your right to appeal or to challenge on what we call a 2255, if you believe there’s been prosecutorial misconduct or ineffective assistance of counsel. *You’ve given up any other arguments on appeal or on a 2255.* Do you understand that?

Saulsberry responded, “Yes, ma’am.”

Several weeks later, Saulsberry moved to withdraw his guilty plea under *United States v. Bashara*, 27 F.3d 1174 (6th Cir. 1994). Bashara outlined several factors that a district court should consider in deciding whether the defendant has established a “fair and just” reason to withdraw his guilty plea. *See Id.* at 1181; *see also* Fed. R. Crim. P. 11(d)(2)(B). The district court held an evidentiary hearing and issued a detailed order concluding that the *Bashara* factors weighed against allowing Saulsberry to withdraw his guilty plea. The court thus denied Saulsberry’s motion. The court subsequently sentenced Saulsberry to 18 months of imprisonment, two years of supervised release, and payment of restitution.

Saulsberry appeals and argues that the district court erred in denying his motion to withdraw his guilty plea. The government contends that Saulsberry cannot appeal that issue because of his plea agreement’s appeal waiver, and therefore it moves to dismiss his appeal. Saulsberry responds that the appeal waiver does not apply because the district court failed to explain the full scope of the waiver to him during the change-of-plea hearing. Saulsberry argues that, although the district court explained that he was

waiving his right to appeal his *sentence*, it did not explain that he was waiving his right to appeal his *conviction*.

“We will enforce an appeal waiver included in a plea agreement when the agreement is made knowingly and voluntarily.” *United States v. Morrison*, 852 F.3d 488, 490 (6th Cir. 2017). Saulsberry “may challenge his waiver of appeal rights only on the grounds that it was not knowing and voluntary, was not taken in compliance with Fed. R. Crim. P. 11, or was the product of ineffective assistance of counsel.” *Id.* (quoting *United States v. Detloff*, 794 F.3d 588, 592 (6th Cir. 2015)). A defendant’s appeal of a district court’s denial of his motion to withdraw his guilty plea is an attack on his conviction. *United States v. Milliron*, 984 F.3d 1188, 1193 (6th Cir. 2021). Consequently, if Saulsberry validly waived the right to appeal his conviction, the appeal waiver applies to the district court’s denial of his motion to withdraw his guilty plea.

Initially, we note that Saulsberry contends only that his appeal waiver is invalid because the district court did not comply with Federal Rule of Criminal Procedure 11(b)(1)(N) during his plea hearing. He does not contend that his guilty plea was not knowing and voluntary or that attorney error caused him to plead guilty. Rule 11(b)(1)(N) requires a district court to inform the defendant of, and ensure that he understands, “the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.” But because Saulsberry did not object to the district court’s alleged failure to explain the full scope of his appeal waiver to him, we review this argument for plain error. *See United States v. Sharp*, 442 F.3d 946, 949 (6th Cir. 2006). To satisfy this standard, Saulsberry must demonstrate “(1) error (2) that was obvious or clear, (3) that affected defendant’s substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.” *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc) (quoting *United States v. Gardiner*, 463 F.3d 445, 459 (6th Cir. 2006)).

We find no error, plain or otherwise, in the district court's Rule 11 colloquy. The court did not completely fail to discuss the appeal waiver with Saulsberry, so *United States v. Murdock*, 398 F.3d 491 (6th Cir. 2005), is inapplicable. The court advised Saulsberry that, by pleading guilty, he was giving up his right to appeal his conviction, and Saulsberry said that he understood. Additionally, the court explained to Saulsberry that he could appeal his sentence only if it exceeded the statutory maximum and that he had reserved the right to raise ineffective-assistance and prosecutorial-misconduct claims on appeal or in a 28 U.S.C. § 2255 motion. Otherwise, the court informed Saulsberry, he had "given up *any other arguments* on appeal." The phrase "any other arguments" necessarily includes any claim that Saulsberry's appeal waiver did not specifically allow, including a claim that attacked the validity of his conviction. *Cf. United States v. Pitts*, 997 F.3d 688, 702 (6th Cir. 2021) (holding that the defendant understood his appeal waiver because the district court advised him that he had given up a "substantial portion" of his appellate rights, and the attorneys explained the "exact contours" of the appellate rights that he had retained). Saulsberry again stated that he understood that provision. Moreover, Saulsberry stated under oath that he had read and discussed "all the parts of this agreement" with his attorney. Considered in its entirety, *see United States v. Wisdom*, 838 F. App'x 983, 985 (6th Cir. 2021), the plea transcript shows that the district court explained the full scope of the appeal waiver to Saulsberry and ensured that he understood it, *see United States v. Mack*, 219 F. App'x 456, 459-60 (6th Cir. 2007); *United States v. Broom*, 207 F. App'x 565, 568-69 (6th Cir. 2006).

For these reasons, Saulsberry's appeal waiver is valid and enforceable. Accordingly, we

GRANT the government's motion to dismiss Saulsberry's appeal.

ENTERED BY ORDER OF THE COURT

In: S/ Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

No. 24-5900

FILED: Oct 10, 2025

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.) ORDER
)
BRIAN L. SAULSBERRY,)
)
Defendant-Appellant.)

BEFORE: BOGGS, NORRIS, and MURPHY, Circuit
Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

In: S/ Kelly L. Stephens

Kelly L. Stephens, Clerk

*Judge Ritz is recused in this case.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540 POTTER STEW-
ART U.S. COURTHOUSE CINCINNATI, OHIO 45202-
3988

Filed: October 10, 2025

Brian L. Saulsberry

P.O. Box 381871

Germantown, TN 38183

Re: Case No. 24-5900, *USA v. Brian Saulsberry*

Originating Case No.: 2:22-cr-20113-1

Dear Mr. Saulsberry,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Kelly Stephens

En Banc Coordinator: Beverly

Direct Dial No. 513-564-7077

cc: Mr. Steven S. Michaels

Mr. Unam Peter Oh

Mr. Jeremy Raymond Sanders

Enclosure

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE WESTERN DIVI-
SION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

BRIAN L. SAULSBERRY,)

Defendant.)

No.2:22-cr-20113-SHL

ORDER DENYING DEFENDANT'S MOTION TO WITH-
DRAW GUILTY PLEA

Before the Court are Defendant Brian Saulsberry's Motion to Withdraw Guilty Plea and Supporting Memorandum, filed January 25, 2024 (ECF No. 113), and the Government's response, filed February 22 (ECF No. 115). The Court heard oral argument on the motion on March 6. (ECF No. 123.) Saulsberry filed his Proposed Findings of Fact and Conclusion of Law in Support of His Motion to Withdraw His Guilty Plea on April 12 (ECF No. 129), which was replaced by a filing with corrected PageID numbers on May 14 (ECF No. 134). The Government filed its Proposed Findings of Fact and Conclusion of Law in Opposition to Defendant's Motion to Withdraw Guilty Plea on April 24 (ECF No. 130), and Saulsberry filed a Reply Brief in Support of His Motion to Withdraw Guilty Plea on May 3 (ECF No. 131). For the following reasons, Saulsberry's motion is **DENIED**.

FACTUAL BACKGROUND¹

On May 19, 2022, Saulsberry was charged with two counts of wire fraud for fraudulently applying for and receiving Economic Injury Disaster Loan Program ("EIDL") funds and two

¹ The following facts are taken from the Parties' statements or are conclusions reached by the Court after weighing the evidence.

counts of money laundering for improperly using those funds during the aftermath of the COVID-19 pandemic. (ECF No. 4.) Saulsberry made his initial appearance before Magistrate Judge Annie Christoff on July 7, 2022. (ECF No. 8.)

He then interviewed numerous attorneys that could potentially represent him because he wanted an experienced criminal defense attorney for his case. (ECF No. 126 at PageID 817.) Saulsberry testified that he “use[d] [his] intellect to make quality decisions like who [he] hire[s], who represents [him].” (Id. at PageID 854.) He first hired Attorney Madeleine Savage-Townes. (Id. at PageID 816–17.) Then, on November 1, 2022, the Government presented its first plea offer to Saulsberry. (ECF No. 130 at PageID 935.) Shortly thereafter, in December 2022, Saulsberry changed counsel to Attorney Michael Scholl at the “recommendation of another attorney” because Scholl “had a stellar reputation.” (ECF No. 126 at PageID 817.)

After a plethora of court proceedings and continuances, the Parties were actively preparing to go to trial on December 11, 2023. (See ECF No. 59.) On November 30, 2023, Scholl reached out to the Government to inquire about another potential plea deal. (ECF No. 130 at PageID 938.) Scholl contacted the Government at Saulsberry’s direction as he “only reached back out to the Government because [Saulsberry] requested me to.” (ECF No. 126 at PageID 763.) He first double checked that Saulsberry genuinely wanted to entertain a plea offer because if he was not “serious about . . . trying to see what they have, let’s [not] crank this conversation up, because . . . we’ve got plenty of work we need to get finished getting ready for trial.” (Id.)

On Friday, December 1, 2023, the Government offered a plea deal whereby Saulsberry would plead guilty to money laundering and the remaining counts in the indictment would be dismissed. (ECF No. 130 at PageID 940.) That same day, the Court held a motion in limine hearing. (ECF No. 87.) Saulsberry was told that he had until Monday, December 4 to inform the Court whether the December 5

hearing would be a change of plea or a final report date for trial. (ECF No. 126 at PageID 767.) He chose a change of plea, after much consultation.

Saulsberry spent the weekend before making his choice weighing his options with input from many people. During the change of plea hearing, Scholl informed the Court that Saulsberry and he discussed the case for at least ten hours that prior weekend. (ECF No. 104 at PageID 289.) Saulsberry also spoke with others in his life, including his mother, about whether he should plead guilty. (ECF No. 126 at PageID 772.) Conversations between Scholl and Saulsberry also occurred on Monday, December 4. (*Id.*) These communications included nuanced details about which count Saulsberry would plead guilty to; he had trepidations about the inclusion of “fraud” in the plea agreement because of the potential ramifications that may have on his future business dealings. (*Id.* at PageID 773.) Scholl counseled Saulsberry that pleading to wire fraud would actually be advantageous because it has a base level offense of only seven compared to money laundering’s base level offense of eight. (*Id.*; ECF No. 130 at PageID 942.)

Because of Saulsberry’s concerns, two separate plea agreements were requested from the Government so that Saulsberry could weigh the pros and cons of each option. (ECF No. 126 at PageID 774; Motion to Withdraw Hearing, Exs. 8–11.)² Saulsberry had been pondering these two options since at least February 2023 when Scholl requested that the Government consider a plea agreement for money laundering instead of wire fraud at the end of a reverse proffer session. (ECF No. 126 at PageID 757.) Even though Scholl “recommended that he not plead to money laundering,” (*Id.* at PageID 774), Saulsberry made the conscious decision to plead to money laundering and not wire fraud because he “didn’t like the term ‘fraud’ being used” (*Id.* at

² Relevant exhibits from the March 6 hearing on the motion to withdraw are attached to this Order.

PageID 768) as it might “make a difference in his business[] in the future (Id. at PageID 773). (See ECF No. 93 at PageID 262.)

Numerous edits were also made to the plea agreement—indicia of Saulsberry’s engagement in the plea-bargaining process. Scholl sent the Government a version of the written agreement with thirteen separate edits. (Motion to Withdraw Hearing, Ex. 10.) One of those edits added language specifying that “Defendant does not waive his right to appeal for prosecutorial conduct or ineffective assistance of counsel.” (Id.) A reference to Saulsberry using portions of the COVID-19 EIDL for payments on a Mercedes-Benz vehicle was also red-lined out of a key paragraph, which otherwise included the facts to which Saulsberry stipulated. (Id.) The intended loss amount was also edited out of the plea agreement. (ECF No. 126 at PageID 801.) Scholl testified at the hearing on this motion that “[c]onversations he had with Mr. Saulsberry” led to the exclusion of the vehicle and the intended loss amount from that paragraph of the plea agreement. (Id. at PageID 801.)

On December 5, 2023, Scholl reviewed every paragraph of the plea agreement with Saulsberry. (ECF No. 126 at PageID 730.) Scholl reminded Saulsberry that he would be “agreeing to all the facts” that were outlined in the agreement. (Id. at PageID 735.) According to Scholl’s testimony, Saulsberry remarked that it was “the same plea agreement I had before.” (Id. at PageID 734.)

After completing their joint review and having the opportunity to ask Scholl any questions, Saulsberry then signed the plea agreement. (Id. at PageID 731–32; 833–35.) The contract included a detailed factual stipulation—a practice that is somewhat rare in this district. (Id. at PageID 731.) According to Scholl, “[T]he plea agreement here is different because it contains the facts. When I say different, we don’t usually do that here in the Western District of Tennessee . . . [so I] ma[d]e sure he had no questions about it.” (Id.)

Saulsberry stipulated to the following facts in paragraph five:

In support of his guilty plea, the Defendant agrees and stipulates to the following facts, which satisfy the offense elements. These facts are submitted for purposes of the Defendant's guilty plea. They do not necessarily constitute all of the facts in this case. Other facts may be relevant to sentencing. Both the Defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentencing in this case.

The Defendant was a Program Evaluation and Risk Analyst for the Internal Revenue Service ("IRS") in Memphis, Tennessee. "The DSG Group" was a purported business operated by the Defendant.

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. The Economic Injury Disaster Loan ("EIDL") Program was a federal program that provided low interest financing to small businesses, renters, and homeowners in regions affected by the declared disaster. The CARES Act authorized the United States Small Business Administration ("SBA") to provide EIDLs up to \$2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-1[9] pandemic.

Beginning in or around April 2020, Defendant submitted false loan applications under the EIDL Program in order to obtain funds for which he and his business were ineligible to receive.

Specifically, on April 1, 2020, the Defendant electronically submitted a false and fraudulent EIDL Program application on behalf of "The DSG Group," from

Memphis, Tennessee, to the SBA in Washington, D.C., seeking approximately \$174,625 in EIDL Program funds. As the Defendant knew at the time he submitted the application, “The DSG Group” did not have the gross revenue reported in the application. On December 3, 2020, the application was funded in the amount of \$149,900 into the Defendant’s account x6556 with Bank 1.

On December 8, 2020, the Defendant made a transfer in the amount of \$100,000 from The DSG Group’s checking account with Bank 1 to his own personal checking account with Bank 1. The following day, on December 9, 2020, the Defendant transferred the \$100,000 to an investment account with Bank 2. Defendant made these transfers and investments with the EIDL Program funds, knowing that the property involved in the transactions was derived from unlawful activity.

After obtaining the fraudulent loan benefits, the Defendant used the money on expenses not authorized by the EIDL Program, including transferring the funds to private investment accounts.

(ECF No. 93 at PageID 264–65.) This factual stipulation was substantially similar to the stipulation in paragraph four of November 2022 plea agreement presented to Saulsberry. (Motion to Withdraw Hearing, Ex. 12; ECF No. 126 at PageID 755.)

While a detailed stipulation is not frequently included in plea agreements, a Federal Rule of Evidence 410(a) waiver is quite common. When asked if Rule 410 waivers are a standard provision, Scholl responded that “99 percent of the time, that provision’s in there.” (ECF No. 126 at PageID 776.) In this plea deal, the waiver is found in subparagraph six(b):

[t]he Defendant further expressly waives his rights pursuant to Rule 410(a) of the Federal Rules of Evidence upon affixing his signature to this plea

agreement. The Defendant understands and agrees that in the event the Defendant violates the plea agreement, the Defendant does not enter his plea of guilty, or his guilty plea is for any reason withdrawn, any statements made by the Defendant to law enforcement agents or an attorney for the prosecuting authority during plea discussions, any statements made by the Defendant during any court proceeding involving the Defendant's plea of guilty, including the "agreed facts" set forth herein, any other factual bases or summaries signed by the Defendant, and any leads from such statements, factual bases or summaries, shall be admissible for all purposes against the Defendant in any and all criminal actions. If the United States violates the terms of this plea agreement, the Defendant will have the right to withdraw from this agreement.

(ECF No. 93 at PageID 266.) Scholl testified that he reviewed the 410 waiver with Saulsberry before he signed the agreement, and told him that if he "back[s] out of this, they're going to be able to use this statement later." (ECF No. 126 at PageID 736.)

Later that day, after a protracted three-hour change of plea hearing that included two recesses, the Court accepted Saulsberry's guilty plea for count three of the Indictment—money laundering in violation of 18 U.S.C. § 1957. (ECF No. 93 at PageID 262.) It took some time to get to that point.

After changing his mind and deciding not to plead guilty after an unsuccessful first colloquy (ECF No. 104 at PageID 299), Saulsberry decided to come back to Court and continue his change of plea thirty minutes later. As the Court followed its normal plea colloquy, Saulsberry implored the Court to just accept the plea agreement that he had signed because he wanted the written plea agreement to stand for itself. He said that he "already signed the document," (Id. at PageID 286), and was frustrated that the

Court would not accept his signed guilty plea as is, instead asking him on the record about his involvement. “But I’ve already signed the document.” (Id. at PageID 303.) “Could we just accept my plea . . . because I signed it.” (Id. at PageID 304.) “I signed the plea agreement.” (Id. at PageID 306.) “I signed the plea agreement.” (Id. at PageID 316.) “I accept this plea. I accept it.” (Id. at PageID 318.)

Throughout the standard plea colloquy, it was evident that Saulsberry was having difficulty emitting the word “guilty” in open court. Scholl testified that Saulsberry didn’t “want to tell the judge” that he was guilty and was hoping he could “just leave” because he already “signed the paperwork.” (ECF No. 126 at PageID 746.) However, eventually, he agreed that the facts asserted in paragraph five of the plea deal—a detailed stipulation that outlines what transpired—were correct (ECF No. 104 at PageID 317), and that he voluntarily entered into the plea agreement because he was guilty (Id. at PageID 318). He also admitted under oath that he went over the plea agreement with Scholl (ECF No. 109 at PageID 338–39), read and discussed all parts of the agreement with him before he signed it (Id. at PageID 339), and understood the terms of the plea agreement (Id.).

One week later, his then-counsel, Michael Scholl, filed a motion to withdraw as Saulsberry’s attorney. (ECF No. 95.) After that motion was granted, Saulsberry filed a pro se Motion for Recission of Plea that the Court construed as a request for withdrawal “until court appointed counsel is secured.” (ECF No. 98 at PageID 275.) The Court later appointed Peter Oh from the Federal Public Defender’s Office as Saulsberry’s new counsel (ECF No. 102), and denied Saulsberry’s first motion to rescind/withdraw his plea as moot because the contingency of his receiving court-appointed counsel had occurred (ECF No. 105). Saulsberry then filed this Motion to Withdraw Guilty Plea on January 25, 2024. (ECF No. 113.) The Court held a hearing on the motion on March 6, where both Saulsberry and Scholl testified. (ECF No. 123.)

LEGAL STANDARD

After a court accepts a guilty plea from a defendant, but before sentencing, “[a] defendant may withdraw a plea of guilty . . . if the defendant can show a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). However, the bar is high for a withdrawal: “once the court has ensured in a transcribed colloquy that a defendant has knowingly pleaded guilty, the defendant faces a ‘formidable barrier’ to overturn the plea.” United States v. Crowe, No. 22-6046, 2023 WL 4586154, at *3 (6th Cir. 2023) (quoting Blackledge v. Allison, 431 U.S. 63, 74 (1977)).

When assessing whether the defendant has shown a fair and just reason” to withdraw a guilty plea under Rule 11, courts are to “consider the totality of the circumstances, including the following seven factors” as delineated in United States v. Bashara, 27 F.3d 1174, 1181 (6th Cir. 1994):

- (1) The amount of time that elapsed between the plea and the motion to withdraw it;
- (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings;
- (3) whether the defendant has asserted or maintained his innocence;
- (4) the circumstances underlying the entry of the guilty plea;
- (5) the defendant’s nature and background;
- (6) the degree to which the defendant has had prior experience with the criminal justice system; and
- (7) potential prejudice to the government if the motion to withdraw is granted.

United States v. Wynn, 663 F.3d 847, 849–50 (6th Cir. 2011). The factors are general guidelines, and “[n]o one factor controls; the list is general and nonexclusive.” United States v. Haygood, 549 F.3d 1049, 1052 (6th Cir. 2008). “The relevance of each factor will vary according to the ‘circumstances surrounding the original entrance of the plea as well as the motion to withdraw.’” Id. (quoting United States v. Triplett, 828 F.2d 1195, 1197 (6th Cir. 1987)).

ANALYSIS

A change of plea is a solemn affair that a defendant enters into after careful consideration of his options. It is quite normal, nay expected, for a defendant to experience trepidation, fear, or nervousness during a change of plea hearing. There were numerous instances throughout Saulsberry's colloquy where this Court was not satisfied with his plea because of his equivocations and hesitations. That is, in part, why the exercise took well over three hours to finish. However, each time the Court signaled it was going to end the change of plea and proceed to trial, Saulsberry implored the Court to accept his plea deal—and eventually the Court did.

Despite Saulsberry's insistence for the Court to accept his plea at the time, he quickly sought to withdraw it, which now requires an evaluation of the Bashara factors—which are not weighted equally.³ See Bashara, 27 F.3d at 1181. While each factor will be addressed in turn

below, the (1) amount of time elapsed and (2) reason for failure to move earlier are pre-requisite, entry-level hurdles that, at least in this situation, must be cleared for the rest of the inquiry to continue. See Bashara, 27 F.3d at 1181. The (4) circumstances underlying the entry of the guilty plea and (5) the defendant's nature and background are the two most important considerations in Saulsberry's case. See id.

Moreover, this Court has discretion to consider other factors as well. The Government argues that the D.C. Circuit's factors, which include the 1) effective assistance of counsel; 2) a misunderstanding of the crimes charged; 3) whether the defendant showed signs of mental illness at the

³ Saulsberry seems to believe that if enough factors tilt one's way (five out of seven according to him), then that party wins the day. (See ECF No. 134 at PageID 1019–37.) However, that is not the case. A defendant could “win” on six of the seven factors, but if that seventh factor is the most important and weighs disproportionately against him, then his motion to withdraw could very well be denied.

time of plea; and 4) if the plea was hastily entered into at arraignment without the benefit of counsel, are persuasive and should be considered. See United States v. Barker, 514 F.2d 208, 221 (D.C. Cir. 1975); (ECF No. 115 at PageID 420–26). The Government also examines whether Saulsberry was coerced, whether he understood the consequences of pleading guilty, his admittance in open court that he is not innocent, conservation of judicial resources, prejudice to the Government, and Saulsberry’s strong educational credentials and work experience. (ECF No. 115 at PageID 426–30.) Because the Bashara factors are not exclusive and a district judge has broad discretion with motions to withdraw, this Court will also consider the effectiveness of Saulsberry’s counsel.

Ultimately, Saulsberry must present a fair and just reason for the withdrawal of his guilty plea. Fed. R. Crim. P. 11(d)(2)(B). Rule 11 “seeks to separate pleas made ‘hastily’ with an ‘unsure heart and confused mind’ from those made strategically with an eye toward withdrawal if the defendant later believes the plea qualified as a ‘bad choice.’” See United States v. Hudson, No. 23–1341, 2024 WL 140550, at *3 (6th Cir. Jan. 12, 2024) (quoting United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991)). Here, Saulsberry seeks to withdraw what he later determined to be a “bad choice.”

I. Bashara Factors That Weigh in Saulsberry’s Favor (1, 2, & 6)

Minimal time elapsed between Saulsberry’s guilty plea and his motion to withdraw, thereby satisfying the first factor. Saulsberry initially moved for a withdrawal of his plea in a pro se capacity fourteen days after his December 5 change of plea hearing; a two-week time period is well within the Sixth Circuit’s thirty-day expectation for timeliness for a motion to withdraw. (ECF No. 113 at PageID 387–88.) The Sixth Circuit has described thirty days as a rough “boundary line between what is acceptable and what is not.” United

States v. Jannuzzi, No. 07–4521, 2009 WL 579331, at *3 (6th Cir. 2009).

The second factor, the reason for failure to move earlier, does not apply here because Saulsberry moved to withdraw within a reasonable amount of time. The sixth factor, contemplating Saulsberry's prior experience with the criminal justice system, also tilts in his favor "[b]ecause Mr. Saulsberry has little to no prior experience with the criminal justice system." (ECF No. 113 at PageID 397.) A defendant who has pled guilty before would understand the gravity of the proceedings, but this case represents the first time Saulsberry has pled guilty in federal court. Therefore, the first, second, and sixth factors weigh in Saulsberry's favor.

II. Whether Saulsberry Has Asserted or Maintained His Innocence (3)

Consistent and numerous "protestation of innocence may support the decision to allow withdrawal of a guilty plea." United States v. Carson, 32 F.4th 615, 624 (6th Cir. 2022). However, statements made in court during a guilty plea and its corresponding colloquy can be treated "as conclusive unless the defendant offers a believable, valid reason justifying a departure from the apparent truth of those statements." United States v. Crowe, No. 22-6046, 2023 WL 4586154, at *5 (6th Cir. 2023).

Saulsberry argues that he has maintained his innocence from the time of his initial arraignment on July 13, 2022, up through the present day. (ECF No. 113 at PageID 391.) The Government, on the other hand, avers that his statements in court during his guilty plea hold tremendous weight and prove that he consciously admitted that he was not innocent. (ECF No. 115 at PageID 427.)

Defendants are presumed innocent until proven guilty. See Taylor v. Kentucky, 436 U.S. 478, 485–87 (1978). Many criminal defendants who eventually change their plea rely on that right until the last possible second. It is not particularly persuasive to argue that Saulsberry maintained his

innocence up until he signed his plea agreement because that is par for the course. Defendants do not typically admit guilt until they are incentivized by the Government to plead guilty to some, but usually not all, of the counts in the indictment.

In the days leading up to his change of plea, Saulsberry conducted research about pleading guilty: “I did a little research on the Internet and I read some things about, well, sometimes people plead guilty to things just to end the situation because they don’t want to go through the situation any longer.” (ECF No. 126 at PageID 872–73.) Throughout the change of plea colloquy, however, Saulsberry carefully chose his words in response to each and every question. Some could interpret his deliberate responses as evidence of confusion or hesitation. Others could view it as recalcitrant and strategic. Regardless, even when defendants “at times show[] reluctance to admit full responsibility,” courts should honor a solemn court proceeding where that same defendant “admitted the facts supporting [the charge to which he pled] in his written plea agreement and at the hearing.” See United States v. Castro, No. 1:22-cr-16, 2023 WL 7383256, at *5 (W.D. Mich. Nov. 8, 2023).

Importantly, Saulsberry admitted his guilt in writing when he signed the plea agreement, including its detailed factual stipulation that outlines what transpired. (ECF No. 93). Paragraph five states that Saulsberry “submitted false loan applications under the EIDL Program in order to obtain funds for which he and his business were ineligible to receive.” (Id. at PageID 265.) Gross revenue for Saulsberry’s business, the DSG Group, was misreported on the application. (Id.) Once the loan was funded, Saulsberry summarily moved \$100,000 of the proceeds from his business account to his personal checking account and then to a personal investment account. (Id.) He also used the loan funds on expenses that were not authorized by the EIDL program, including the personal investment portion. (Id.) Saulsberry admitted his guilt to these facts when he signed the plea agreement.

While Saulsberry struggled to say the word “guilty” in open court—a point that might otherwise weigh in his favor—he stated numerous times at his change of plea that he had already signed the plea agreement and that he wanted the Court to accept it. “But I’ve already signed the document.” (ECF No. 104 at PageID 303.) “Could we just accept my plea . . . because I signed it.” (*Id.* at PageID 304.) “I signed the plea agreement.” (*Id.* At PageID 306.) “I signed the plea agreement.” (*Id.* at PageID 316.) “I accept this plea. I accept it.” (*Id.* at PageID 318.)

At the end of the change of plea, Saulsberry spent four minutes reading paragraph five’s stipulation to himself in the courtroom, and then stated that everything in the plea agreement, including paragraph five, was accurate. (*Id.* at PageID 317.) He then orally admitted his guilt to the Court. (*Id.* at PageID 318.) Because he admitted his guilt in writing before the change of plea colloquy and eventually orally admitted his guilt to the Court (after struggling with that task for whatever reasons may be personal to him), this factor slightly favors the Government.

III. The Circumstances of the Guilty Plea (4)

The “circumstances underlying the entry of the guilty plea” is the broadest Bashara factor. Here, it is relevant to consider when this case started, if prior plea bargaining had taken place, whether the defendant had been engaged in his case, and how the change of plea itself unfolded. The context for what transpired during the days and months preceding the December 5 change of plea is critically important. Indeed, a plea deal was not hastily presented to Scholl and Saulsberry at the last second. The Parties had been laying the groundwork for this day for at least thirteen months.

A. Months of Preparation Before the Change of Plea

The Government presented its first plea offer to Saulsberry on November 1, 2022. (ECF No. 130 at PageID 935.)

That offer included language recognizing that a defendant waives his Rule 410(a) rights as soon as the offer is signed and a factual stipulation that was substantially similar to what he agreed to in December 2023. (Id.; Motion to Withdraw Hearing, Ex. 12)

One year later, on November 30, 2023, as the Parties were preparing for trial, Scholl contacted the Government to inquire about a potential plea deal. (ECF No. 130 at PageID 938.) Scholl testified that he contacted the Government “because [Saulsberry] requested me to.” (ECF No. 126 at PageID 763.)

On Friday, December 1, 2023, the Government offered another plea deal to Saulsberry. (ECF No. 130 at PageID 940.) That weekend, Saulsberry and Scholl spoke frequently about the trial and the plea agreement. (ECF No. 126 at PageID 729.) Saulsberry also spoke with others in his life, including his mother, about whether he should plead guilty. (Id. at PageID 772.)

Conversations between Scholl and Saulsberry continued on Monday, December 4. (Id.) These communications included nuanced details about which count Saulsberry would plead guilty to; he had trepidations about the inclusion of “fraud” in the plea agreement because of the potential ramifications that may have on his future business dealings. (Id. at PageID 773.) Scholl counseled Saulsberry that pleading to wire fraud would actually be advantageous because it has a base level offense of only seven compared to money laundering’s base level offense of eight. (Id.; ECF No. 130 at PageID 942.)

Those conversations led to the Government presenting two separate plea agreements so that Saulsberry could weigh his options. (ECF No. 126 at PageID 774; Motion to Withdraw Hearing, Exs. 8–11.) It was not the first time Saulsberry had weighed the differences between these two counts because the Parties contemplated a plea agreement for money laundering instead of wire fraud in a February 2023 reverse proffer session. (ECF No. 126 at PageID 757.)

Scholl “recommended that he not plead to money laundering,” (Id. at PageID 774), but Saulsberry made the conscious decision to plead to money laundering and not wire fraud because he “didn’t like the term ‘fraud’ being used” (Id. at PageID 768) as it might “make a difference in his business[] in the future (Id. at PageID 773). (See ECF No. 93 at PageID 262.)

Edits made to the plea agreement are further evidence of Saulsberry and Scholl’s active engagement in the plea-bargaining process. In total, thirteen separate edits were sent back to the Government. (Motion to Withdraw Hearing, Ex. 10.) Those edits included new language specifying that “Defendant does not waive his right to appeal for prosecutorial conduct or ineffective assistance of counsel,” the removal of the intended loss amount and a stipulation stating that Saulsberry used COVID-19 EIDL for payments on a Mercedes-Benz vehicle. (Id.; ECF No. 126 at PageID 801.) Scholl testified under oath that “[c]onversations he had with Mr. Saulsberry” led to the vehicle’s exclusion from the plea agreement. (ECF No. 126 at PageID 801.)

At the hearing on his motion, Saulsberry insisted that he did not obtain a physical version of the plea agreement during the beginning of December. (Id. at PageID 825–26.) However, he also contradicted Scholl’s testimony and the proof of the edits when asked if he discussed the plea agreement with Scholl during that time: “We didn’t have any discussions. We didn’t—I didn’t have the document. I didn’t have any discussions about the details. . . . But to the details, if you’re asking me did I see the document, did I view the document . . . I didn’t see that document.” (Id. at PageID 827.) After contradicting the proof, he answered a question not asked—whether he saw the document.

Based on Scholl’s testimony, proof of edits that indicate Saulsberry’s participation, and Saulsberry’s contradictory testimony, the Court concludes that there were in depth conversations that weekend and beyond about the details of the plea agreement, including the language of the agreement

itself. (See Id. at PageID 729.) Because the right to appeal based on ineffective assistance of counsel was added back in and payments for a Mercedes-Benz vehicle and the intended loss amount were taken out, and the fact that Saulsberry opted to plead guilty to a count that had a higher base level offense because he preferred the semantics and public perception of “money laundering” to “wire fraud,” the Court concludes that Saulsberry grappled with and understood the most important aspects of his plea agreement.

Ultimately, he signed the plea agreement, including its detailed factual stipulation in paragraph five, after much thought. The change of plea on December 5 was the next step in his formalizing what he had already agreed to on paper.

B. December 5 Change of Plea

The change of plea colloquy on December 5 was suboptimal for all involved. It was the longest change of plea this Court has ever conducted. The Court tried to stop the proceedings on numerous occasions so that the Parties could head to trial the following week. However, Saulsberry continued to insist that the Court should accept his plea deal as agreed upon in writing.

The transcript of this proceeding does not tell the full story. Facial expressions mattered. The timing and cadence of sentences was important. It is often said that much of communication is conveyed nonverbally through tone and body language, so one cannot rely solely on the words in the transcript in a vacuum—and this case is a prime example.

Saulsberry’s tone was defiant and defensive for much of the change of plea. He paused for five seconds before answering, and word smithed and prefaced each and every response. In his motion, Saulsberry cherry-picks the most advantageous quotations from a plea hearing that lasted over three hours. He argues that his defeated admittance “that he would ‘just say yes, yes, yes’” to whatever question was asked insinuates he was somehow pressured or rushed into the plea deal. (ECF No. 113 at PageID 368.) In fact this “just say

yes” line became a bit of a thesis statement for Saulsberry during the hearing on the motion. He argued that Scholl coached him to “just say yes” on at least eight separate occasions during his testimony. (See ECF No. 126 at PageID 838, 842, 845, 846, 848, 849, 850.) However, the Court remembers distinctly when those now infamous “just say yes, yes, yes” words were uttered. They were whispered so quietly, so softly, so bizarrely, that the Court could barely hear them. Saulsberry even used a different tone from his normal voice. At best, it was a way for Saulsberry to pump himself up for providing a simple “yes” or “no” to the Court’s questions. At worst, it was an intentional way of getting something on the transcript that could create ambiguity and potentially be used to his advantage at a later date.

Saulsberry argues that he misunderstood the importance of Subparagraph six(b), the waiver of his Federal Rule of Evidence 410(a) rights, enabling the Government to use the agreed upon facts in paragraph five if he were to withdraw his guilty plea. (ECF No. 93 at PageID 266.) He maintains that “at the moment he ‘affixed his signature’ to the agreement—he did not fully understand or appreciate the details in Subparagraph 6.b. and its interplay with Paragraph 5,” the Parties’ stipulation as to the facts that satisfy the elements of money laundering. (ECF No. 113 at PageID 393; ECF No. 93 at PageID 264.) This misunderstanding was driven, in his mind, by his hurriedly signing the plea agreement “while sitting on a hallway bench on the 11th floor of the federal building.” (ECF No. 113 at PageID 367.) He also argues that, by the time of the second recess, “he felt that he had no choice but to plead guilty. Scholl had already told him that, upon affixing his signature to the plea agreement, he had essentially signed off on a ‘confession’ destroying his chances at any trial.” (Id. at PageID 379.)

In response, the Government emphasizes that Saulsberry had seen this language for more than a year as he received his first plea offer on November 1, 2022 (ECF No. 115 at PageID 405), and his second on February 7, 2023 (Id.)—

both of which contained language that mirrors Subparagraph 6.b. The Government also argues, as previously discussed, that the events of the days leading up to the change of plea are critical context for the circumstances of the guilty plea:

After seeing and hearing about the Government's evidence of Defendant's guilt; after asking the Government whether the preliminary plea offer was still available in the weeks before trial; after requesting a Change of Plea hearing with the Court; after taking a weekend to speak "extensively" with his attorney about the pending plea offer . . . the Defendant elected to "voluntarily plead guilty . . . [b]ecause [he is] guilty."

(Id. at PageID 420.)

The Government's argument is persuasive. Saulsberry had plenty of time to evaluate his options and prior plea deals, including the two plea agreements presented to him in December 2023. His in-court hesitations were more about struggling to orally admit what he had already admitted to on paper. His comprehension of what he was signing was not rushed. Rather, it was simply the culmination of a multi-step task that had already been thoroughly deliberated.

Of note, the plea agreement itself is a manageable five-and-a-half pages of substantive information with eleven total paragraphs. (See ECF No. 93.) During the plea colloquy, Saulsberry admitted under oath that he went over the plea agreement with Scholl (ECF No. 109 at PageID 338–39), read and discussed all parts of the agreement with him before he signed it (Id. at PageID 339), and understood the terms of the plea agreement (Id.). Paragraph six clearly starts with "Defendant understands that," followed by two subparagraphs. This provision was not buried in the footnote of a seventy-page terms of use agreement. Rather, it was plain language in a brief document that impacted Saulsberry's life in a very direct way.

Scholl testified on the record that they went over the 410 waiver in the hallway before the change of plea. (ECF No. 126 at PageID 776, 797.) He also stated that it was standard language that is included in most plea agreements in the Western District of Tennessee. (*Id.* at PageID 796–77.) Moreover, Scholl reviewed paragraph six(b) with Saulsberry before the start of the plea colloquy. That hallway review, coupled with the prior extensive work Saulsberry and Scholl conducted on editing and crafting paragraph five's stipulation, gives the Court confidence that Saulsberry had an opportunity to digest this portion of the plea agreement.

In much of his briefing, Saulsberry tries to craft an image of a confused defendant who has an unsure heart and confused mind. While it is normal for a defendant to equivocate slightly when making such a large life decision as deciding to take a plea deal, Saulsberry was not confused. He was overly careful with his diction and would ask clarifying questions if he thought a certain question could have multiple answers, but he was not confused.

After changing his mind and deciding not to plead guilty after an unsuccessful first colloquy (ECF No. 104 at PageID 299), Saulsberry decided to come back to Court and continue his change of plea thirty minutes later. He implored the Court to accept the plea agreement that he had signed as he did not want to be subjected to the questions the Court must go through to accept the plea. Ultimately, three hours later, this Court became comfortable accepting his plea after he admitted his guilt on the record:

THE COURT: Considering everything we've discussed, how do you plead to the charge in Count 3 of the indictment; guilty or not guilty?

Mr. Scholl: It's just a formality.

Saulsberry: Guilty.

THE COURT: Is this your decision—the decision to plead guilty, made voluntarily by you because you are guilty?

Saulsberry: I accept this plea. I accept it. Yes, ma'am.

THE COURT: Is it your decision to plead—is this your decision to plead guilty, made voluntarily by you because you are guilty? It's really just a yes or no answer.

Saulsberry: So do I voluntarily plead guilty? Yes.

THE COURT: Because you are guilty?

Saulsberry: Yes.

(Id. at PageID 318.)

The circumstances leading up to the change of plea hearing strongly favor the Government. The circumstances during the actual change of plea hearing were less than ideal, but they too favor the Government because of Saulsberry's insistence that the Court accept his written plea and his oral admittance of guilt.

IV. Saulsberry's Nature and Background (5)

A defendant's "intelligence, sophistication, and understanding of the plea are relevant to the Court's analysis of [the nature and background] factor." *United States v. Osborne*, 565 F. Supp. 2d 927, 933 (E.D. Tenn. 2008). If a defendant is undereducated and has not been actively engaged in his case, then an avenue opens up for withdrawing the plea. See, e.g., Id. at 938, 940 (granting a motion to withdraw in part because of a "defendant's cognitive, behavioral, and emotional" deficiencies that were revealed in a psychological evaluation).

Saulsberry is "highly educated," having received his Bachelor of Arts in Finance and Financial Management Services from Howard University as well as a master's degree in Technology Management and Agile Project Management from Georgetown University. (ECF No. 113 at PageID 396–97.) He has been in business for at least twenty years and signed multiple binding documents during his career. (ECF No. 126 at PageID 863.)

Not only is Saulsberry well-educated and professionally accomplished, but he was invested in every aspect of his case. He interviewed numerous attorneys because he wanted an experienced criminal attorney for his case. (Id. at PageID 817.) Saulsberry “use[d] [his] intellect to make quality decisions like who [he] hire[s], who represents [him].” (Id. at PageID 854.) He first hired Attorney Madeleine Savage-Townes. (Id. at PageID 816–17.) In December 2022, he decided to make a change to Attorney Scholl at the “recommendation of another attorney” because Scholl “had a stellar reputation.” (Id. at PageID 817.)

Over the next year, Scholl shared that it was common for him to come into work and see “ten e-mails from Mr. Saulsberry from the night before.” (Id. at PageID 723.) Saulsberry seemed to be paying attention to the happenings of his case and methodically thinking through the ramifications of his decisions.

As the Court observed, Saulsberry is also very careful with his words. He would typically pause for five seconds before answering a question in his change of plea. Most answers were couched, prefaced, or included modifiers that could open up avenues for alternative interpretations. He also begins answers with “to the best of my knowledge” or “as I recall” or “I believe” or “it was my understanding.” He infrequently gave yes or no answers in either his change of plea or in the hearing on the motion to withdraw.

The jury instruction used to help the jury in their fact-finding mission is relevant here:

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? . . . Did the witness seem to have a good memory? . . . Did he or she appear to understand the questions clearly and answer them directly?

All of those questions, and more, can help jurors determine the believability of a witness. Applying those same

considerations here, Saulsberry did not appear to be telling the truth at multiple different junctures during the hearing on this motion. He did not have a good memory during key portions of his testimony. He did not answer questions clearly or directly. Those factors all weigh against his credibility and believability.

Saulsberry admits that his nature and background “would ordinarily weigh in the government’s favor.” (ECF No. 113 at PageID 397.) However, he also argues that Scholl pointing out to him that there “may be a problem” with the interplay between subparagraph six(b) with paragraph five shows that even a “seasoned attorney” finds this plea deal nuanced, thereby potentially decreasing the weight of this factor. (*Id.*) In response, the Government contends that defendants do not need to possess specific legal knowledge to understand the consequences of pleading guilty. (ECF No. 115 at PageID 430.)

The Court agrees with the Government. Saulsberry had enough of an understanding of what he was agreeing to when he signed the document based on his education, background, and preparation. It is not realistic for a defendant to fully understand every legal implication and future unknown consequence; but Saulsberry had just as much information at his disposal, if not more, than the average defendant who changes his plea.

This factor squarely favors the Government. An undereducated defendant who was not fully prepared and cannot read and understand the provisions of his plea deal is a more likely candidate to be a “confused mind” than a former IRS employee who owns multiple businesses, has a master’s degree, and has been involved in every intricate detail of his case for multiple years. Saulsberry is a well-educated, sophisticated defendant who can understand all material aspects of a short plea deal.

V. Prejudice to the Government (7)

The Government argues that a guilty plea withdrawal “by its nature, wastes judicial resources and delays the processing of a case by the Government.” (Id. at PageID 429.) By the time of the change of plea hearing, “the Government had worked for months to ensure that it would be prepared for trial on December 11, 2023, including coordinating witness travel for interstate witnesses.” (Id.)

However, Saulsberry emphasizes that “[t]he Government always has to spend time and money trying a case.” United States v. Valdez, 362 F.3d 903, 913 (6th Cir. 2004). Significant prejudice is typically found when the Government’s case is directly harmed by the withdrawal of a plea. See United States v. Murray, 66 F. App’x 600, 605 (6th Cir. 2003). In Murray, the defendant had an idea of how the Government would present its case because the testimony of three witnesses had already been presented when the defendant ultimately signed his plea deal. Id. Here, in contrast, the trial had not started yet, and the Government’s trial strategy would be largely unaffected by a withdrawal of the plea.

But this case is relatively complex and involves interstate witnesses and out-of-town lawyers. Every time Saulsberry vacillates, his indecision greatly affects the time and resources of the attorneys and their staff involved in the case. However, increased travel costs and preparation time alone are not enough to swing the prejudice pendulum the Government’s way. This factor slightly favors Saulsberry.

VI. Whether Saulsberry Had Effective Assistance of Counsel

Scholl’s effectiveness was not put at issue in Saulsberry’s motion, and he is not currently asserting an *ineffective* assistance of counsel claim. Saulsberry argues that an ineffective assistance of counsel claim should be considered separately, if applicable, after the motion to withdraw. However, the Court is considering Scholl’s *effectiveness* instead of his ineffectiveness. Evidence that Saulsberry’s hired counsel properly prepared him is instructive when discerning

whether Saulsberry knew what he was doing at the change of plea or just regretted his decision at a later date. The effectiveness of his counsel leading up to and during the change of plea hearing is therefore inextricably intertwined with this analysis.

While this factor is not one of the Sixth Circuit Bashara factors, other circuits, including the Fifth Circuit, Eleventh Circuit, and D.C. Circuit, utilize this factor in the guilty plea withdrawal analysis. This additional factor can be considered because the Bashara factors are “general and nonexclusive.” See United States v. Haygood, 549 F.3d 1049, 1052 (6th Cir. 2008).

Scholl was hired by Saulsberry because of his “stellar reputation” within the Memphis legal community. (ECF No. 126 at PageID 752, 817.) In fact, Scholl is on the National Board of Trial Advocacy and he has been selected as a top 100 trial attorney by the National Trial Lawyers Association. (ECF No. 130 at PageID 936.) He has tried countless cases over his thirty-one years of practice. (See ECF No. 126 at PageID 700, 751.) Saulsberry’s hypothesis that Scholl did not want to try the case (Id. at PageID 830), could only be true if the evidence was such that Scholl knew Saulsberry would be convicted.

During the plea colloquy, Saulsberry stated numerous times on the record that he was satisfied with Scholl’s representation. (See e.g., ECF No. 104 at PageID 295.) The two of them discussed this case for at least ten hours the weekend before the change of plea. (Id. at PageID 289.) All in all, this Court is satisfied with Scholl’s representation of Saulsberry as well.

CONCLUSION

Saulsberry regrets his decision to plead guilty. Many other criminal defendants have felt the same way. The realities of sentencing and the next steps in the process sink in at different points for every defendant. But it cannot be said

that Saulsberry hastily entered into this plea agreement when he has been presented with multiple plea deals over a thirteen month period, he spent multiple hours discussing the plea deal with his attorney, he decided to plead guilty to a count that actually had a higher base level offense because he cared about the wording of the offense and how the word "fraud" would be perceived in the business community, he altered language in the stipulation of facts that supported his guilt, and he insisted numerous times during his change of plea that he wanted the Court to accept his guilty plea. There is not enough indicia of confusion. He is not an under-educated, underprepared defendant.

Therefore, Saulsberry's motion to withdraw his guilty plea is **DENIED**. A status conference will be held on **Tuesday, August 13 at 10:00 a.m.** so that Saulsberry's sentencing can be scheduled.

IT IS SO ORDERED, this 30th day of July, 2024.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT
JUDGE

AO 245B (Rev. 09/19)

Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Western District of Tennessee

UNITED STATES)	JUDGMENT IN A CRIMINAL CASE
OF AMERICA)	
v.)	Case Number: 2:22CR20113-01-SHL
BRIAN L.)	USM Number: 09406-510
SAULSBERRY)	<u>Unam Peter Oh</u>
)	Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 3 of the Indictment on
12/5/2023
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1957 and 2	Money Laundering	12/8/2020	3

The defendant is sentenced as provided in pages 2 through
7 of this judgment. The sentence is imposed pur-
suant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)

Count(s) 1, 2, and 4 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/25/2024

Date of Imposition of Judgment

s/Sheryl H. Lipman

Signature of Judge

Sheryl H. Lipman, US District Judge

Name and Title of Judge

9/27/2024

Date

AO 245B (Rev. 09/19)

Judgment in a Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 7

DEFENDANT: BRIAN SAULSBERRY

CASE NUMBER: 2:22CR20113-01-SHL

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

18 MONTHS

- The court makes the following recommendations to the Bureau of Prisons:

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____.
 - as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 09/19)

Judgment in a Criminal Case
Sheet 3 — Supervised Release

Judgment — Page 3 of 7

DEFENDANT: BRIAN SAULSBERRY

CASE NUMBER: 2:22CR20113-01-SHL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

2 YEARS

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)

7. You must participate in an approved program for domestic violence. (check if applicable)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AO 245B (Rev. 09/19)

Judgment in a Criminal Case
Sheet 3A — Supervised Release

Judgment — Page 4 of 7

DEFENDANT: BRIAN SAULSBERRY

CASE NUMBER: 2:22CR20113-01-SHL

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated

- circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
 7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
 8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
 9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
 10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
 11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

AO 245B (Rev. 09/19)

Judgment in a Criminal Case

Sheet 3B — Supervised Release

Judgment — Page 5 of 7

DEFENDANT: BRIAN SAULSBERRY

CASE NUMBER: 2:22CR20113-01-SHL

ADDITIONAL SUPERVISED RELEASE TERMS

1. Defendant shall provide the probation officer access to all financial information.
2. Defendant shall submit to third party risk notification.
3. Defendant shall be prohibited from opening additional lines of credit without the probation officer's approval.
4. Defendant shall participate in mental health assessment and counseling as directed by the probation officer.
5. Defendant shall participate in Moral Reconciliation Therapy (MRT) or another similar and approved cognitive behavioral therapy program as directed by the probation officer.

AO 245B (Rev. 09/19)

Judgment in a Criminal Case
Sheet 5 — Criminal Monetary
Penalties

Judgment — Page 6 of 7

DEFENDANT: BRIAN SAULSBERRY

CASE NUMBER: 2:22CR20113-01-SHL

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Assessment Restitution Fine AVAA Assessment*

TO-TALS	<u>Assess- ment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assess- ment*</u>	<u>JVTA Assess- ment**</u>
	\$ 100.00	\$ 171,400.00	\$ 0.00	\$ 0.00	\$ 0.00
	(Due immediately)				

**\$171,400 MFTT BOZ QBZNFOUT BMSFBEZ DSFEJUFE UP EFGFOEBOU.

- The determination of restitution is deferred until _____.
An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss</u> ^{***}	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
	\$171,400.00	\$171,400.00	

Name of Payee

Small Business Administration

721 19th Street, Third Floor

Room 301

Denver, Colorado

Loan Nos. 1577498007 / 9326498205

**Restitution ordered in the amount of \$171,400 less any payments already credited to defendant.

TOTALS \$171,400.00 \$171,400.00

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments
Judgment — Page 7 of 7

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A. Lump sum payment of \$ _____ due immediately, balance due
- not later than _____, or
- in accordance with C, D, E, or F below;
or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D. Payment in equal _____ (e.g., weekly, monthly, quarterly)) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

Restitution should be paid in monthly installments in the amount of 10% of gross income (total income from all sources before deductions, exemptions or other tax reductions). Pursuant to 18 USC § 3664 (k), the defendant shall notify the Court and the United States Attorney of any

material change in economic circumstances that might affect the defendant's ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

BRIAN L. SAULSBERRY,)

Defendant.)

No.2:22-cr-20113-01-SHL

ORDER TO SURRENDER

The defendant, Brian Saulsberry, having been sentenced in the above case(s) to the custody of the Bureau of Prisons, and having been granted leave by the Court to report to the designated facility, **IS HEREBY ORDERED** to surrender to the Bureau of Prisons by reporting to FCI Forrest City SCP, 1400 Dale Bumpers Road, Forrest City, AR 72335 by 2:00 P.M. on Tuesday, November 5, 2024.

The defendant **MUST** report to the above designated facility. If the defendant fails to report as directed, he or she will be considered an absconder.

IT IS FURTHER ORDERED that upon receipt of a copy of this Order the defendant shall sign one copy of this Order in the proper space below and return it to the Clerk of the Court in the enclosed self-addressed envelope, acknowledging that he/she has received a copy of this Order, and that he/she will report as ordered to the facility named above.

IT IS SO ORDERED, this 4th day of October, 2024.

s/ Sheryl H. Lipman

**SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT
JUDGE**

ACKNOWLEDGEMENT

I agree to report as directed above and understand that
if I fail to report, I may be cited for contempt of
Court and if convicted, may be punished by
imprisonment, fine or both.

Signed: _____
Defendant

Date: _____

A P P E A R A N C E S

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Appearing on behalf of the Plaintiff:

MR. THOMAS CAMPBELL

MR. JUSTIN WOODARD

United States Attorney's Office

167 N. Main Street Suite 800

Memphis, TN 38103

(901) 544-4231

Appearing on behalf of **THE DEFENDANT**:

MR. MICHAEL SCHOLL

Michael E. Scholl, Attorney at Law

253 Adams Avenue Suite 1500

Memphis, TN 38103

(901) 529-8500

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Tuesday

December 5, 2023

The Change of Plea hearing in this case began on this date, Tuesday, 5th day of December, 2023, at 11:00 a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: Good morning.

MR. SCHOLL: Thank you for giving me a few more minutes, Judge. I appreciate that. We were here at 10:30. I'll let Your Honor know we were working on that.

THE COURT: I appreciate that. So it is my understanding, Mr. Saulsberry, that you want to change your plea today; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. There are a number of questions I need to ask you on the record to be sure this is what you want to do, to be sure you understand what happens when you change your plea.

If I ask a question that you don't understand, it's because it's been a long week already and I've asked a bad question. So tell me and I'll figure out a better way to ask it.

1 | If you need to stop and talk to Mr. Scholl along the
2 | way, that's fine. Just let me know, and we'll let you
3 | talk to him. Okay?

4 | **THE DEFENDANT:** Yes, ma'am.

5 | **THE COURT:** You've got to, you know, answer
6 | verbally. Our court reporter, of course, is taking every-
7 | thing down.

8 | **THE DEFENDANT:** I'm with you.

9 | **THE COURT:** Okay.

10 | Ms. Mullen, if you could administer the oath.
11 | (Defendant Sworn.)

12 | **THE COURT:** Mr. Saulsberry, do you under-
13 | stand you're now under oath and must answer all my
14 | questions truthfully?

15 | **THE DEFENDANT:** Yes, ma'am.

16 | **THE COURT:** Do you understand that if you
17 | don't, if you give me a false answer to a question, you
18 | could be charged with a crime of making a false state-
19 | ment?

20 | **THE DEFENDANT:** Yes, ma'am.

21 | **THE COURT:** And do you understand anything
22 | you say in this hearing could be used against you?

23 | **THE DEFENDANT:** Yes, ma'am.

24 | **THE COURT:** What is your full name?

25 | **THE DEFENDANT:** Brian L. Saulsberry.

1 **THE COURT:** Brian L?

2 **THE DEFENDANT:** Yes, ma'am.

3 **THE COURT:** Okay. Where were you born, sir?

4 **THE DEFENDANT:** Memphis, Tennessee.

5 **THE COURT:** How old are you?

6 **THE DEFENDANT:** Forty-eight.

7 **THE COURT:** Are you married?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Kids?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** How many kids?

12 **THE DEFENDANT:** Three.

13 **THE COURT:** How far did you go in school?

14 **THE DEFENDANT:** Masters.

15 **THE COURT:** In business?

16 **THE DEFENDANT:** Which one, the bachelors
17 or the master?

18 **THE COURT:** Masters.

19 **THE DEFENDANT:** Technology management.

20 **THE COURT:** So when you read a piece of pa-
21 per, you understand what you're reading?

22 **THE DEFENDANT:** I do.

23 **THE COURT:** Have you taken --

24 **THE DEFENDANT:** For the most part.

25 **THE COURT:** What's that?

1 **THE DEFENDANT:** There are times where I
2 question myself on some stuff. Sometimes I'm like, I
3 got to reread to make sure I understand.

4 **THE COURT:** Okay. And in this case -- we'll
5 talk about a couple of the documents. In this case,
6 you know, there are documents where we use legal
7 words.

8 And particularly for those things, if you had
9 questions about those documents, did you ask Mr.
10 Scholl?

11 **THE DEFENDANT:** Could you repeat that one
12 more time for me?

13 **THE COURT:** Sure.

14 And we'll talk specifically about a couple of the
15 documents in this case, but if you had questions about
16 the legal meaning of any words used in the documents
17 connected to this case, did you ask Mr. Scholl those
18 questions?

19 **THE DEFENDANT:** I think I did. Yes, ma'am.

20 **THE COURT:** Okay. And did he give you an-
21 swers?

22 **THE DEFENDANT:** Yes, ma'am.

23 **THE COURT:** To explain the legal meaning of
24 words that we use.

25 **THE DEFENDANT:** He did.

1 **THE COURT:** Okay. Have you taken any drugs
2 or drank any alcohol within the last 24 hours?

3 **THE DEFENDANT:** No, ma'am.

4 **THE COURT:** Have you ever been treated for
5 any mental illness or addiction to drugs?

6 **THE DEFENDANT:** I haven't.

7 **THE COURT:** Do you understand what you're
8 doing here today?

9 **THE DEFENDANT:** I do.

10 **THE COURT:** What are you here to do today?

11 **THE DEFENDANT:** To finalize this trial. I
12 mean, that's -- am I here to plead guilty to a count?

13 **THE COURT:** Is that what you're here to do?

14 **THE DEFENDANT:** Could I have a moment,
15 please?

16 **THE COURT:** Certainly.

17 **THE DEFENDANT:** Your Honor -- I'm sorry.

18 **THE COURT:** No, no, no, little too much with
19 the volume. They were trying to turn the volume up.
20 Try again.

21 **THE DEFENDANT:** Your Honor.

22 **THE COURT:** A little bit too much. Try again.

23 We're -- your voice was pretty soft, so we were
24 trying to turn the mike up to make it easier for you.

25 **THE DEFENDANT:** It's too loud.

1 **THE COURT:** But just -- yeah, we just turned
2 it back down a little bit. Okay, let's proceed.

3 So the question is, what are you here to do to-
4 day?

5 **THE DEFENDANT:** Enter a plea.

6 **THE COURT:** Is that a question?

7 **THE DEFENDANT:** A statement.

8 **THE COURT:** Is that a statement?

9 **THE DEFENDANT:** That's a statement. Enter
10 a plea.

11 **THE COURT:** All right.

12 Mr. Scholl, do you consider Mr. Saulsberry com-
13 petent to enter a plea of guilty?

14 **MR. SCHOLL:** I do, Your Honor.

15 **THE COURT:** Mr. Saulsberry, did you receive a
16 copy of the indictment against you?

17 **THE DEFENDANT:** I did.

18 **THE COURT:** Did you fully discuss the charges
19 in the indictment and the case in general with Mr.
20 Scholl?

21 **THE DEFENDANT:** I did. Yes. Yes.

22 **THE COURT:** Did you tell him everything you
23 knew about the case?

24 **THE DEFENDANT:** I did.
25

1 **THE COURT:** Do you believe he is fully aware
2 of the facts upon which these charges are based?

3 **THE DEFENDANT:** I do.

4 **THE COURT:** Did he explain -- excuse me.
5 Did he advise you as to the nature and the
6 meaning of the charges against you?

7 **THE DEFENDANT:** He did. He did.

8 **THE COURT:** Did he advise you -- did he ex-
9 plain the meaning of any words in the indictment you
10 might not understand?

11 **THE DEFENDANT:** He explained everything
12 to my -- to -- I believe.

13 **THE COURT:** Okay. Did he specifically advise
14 you as to every element of these offenses that the Gov-
15 ernment must prove beyond a reasonable doubt to get
16 a conviction against you?

17 **THE DEFENDANT:** We probably -- I mean,
18 from that standpoint, I can't say it's 100 percent clear,
19 you know, what reasonable doubt and all that, so I
20 can't...

21 **THE COURT:** What I asked Mr. Saulsberry is
22 whether he told you the elements of the offenses that
23 the Government must prove beyond a reasonable
24 doubt, what are the elements of each of these offenses?

25 Mr. Scholl, do you want a minute to...

1 MR. SCHOLL: If I could, Judge.

2 **THE DEFENDANT:** Okay. I got you. I'm
3 tracking on the elements now.

4 **THE COURT:** Okay.

5 **THE DEFENDANT:** I just wanted to make sure
6 I was following you a hundred percent.

7 **THE COURT:** Certainly.

8 So he did advise you as to the elements of these
9 offenses that the Government must prove be-
10 yond a reasonable doubt to get convictions?

11 **THE DEFENDANT:** We talked about the ele-
12 ments, but the latter part to get convictions, that part,
13 I'm not – I can't...

14 **THE COURT:** The question is whether he told
15 you the elements, that those are the things that the
16 Government has to prove beyond a reasonable doubt.

17 I didn't ask you, frankly, whether you under-
18 stand reasonable doubt right now. I will in a minute,
19 but let's first talk about the elements.

20 Do you understand the elements of the of-
21 fenses?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Okay. Those elements of the of-
24 fenses, let's talk about this. Do you understand that to
25 get convictions against you, the Government would

1 have had to have proven those elements beyond a rea-
2 sonable doubt?

3 Do you want me to define "reasonable doubt" for
4 you?

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** Reasonable doubt is the -- what
7 you use in your everyday life to make very significant
8 decisions. So reasonable doubt is not the absence of all
9 doubt, but it's, what is the level of information you
10 would use in your everyday life to make significant de-
11 cisions?

12 If the jury concluded that there was enough
13 proof that would support the reasonable -- the im-
14 portant decisions they make in their lives, then they
15 have gotten to a lack of reasonable doubt.

16 **THE DEFENDANT:** Okay.

17 **THE COURT:** Do you understand that?

18 **THE DEFENDANT:** I think I'm tracking with
19 you. So it's like -- almost like a preponderance of the
20 evidence or something.

21 **THE COURT:** Higher than that. Preponder-
22 ance of evidence is just a little over 50 percent. Pre-
23 ponderance is 50/50, a little bit over 50/50. Reason-
24 able doubt is more. So the Government would have to
25 prove more than a preponderance of the evidence.

1 Mr. Scholl, did you discuss this with Mr. Sauls-
2 berry?

3 MR. SCHOLL: Judge, we have spent hours and
4 hours and hours going over this, Judge, and what the
5 Government would have to prove and talking about
6 Mr. Saulsberry's case. The last probably five days, I've
7 probably spoken to him probably ten or more hours,
8 just the two of us on the phone. So we have.

9 **THE COURT:** So Mr. Saulsberry, if the jury had
10 enough evidence to convince them that you had en-
11 gaged in the activities the Government alleges you
12 did, if they had a level of evidence that would be sort
13 of equal to the level of evidence they would use in mak-
14 ing important decisions in their lives.

15 Could have some doubt, but not -- it couldn't --
16 the doubt couldn't go beyond -- the doubt could not be
17 large in any way. It could not be significant in any
18 way. They would have to feel comfortable enough with
19 the proof against you at the same level that they would
20 feel comfortable making significant decisions in their
21 lives.

22 **THE DEFENDANT:** I do. I understand.

23 **THE COURT:** Is there a way you explained it
24 that you wanted to put on the record, Mr. Scholl?

25

1 MR. SCHOLL: Judge, we've just -- and, Mr.
2 Saulsberry, you and I have gone over this case exten-
3 sively; is that right?

4 **THE DEFENDANT:** We have.

5 MR. SCHOLL: We have.

6 And I've explained to you the proof that the
7 Government has; is that correct?

8 **THE DEFENDANT:** Yes, sir.

9 MR. SCHOLL: We've gone over the documents
10 and we've gone through all those things; is that right?

11 **THE DEFENDANT:** Correct.

12 MR. SCHOLL: And I've explained to you what
13 they would have to prove at trial with regards to each
14 of these counts of wire fraud and each of these counts
15 of money laundering, right?

16 **THE DEFENDANT:** Uh-huh.

17 MR. SCHOLL: Is that a yes?

18 **THE DEFENDANT:** Yes.

19 MR. SCHOLL: Okay. And so, you understand
20 what they've got to put on in their case to prove their
21 case against you; is that correct?

22 Have I shown you that?

23 I've shown you the documents and I've told you
24 what they're going to put on, and I've told you what

25

1 each of them is going to have to prove. You and I have
2 discussed that, yes?

3 **THE DEFENDANT:** As far as the elements of
4 the case, what they would have to show in regards to
5 what I put forward versus what they have?

6 **MR. SCHOLL:** What they have to put forth.
7 We've had many, many discussions, have we
8 not?

9 **THE DEFENDANT:** We've had a lot of discus-
10 sions.

11 **MR. SCHOLL:** A lot of discussions, okay.

12 And I have even shown you all their -- I've gone
13 through the exhibits and stuff with you that they have
14 for trial, correct? We've talked about them, I've talked
15 to you on the phone about them, I've talked to you in
16 person about them; is that right?

17 **THE DEFENDANT:** Yeah.

18 **MR. SCHOLL:** And I've talked to you about the
19 EIDL applications that they would bring in; is that
20 correct?

21 **THE DEFENDANT:** Correct.

22 **MR. SCHOLL:** I've talked to you about the tax
23 return stuff that they would bring in; is that correct?

24 **THE DEFENDANT:** That's correct.
25

1 MR. SCHOLL: And I've talked to you about all
2 the differences in the applications; is that right?

3 THE DEFENDANT: We've talked about that,
4 yes.

5 MR. SCHOLL: The differences in the numbers;
6 is that right?

7 THE DEFENDANT: Correct.

8 MR. SCHOLL: And that they have to show that
9 those numbers were different and they have to show
10 that you had intent to defraud; is that right?

11 THE DEFENDANT: Right.

12 MR. SCHOLL: And we went through all these
13 things; is that correct?

14 THE DEFENDANT: Correct.

15 MR. SCHOLL: And so, I told you and showed
16 you what they had to prove against you in this case; is
17 that right?

18 THE DEFENDANT: Correct.

19 MR. SCHOLL: Okay. I think that's -- what
20 we're trying to get to here, Mr. Saulsberry, is that we
21 have sat down and gone through their entire case to-
22 gether. I've shown you what they're going to bring into
23 court and what they are bringing into court, right?

24 THE DEFENDANT: Right.

25

1 MR. SCHOLL: Okay. I think that's the ques-
2 tions the Judge is trying to ask you right now. She
3 wants to make sure that you -- we've gone over all
4 these things together.

5 THE DEFENDANT: Okay.

6 MR. SCHOLL: Because if I haven't gone over all
7 these things together, then we would have a problem
8 here today. Okay?

9 THE DEFENDANT: Uh-huh.

10 MR. SCHOLL: You understand?

11 THE DEFENDANT: Right.

12 MR. SCHOLL: Okay.

13 THE COURT: But the -- that's good.

14 The other piece of that is what the --
15 understanding the burden that the Govern-
16 ment has in this case, which is to prove those things
17 that Mr. Scholl went over with you to a jury beyond a
18 reasonable doubt.

19 So do you understand that whatever evidence
20 Mr. Scholl has highlighted for you in y'all's conversa-
21 tions that he understands the Government is going to
22 use, I don't want Mr. Scholl to answer this question, of
23 course, but he's given you his opinion of how a jury
24 would view that. The -- I have no doubt.

25

1 The question is, do you understand that when
2 the Government puts all that proof on, that their obli-
3 gation would be to convince the jury that you are
4 guilty of these offenses beyond a reasonable doubt?
5 And that's where we got stuck before. So do you un-
6 derstand that that is what the jury would be evaluat-
7 ing?

8 **THE DEFENDANT:** I do now. I do.

9 **THE COURT:** You do, okay.

10 **THE DEFENDANT:** Your Honor.

11 **THE COURT:** I'm sorry.

12 **THE DEFENDANT:** You've got another ques-
13 tion, Your Honor?

14 **THE COURT:** I do.

15 **THE DEFENDANT:** Okay.

16 **THE COURT:** Do you have a question?

17 **THE DEFENDANT:** No, ma'am.

18 **THE COURT:** Has Mr. Scholl advised you as to
19 any defenses you have -- you may have to the charges?

20 In other words, has he walked through what
21 your case would have been if you had gone to trial?

22 **THE DEFENDANT:** My testimony?

23 **THE COURT:** Well, just your -- all of your de-
24 fenses. Go ahead, Mr. Scholl.

25 **THE DEFENDANT:** Yes, ma'am.

1 **THE COURT:** Has he explained the terms of
2 the plea agreement to you?

3 **THE DEFENDANT:** We went through the plea
4 agreement.

5 **THE COURT:** Are you fully satisfied with the
6 counsel, representation and advice Mr. Scholl has
7 given you in this case?

8 **THE DEFENDANT:** I think the counsel he's
9 given me to the best of his ability, yes.

10 **THE COURT:** Are you fully satisfied with the
11 counsel, representation and advice Mr. Scholl has
12 given you in this case?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Mr. Scholl, are you satisfied that
15 Mr. Saulsberry understands the charges, the elements
16 of the offenses charged and the legal meaning of the
17 words used in the indictment?

18 **MR. SCHOLL:** Yes, Your Honor.

19 **THE COURT:** Mr. Saulsberry, by pleading
20 guilty, you give up valuable civil rights. Count 3 is a
21 felony offense. And do you understand that as a felon,
22 you may lose the right to vote, the right to hold public
23 office, the right to serve on a jury and the right to pos-
24 sess any kind of a firearm, meaning you can't have a
25

1 | gun, even ammunition or explosives. Do you under-
2 | stand those rights you give up?

3 | **THE DEFENDANT:** Could I consult my attor-
4 | ney?

5 | **THE COURT:** Yes.

6 | **THE DEFENDANT:** Yes, ma'am.

7 | **THE COURT:** In pleading guilty, you also give
8 | up constitutional rights that would have been part of
9 | the trial if we had a trial in this case.

10 | So do you understand you have the right to
11 | plead not guilty and to hold onto that plea throughout
12 | the whole process?

13 | **THE DEFENDANT:** Could you repeat that
14 | question one more time, please? I do apologize, Your
15 | Honor.

16 | **THE COURT:** Mr. Scholl, did you review what
17 | these questions would be?

18 | **MR. SCHOLL:** We did, Judge.

19 | **THE COURT:** Mr. Saulsberry, I need you to lis-
20 | ten.

21 | **THE DEFENDANT:** Yes, ma'am.

22 | **THE COURT:** And I need you to answer the
23 | questions.

24 | You have the --

25 |

1 **THE DEFENDANT:** I'm trying to focus on this
2 as best as I can. I'm sorry.

3 **THE COURT:** You have the right to plead not
4 guilty.

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** And you pled not guilty up until
7 right -- until today. You could hold onto that. We
8 could go to trial next week.

9 So do you understand you have the right to con-
10 tinue to plead not guilty and go to trial next week? Do
11 you understand you have that right?

12 **THE DEFENDANT:** As of right now?

13 **THE COURT:** Correct. Yes or no, sir?

14 **THE DEFENDANT:** Yes, I do.

15 **THE COURT:** I don't know what's going on. You
16 have got to concentrate on what I'm saying and an-
17 swer my questions.

18 If you wanted to go to trial next week, you have
19 the right to a trial by jury and we would do that jury
20 trial next week. Do you understand that?

21 **THE DEFENDANT:** Yes, ma'am.

22 **THE COURT:** At a trial, you would be pre-
23 sumed to be innocent. It would be the Government's
24 job to prove your guilt at that trial beyond a reasona-
25 ble doubt. Do you understand that right?

1 **THE DEFENDANT:** Yes, ma'am.

2 **THE COURT:** At a trial, you would have assis-
3 tance of counsel, appointed by the Court if necessary,
4 and you would have the right to that lawyer through-
5 out each stage of the case. Do you understand that
6 right?

7 **THE DEFENDANT:** Yes, ma'am.

8 **THE COURT:** At a trial, you would have the
9 right to see and to hear all of the witnesses the Gov-
10 ernment would offer against you and to have your law-
11 yer cross-examine those witnesses in your defense. Do
12 you understand that trial right?

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** At a trial, you would have the
15 right to not testify unless you voluntarily chose to do
16 so in your own defense. Do you understand that right?

17 **THE DEFENDANT:** Yes, ma'am.

18 **THE COURT:** At a trial, you would have the
19 right to have your own witnesses here, people who
20 may be able to testify in your case, and you would have
21 the right to present documents that you think might
22 help you in the case.

23 Do you understand those trial rights?

24 **THE DEFENDANT:** Yes, ma'am.

25

1 **THE COURT:** If we had the trial and you de-
2 cided you did not want to testify and you didn't want
3 to present any evidence, those facts could not be held
4 against you. Do you understand those trial rights?

5 In other words, a jury could not say, well, he
6 didn't testify and he didn't give us any evidence, so
7 we're finding for the Government. They're not allowed
8 to consider whether you testified or whether you pre-
9 sented any evidence in their decision. Do you under-
10 stand that?

11 **THE DEFENDANT:** I do.

12 **THE COURT:** So throughout the trial, it's the
13 Government's burden of proof, they have to prove be-
14 yond a reasonable doubt. That's what I'm saying. Do
15 you understand that?

16 **THE DEFENDANT:** I want to plead not guilty.

17 **THE COURT:** Okay. We'll go to trial next week.
18 I'm sorry, are you going somewhere, sir?

19 **THE DEFENDANT:** I'm sorry. I'm so sorry,
20 Your Honor.

21 **THE COURT:** All right. Are we ready to go to
22 trial?

23 **MR. CAMPBELL:** Yes, Your Honor.

24 **THE COURT:** All right. Be here at 9:30 on Mon-
25 day.

1 Any other issues we need to discuss?

2 MR. SCHOLL: No, Your Honor.

3 MR. CAMPBELL: No, Your Honor.

4 THE COURT: All right. We'll see you then. We
5 are in recess.

6 (Short break.)

7 (Ms. Marshall, court reporter, took down testi-
8 mony for continuation of change of plea.)

9 (Short break.)

10 MR. SCHOLL: Judge, if I may proceed with
11 asking my client a few questions about the plea.

12 THE COURT: Please.

13 MR. SCHOLL: Mr. Saulsberry, three questions
14 I want to ask you about this whole thing.

15 The money from the loan eventually went to TD
16 Ameri -- into a TD Ameritrade account; is that cor-
17 rect?

18 THE DEFENDANT: Yes, eventually.

19 MR. SCHOLL: And part of that money was
20 spent on some business expenses; is that correct?

21 Did you hear my question?

22 THE DEFENDANT: Repeat that again.

23 MR. SCHOLL: Pay attention. Listen to my
24 question.

25

1 **THE DEFENDANT:** I promise you I'm listen-
2 ing.

3 **MR. SCHOLL:** Okay. Part of that money went
4 to pay business expenses, yes? Yes or no?

5 Are you listening -- did you hear my question?

6 **THE DEFENDANT:** Yeah, I did. It just --

7 **MR. SCHOLL:** Did you hear my question?

8 **THE DEFENDANT:** Yes.

9 **MR. SCHOLL:** Did part of that money go to-
10 wards business expenses?

11 **THE DEFENDANT:** Yes.

12 **MR. SCHOLL:** Okay. And did some of that
13 money go to personal expenses that were not -- that
14 you knew were not allowed?

15 Did you hear my question?

16 **THE DEFENDANT:** Can you repeat that
17 again?

18 **MR. SCHOLL:** Did part of the money go to per-
19 sonal expenses that you knew were not allowed?

20 Did you hear my question?

21 **THE DEFENDANT:** I heard your question.

22 **MR. SCHOLL:** Okay. What's the answer?

23 You just answered the question whenever we
24 walked in the door. What's the answer?

25

1 **THE DEFENDANT:** Was some of the money
2 used knowingly?

3 **MR. SCHOLL:** Was some of the money used for
4 personal expenses that you weren't allowed to use
5 them for?

6 **THE COURT:** I'm...

7 **MR. SCHOLL:** It's a simple question. Why
8 won't you answer it?

9 **THE DEFENDANT:** Yes. Yes.

10 **THE COURT:** Well, why the hesitation, Mr.
11 Saulsberry?

12 I don't -- you know --

13 **MR. SCHOLL:** I mean, I've asked the three sim-
14 ple -- I'm sorry, Judge.

15 **THE COURT:** I know.

16 **MR. SCHOLL:** I'm sitting down, I'm just sort of
17 frustrated. I've asked the three questions about 20
18 times walking in the door and walking as we walk in
19 here, and he's asked me to ask the three -- these ques-
20 tions to him. I asked the questions to him, just answer
21 the question.

22 **THE DEFENDANT:** Yeah.

23 **MR. SCHOLL:** And so, your three questions
24 are, did you -- money go into TD Ameritrade account
25 eventually?

1 **THE DEFENDANT:** It did.

2 **MR. SCHOLL:** Okay. And did you spend part of
3 the money on business expenses?

4 I don't know why he would have to think, be-
5 cause he's even telling me this in the hallway.

6 **THE COURT:** I understand, Mr. Scholl. I un-
7 derstand. And something is going on with Mr. Sauls-
8 berry, and I just -- you know, we've gotten to the point
9 where I feel like -- I can't tell whether I'm getting
10 straight answers or not, and I can't accept a plea when
11 the Defendant doesn't seem to accept that he's guilty.

12 You know, it's -- we've been going on now for,
13 oh, gosh, two -- on and off for two hours and --

14 **THE DEFENDANT:** I'll just say yes, yes, yes.

15 **THE COURT:** Hang on, Mr. Saulsberry.

16 **THE DEFENDANT:** I'm sorry.

17 **THE COURT:** And, you know, over two hours, I
18 don't want him, you know, after the fact to argue that
19 he was coerced into doing something, and --

20 **MR. SCHOLL:** May I ask a couple questions?

21 **THE COURT:** You can give it a shot.

22 **MR. SCHOLL:** Thank you.

23 Do you want --

24 **MR. WOODARD:** I'm sorry. Your Honor, in the
25 -- I'm sorry this is going on so long. I think the

1 difficulty is that when we all meet and talk, we -- it's
2 different than presented in court. And so, that's sort of
3 what both parties are struggling with.

4 MR. SCHOLL: Because, I mean, we've met,
5 Judge, it's been clear and it's been clear to Mr. Sauls-
6 berry. He's signed the agreement, which says the facts
7 in there, Judge --

8 THE COURT: Yeah.

9 MR. SCHOLL: -- which he's admitted to the
10 facts in there.

11 Do you want to plead guilty, Mr. Saulsberry?
12 We're doing the guilty plea. She's asked you if you
13 wanted to plead guilty.

14 THE DEFENDANT: But I've already signed the
15 document.

16 MR. SCHOLL: That's what -- but you have --

17 THE COURT: But you have to say these things
18 in court. I have to hear you say them. And, you know,
19 if you want me to just read the document to you and
20 let me see if that satisfies the elements, I'll see, but
21 I'm hearing different answers than what you agreed
22 to in this agreement.

23 MR. SCHOLL: Do you want me to ask the three
24 questions again?

25

1 **THE DEFENDANT:** Man, it's whatever. It's
2 whatever.

3 **MR. SCHOLL:** Are you going to answer the
4 questions?

5 **THE DEFENDANT:** Yeah.

6 **MR. SCHOLL:** Okay. I get the -- but the bottom
7 question is that -- go ahead, what do you want to say?

8 **THE DEFENDANT:** Could we just accept my
9 plea and -- just -- because I signed it, and I'm just try-
10 ing to --

11 **THE COURT:** Mr. Saulsberry, this works in a
12 particular way.

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** And I have to hear from you that
15 you are admitting to guilt in this case.

16 **THE DEFENDANT:** Yes, ma'am.

17 **THE COURT:** So far, I haven't heard it. I've
18 heard you sort of backtracking, thinking -- you know,
19 saying you thought what you did was fine. I don't hear
20 it. And so, I can't accept a plea that I don't have a fac-
21 tual basis for from the defendant.

22 **MR. SCHOLL:** I think what he's trying to say,
23 Judge, is he signed the factual basis in the plea. It
24 was something sort of unusual what we -- than what
25 we normally do here in the Western District, but the

1 factual basis was laid out in the plea and he signed
2 and agreed to it.

3 You know, I would put that forth to the Court
4 that that meets the criteria here with regard to his ad-
5 mission in all of this, I mean, because one of the big
6 problems we run into is if we go to trial, they can take
7 and use this document at trial as an admission of guilt
8 on his part, where it quite frankly -- the paragraph
9 that -- this says, On December 8, 2020, Defendant
10 made a transfer in the amount of a hundred thousand
11 dollars for DSG Group checking account with Bank
12 One to his own personal checking account Bank One.
13 The following day, on December 9th, 2020, the Defend-
14 ant transferred the \$100,000 to an investment account
15 with Bank Two. Defendant made these transfers and
16 investment with the EIDL program funds, knowing
17 that the property involved in the transaction was de-
18 rived from unlawful activity.

19 And you read that, correct, Mr. Saulsberry? We
20 went over this before court, right, in your plea agree-
21 ment -- the plea agreement, right?

22 **THE DEFENDANT:** I saw it right before court,
23 yes.

24 **MR. SCHOLL:** And signed that; is that right?
25 You signed the plea agreement?

1 **THE DEFENDANT:** I signed the plea agree-
2 ment, yes.

3 **MR. SCHOLL:** And so, that -- that's a pretty big
4 admission that if we were in trial comes out that
5 pretty much admits the crime.

6 **THE DEFENDANT:** Right.

7 **MR. SCHOLL:** In fact, it admits more than that
8 in the plea colloquy that -- submitted false loan appli-
9 cations under EIDL program in order to obtain funds
10 for which he and his business were ineligible to re-
11 ceive, specifically -- and it goes into specific acts. I
12 don't need to read it because it's in there, but I think
13 we have sort of a different situation and --

14 **THE COURT:** And maybe I should have just
15 read Paragraph 5 in the plea agreement --

16 **MR. SCHOLL:** Right.

17 **THE COURT:** -- to him and not asked him any-
18 thing, but I did -- I did ask him something, and now
19 it's as if he's trying to walk back Paragraph 5.

20 **MR. SCHOLL:** You're not trying to walk out of
21 anything in your plea, are you? Is your plea agree-
22 ment what the plea agreement is?

23 **THE DEFENDANT:** Just give me one second.

24 **MR. SCHOLL:** Okay.

25 **THE DEFENDANT:** Yeah.

1 Your Honor, this agreement was presented to
2 me right before court. I thought sign it, move on with
3 life. And the problem is that I don't want to mislead
4 anybody if I accept something and someone tells me,
5 hey, Brian, you made a mistake here, if you show me
6 that I accept that, if that's the truth.

7 So I just -- it's -- when I see you and I see what
8 the Court represents, I see truth. I see honesty. That's
9 -- I don't want to lose who I am and go into all these
10 questions. I just want to say if I did something that I
11 didn't knowingly do right, I accept that and I take re-
12 sponsibility.

13 But I thought we've signed this and just, okay.
14 And I made a mistake if I calculated my numbers
15 wrong, I take -- if -- if I made that.

16 **THE COURT:** I mean, it doesn't sound like he's
17 saying he admits to Paragraph 5.

18 I mean, do you understand, Mr. Saulsberry,
19 that what you are saying in this document is not that
20 you made an unknowing mistake but that you commit-
21 ted fraudulent behavior? Those are different things.
22 And if you are telling me now that that's not the case,
23 then we need to go to trial.

24 I don't know if -- the Government's case is based
25 on these conflicting statement -- I guess in part on

1 conflicting statements he made in the various applica-
2 tions that were submitted at or about the same time,
3 correct?

4 MR. WOODARD: That's correct, Your Honor.

5 THE COURT: So it's not even really a willful
6 blindness case. It's a, he made these very con-
7 flicting statements at or about the same time.

8 MR. WOODARD: That's correct, Your Honor.

9 MR. SCHOLL: Including the submission,
10 Judge, of an early IRS document, and so -- and I -- and
11 Mr. Saulsberry agrees all those numbers were differ-
12 ent. And so, you're right. It's not even a deliberate in-
13 difference type of thing. It's...

14 And we signed it, we went through everything
15 and went through the facts, and he's okay with all that
16 and says he was okay with it. He's just like -- he
17 said to answer the questions in court are just -- he's
18 having trouble, Judge.

19 And, I mean, we literally got past part of that, I
20 would think, with his admission in the plea agree-
21 ment, which can be -- if we can't use the admission
22 here to accept that as his plea here, then it would be
23 hard to say we could use the same thing in front of the
24 jury, if he's -- if he signed it admitting he did this,
25 right, today.

1 **THE COURT:** Well, but what I hear him saying
2 -- and maybe I've asked too many questions, but what
3 I've heard him saying is he just signed this to get it
4 over with. That it's not -- you know, it's not neces-
5 sarily the truth.

6 And, you know, if that's his position, that's fine.
7 We just need to go to trial.

8 I understand your position, Mr. Scholl, and, you
9 know, I'm taking all of this as you are trying to save
10 him from himself.

11 **MR. SCHOLL:** I very much am, Your Honor.

12 And my concern is the disconnect that I get,
13 like, literally when I say -- I'm talking walking from
14 the door to right here. I mean, we talked about the
15 same three things for the entire time Your Honor was
16 gone.

17 And then I think Your Honor even saw me ask
18 the second question, it was like he didn't even hear the
19 second question. I don't know if he's just so nervous or
20 what, but it's like the second question was just basic
21 and it's like he didn't even hear it. And he goes, you
22 want me to repeat the question, and I'm like, you've
23 heard the question already. And so, I don't know -- are
24 you not paying attention to what I'm saying?

25

1 **THE DEFENDANT:** I'm paying attention very
2 well. I just -- my summation was that it would be --

3 **MR. SCHOLL:** He thought it was over once he
4 signed the documents, and -- but I told him he had to
5 come in here before Your Honor and convince Your
6 Honor that he's pleading guilty. That's part of all of it,
7 part of acceptance of responsibility points, all those
8 things.

9 And so, I think Mr. Campbell was going to say
10 something.

11 **THE DEFENDANT:** But --

12 **THE COURT:** Yeah. Mr. Campbell, what would
13 you like to add to this mess?

14 **MR. CAMPBELL:** Your Honor, I just -- I want
15 to make sure that it's on the record that within this
16 agreement, Paragraph 6B reads, The Defendant un-
17 derstands and agrees that in the event the Defendant
18 violates the plea agreement, the Defendant does not
19 enter his plea of guilty or his guilty plea is for any rea-
20 son withdrawn, any statements made by the Defend-
21 ant to law enforcement agents or an attorney for the
22 prosecuting authority during plea discussions, any
23 statements made by the Defendant during any court
24 proceeding involving the Defendant's plea of guilty.

25

1 So all the statements he's given today, includ-
2 ing the agreed facts set forth herein, which is Para-
3 graph 5 that Your Honor was talking about, any other
4 factual bases or summaries signed by the Defendant,
5 any leads from such statements, et cetera, shall be ad-
6 missible for all purposes against the Defendant.

7 With that, I wanted to -- we've talked a lot about
8 the use of funds in Paragraph 5, beginning specifically
9 on April 1st. I wanted to highlight that that says spe-
10 cifically on April 1st, the Defendant electronically sub-
11 mitted a false and fraudulent EIDL program applica-
12 tion. So this would be admissible for Count 3 because
13 he's pled guilty.

14 But also for Count 2, the wire fraud, he has ad-
15 mitted in the statement of facts that he signed that he
16 knew at the time that it was false and fraudulent.

17 And I just wanted to make sure that was on the
18 record for the Defendant.

19 MR. SCHOLL: So Mr. Saulsberry, you've heard
20 what we've talked about. I'm going to ask you those
21 three questions again, okay?

22 **THE DEFENDANT:** Yes, sir.

23 MR. SCHOLL: Paying attention now?

24 **THE DEFENDANT:** I've been -- I promise --

25 MR. SCHOLL: Okay, listen to me.

1 **THE DEFENDANT:** I've been paying attention.

2 **MR. SCHOLL:** Did the money -- did this money
3 eventually go into a TD Ameritrade account?

4 **THE DEFENDANT:** Yes.

5 **MR. SCHOLL:** Yes? Did you say yes?

6 **THE DEFENDANT:** Uh-huh.

7 **MR. SCHOLL:** Did you use part of this money
8 for business expenditures?

9 **THE DEFENDANT:** I used the money for busi-
10 ness expenditures, yes.

11 **MR. SCHOLL:** Okay. And did you use part of
12 this money for personal expenditures, which you knew
13 you weren't supposed to use them for? Did you use
14 part of the money for personal items that you knew
15 you weren't supposed to spend the money on?

16 **THE DEFENDANT:** Yes.

17 **MR. SCHOLL:** Say it to her. Don't say it to me,
18 say it to her.

19 **THE DEFENDANT:** I'll say yes.

20 **MR. SCHOLL:** Say it. I can't hear you. You're
21 saying it -- you're whispering it to me. You need to
22 say it to the Court.

23 You just answered it to me. Will you answer it
24 to the Judge so she can hear you?

25 **THE DEFENDANT:** Right.

1 Did I use the money for personal --

2 MR. SCHOLL: Personal expenses, which you
3 weren't supposed to use the money for?

4 **THE DEFENDANT:** Did I use the money for
5 personal expenses that I knew I --

6 MR. SCHOLL: Brian, I just asked you, did you
7 use the money for personal expenses that you weren't
8 supposed to use it for?

9 **THE COURT:** That you knew you weren't sup-
10 posed to use it for.

11 MR. SCHOLL: That you knew you weren't sup-
12 posed to use it for.

13 Same three questions, Brian. You just told me -
14 - you just told me yes -- you've got to say it in the mi-
15 crophone.

16 **THE DEFENDANT:** Can we take out "know-
17 ingly"?

18 MR. SCHOLL: No.

19 **THE DEFENDANT:** Yes. Yes.

20 MR. SCHOLL: So did you knowingly do that,
21 Brian?

22 **THE COURT:** Look, we've got two alternatives.
23 I feel like he is walking away from the idea that he
24 knew what he was doing was not allowed.

25 **THE DEFENDANT:** Just yes.

1 **THE COURT:** And --

2 **THE DEFENDANT:** Can I just say something,
3 Your Honor?

4 **MR. SCHOLL:** Don't say anything else right
5 now. You -- because right now, all this is coming in at
6 trial. You need to stop talking for a second.

7 **THE COURT:** If -- I don't know that any more -
8 - any more time would help, but I'm out of time today.
9 I'm out of time today.

10 If you all want to try and come back, there may
11 be some time on Thursday, there may be some time
12 Friday morning. But, you know, by Friday midday,
13 we're putting in the jury call and we're going to have
14 jurors here on Monday.

15 If you think more time would help, Mr. Scholl,
16 I'm willing to give Mr. Saulsberry that oppor-
17 tunity, because right now this is not going well for
18 him.

19 **THE DEFENDANT:** Just yes.

20 **MR. SCHOLL:** I know you're nervous,
21 Mr. Saulsberry, but I'm -- now you'll answer,
22 I'm going to ask the last question, okay?

23 **THE DEFENDANT:** Uh-huh.

24 **MR. SCHOLL:** All right. The last question is,
25 did you take some of this money and use it for personal

1 use knowingly when you weren't supposed to? Did you
2 do that?

3 You just told me to ask the question.

4 **THE COURT:** I'm not comfortable with this.

5 **THE DEFENDANT:** Just yes so I can -- yes,
6 whatever.

7 **MR. SCHOLL:** No, you can't do that, Brian.

8 **THE COURT:** You can't -- Mr. Saulsberry, Mr.
9 Scholl is frankly doing everything he can --

10 **MR. SCHOLL:** Judge.

11 **THE COURT:** -- to save you from yourself and -

12 -

13 **MR. SCHOLL:** Judge, I literally asked the
14 question --

15 **THE DEFENDANT:** I'm saying yes.

16 **MR. SCHOLL:** He's saying, I'll answer it, and
17 then when I ask it, he acts like he's never been asked
18 the question.

19 **THE DEFENDANT:** That -- the -- the part --

20 **THE COURT:** I understand. I understand. I
21 just -- I feel like he is at this point, you know, saying
22 yes -- to the extent he's saying yes, which is very
23 tenuous,

24 he's saying that to get it over with as opposed to
25 -- he -- he clearly is taking the position he didn't know

1 any of this was wrong. I mean, that -- that's what I'm
2 taking his statements in court to be.

3 MR. SCHOLL: Well -- and, Judge, I go back to
4 the plea agreement itself, which is very different.

5 Normally in our district, you would have to ask
6 that of the defendant after the signing of the plea
7 agreement, because it's not included in the plea agree-
8 ment. In this situation, it is. It's a signed admission in
9 the plea agreement. And if we had a plea agreement
10 like we normally have in the Western District and he
11 said stuff like this, it wouldn't be as -- it would be a
12 more serious situation. But in this case, he's come out
13 and signed his name and dated it to more extensive
14 facts.

15 I don't know what the disconnect is in the ques-
16 tion, but there's obviously -- but those facts have been
17 reviewed. They've been read in court. You know, he
18 has said he's understood everything. And until we
19 start getting into particularized questions, that's the
20 only thing that becomes a problem. And so, I sub-
21 mit, Judge, that there's enough there for the ac-
22 ceptance of the plea.

23 THE COURT: I guess my problem is -- and
24 again, maybe I should have just relied on the plea
25 agreement and never asked him a question, but I did

1 ask him questions and he's walking away from the
2 statement he signed in the plea agreement.

3 **THE DEFENDANT:** Can I read the statement?

4 **THE COURT:** So I -- you know, I guess I created
5 this mess, but since I created it, he -- in creating it, it's
6 become clear that he doesn't agree with what's in the
7 plea agreement even though he signed his name.

8 **THE DEFENDANT:** Your Honor, can we just go
9 off the plea agreement?

10 **MR. SCHOLL:** Is the plea agreement correct?

11 **THE DEFENDANT:** I signed the plea agree-
12 ment.

13 **THE COURT:** Is the plea agreement correct?

14 **MR. SCHOLL:** Is it correct?

15 **THE COURT:** You want to -- we have, I think --
16 do you have that in front of you?

17 **MR. SCHOLL:** Yes, I have a copy.

18 You signed it because it was correct, did you
19 not?

20 **THE COURT:** Read the plea agreement. Read
21 particularly Paragraph 5.

22 **THE DEFENDANT:** Okay.

23 **THE COURT:** And tell me if that is correct.

24 **THE DEFENDANT:** Let me read it -- on Decem-
25 ber --

1 **THE COURT:** Not -- just to yourself.
2 **THE DEFENDANT:** Oh, I'm sorry. Sorry about
3 that, Your Honor.
4 Yes.
5 **MR. SCHOLL:** Is that correct?
6 **THE DEFENDANT:** Yes.
7 **THE COURT:** What's stated in the document is
8 correct, including Paragraph 5?
9 **THE DEFENDANT:** Yes, ma'am.
10 **THE COURT:** Okay. I think I can rely on that.
11 Does the Government have anything?
12 **MR. CAMPBELL:** No, Your Honor.
13 **THE COURT:** Anything else, Mr. Scholl?
14 **MR. SCHOLL:** No, Your Honor.
15 **THE COURT:** So we've talked through a lot of
16 different issues here, Mr. Saulsberry. We've talked
17 about what the charge is here, what the maximum
18 possible penalty for the charge is. We've talked about
19 the plea agreement and the terms of the plea agree-
20 ment.
21 We've talked about what I'll look at to make a
22 decision on your sentence, but also that I don't make
23 that decision now, I make it at the time of the sentenc-
24 ing hearing.
25

1 Do you have any questions about anything
2 we've talked about?

3 **THE DEFENDANT:** No, ma'am.

4 **THE COURT:** Considering everything we've
5 discussed, how do you plead to the charge in Count 3
6 of the indictment; guilty or not guilty?

7 **MR. SCHOLL:** It's just a formality.

8 **THE DEFENDANT:** Guilty.

9 **THE COURT:** Is this your decision -- decision to
10 plead guilty, made voluntarily by you because you are
11 guilty?

12 **THE DEFENDANT:** I accept this plea. I accept
13 it. Yes, ma'am.

14 **THE COURT:** Is it your decision to plead -- is
15 this your decision to plead guilty, made voluntarily by
16 you because you are guilty?

17 It's really just a yes or no answer.

18 **THE DEFENDANT:** So do I voluntarily plead
19 guilty? Yes.

20 **THE COURT:** Because you are guilty?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** I've observed Mr. Saulsberry's
23 appearance and listened to his many answers to my
24 questions. Based on my observations and his answers,
25 I find that Mr. Saulsberry is fully competent and

1 | capable of entering an informed plea, that he's aware
2 | of the nature of the charge and the consequences of the
3 | plea.

4 | Mr. Saulsberry's plea of guilty is a knowing and
5 | voluntarily plea, supported by an independent basis in
6 | fact containing each of the essential elements of the
7 | offense.

8 | I further find that Mr. Saulsberry has had the
9 | assistance of counsel through Mr. Scholl, has been
10 | fully informed of his rights at trial and fully advised of
11 | the maximum possible punishment. I accept Mr.
12 | Saulsberry's plea of guilty and enter a judgment of
13 | guilty on Count 3 of the indictment.

14 | Looking at a date for sentencing, how about
15 | Tuesday, March 5th at 2 o'clock?

16 | MR. CAMPBELL: That's good for the Govern-
17 | ment, Your Honor.

18 | MR. SCHOLL: Judge, I may be in trial in front
19 | of Judge McCalla that week, on the 4th. I think we had
20 | this issue on another one of my cases earlier, Judge.

21 | **THE COURT:** Then how about Friday, April
22 | 5th at 1:30?

23 | MR. CAMPBELL: Good for the Government,
24 | Your Honor.

25 | MR. SCHOLL: That's good for me, Your Honor.

1 **THE COURT:** All right. Mr. Saulsberry, that's
2 when we will do your sentencing. Do you have any
3 questions for me at this point?

4 Any questions?

5 **THE DEFENDANT:** You only want questions,
6 right?

7 **THE COURT:** What's that?

8 **THE DEFENDANT:** The statement is if I have
9 any questions. Nothing else.

10 **MR. SCHOLL:** He said nothing else, Your
11 Honor.

12 **THE COURT:** Okay.

13 Let me ask, the plea agreement didn't specifi-
14 cally say you were going to dismiss Counts 1, 2 and 4
15 at the sentencing, but I certainly -- you know, some-
16 times it does, sometimes it doesn't. I assume that was
17 the intent.

18 **MR. CAMPBELL:** At the time of sentencing,
19 yes, Your Honor.

20 **THE COURT:** Okay. Anything else from the
21 Government?

22 **MR. CAMPBELL:** No, Your Honor.

23 **THE COURT:** Mr. Scholl, anything else from
24 you?

25

1 MR. SCHOLL: No, Your Honor. I apologize for
2 my lack of patience here and there.

3 **THE COURT:** All right. You're -- we're all -- our
4 patience -- the patience of all of us has been tried, but
5 --

6 **THE DEFENDANT:** I apologize, Your Honor.

7 MR. SCHOLL: You're fine.

8 **THE COURT:** That's fine, Mr. Saulsberry. We
9 do understand it's a difficult time. Doesn't mean
10 that we don't get frustrated, but we do understand.
11 Mr. Scholl understands.

12 I'm speaking on behalf of you. I hope that's all
13 right, Mr. Scholl.

14 MR. SCHOLL: Absolutely, Your Honor.

15 **THE COURT:** I understand it's a difficult time,
16 okay?

17 **THE DEFENDANT:** Thank you for under-
18 standing.

19 **THE COURT:** All right. Thank you all. We'll
20 see you on April 5th.

21 MR. SCHOLL: Thank you, Judge.

22 **THE COURT:** Thank you all. We're in recess.

23 (Adjournment.)

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C E R T I F I C A T E

I, CANDACE S. COVEY, do hereby certify that the foregoing 44 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the Change of Plea hearing on the 5th day of December, 2023, in the matter of:

United States of America

vs.

Brian Saulsberry

Dated this 4th day of January, 2024.

S/Candace S. Covey

CANDACE S. COVEY, LCR, RDR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee

REFERRAL MEMORANDUM

1. Address of Receiving Official Internal Revenue Service 1111 Constitution Ave. NW OS:HC:R:EC:EI:ROIU - NCFB-C1-530 Washington, DC 20224-0002	2. Case Number 76-2102-0018-I
	3. Date Forwarded July 20, 2022
4. Title/Subject Name <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Non-employee <input type="checkbox"/> Former employee SAULSBERRY, BRIAN	5. SSN 554-47-6432
6. Position and Grade (<i>if IRSE</i>) Program Evaluation & Risk Analyst /GS-11	7. IRSE's POD and IRS Business Unit MEMPHIS, TN, HCO OFFICE OF HR STRAT- EGY
8. Supervisor's Name TOMMY LEE TAYLOR JR	9. Supervisor's POD & Phone Number MEMPHIS, TN 901-707-3535
10. TIGTA Report of Investigation forwarded for <input checked="" type="checkbox"/> Appropriate Action & Response <input type="checkbox"/> Information Only - No Response Required	
11. Criminal Features or Judicial Action 1 - AUSA - ACCEPTED	
12. Related Case Number(s) and their current status (Open, Closed, Referred)	
13. Remarks – include brief statement of nature of allega- tions, i.e., UNAX, disclosure, Section 1203, embezzlement, etc. CARES ACT FRAUD	
14. Signature and Title of Approving TIGTA Official Felecia Leggett Special Agent in Charge - Acting	
15. Address and Telephone Number of TIGTA Office Transmitting Report	
16. Telephone Number of Transmitting Official	

(904) 232-1274 (Voice)

Instructions to Labor Relations Office: The information contained in the attached copy of a Report of Investigation (ROI) represents the results of an investigation conducted by the Treasury Inspector General for Tax Administration (TIGTA). The following are the instructions as they relate to the attached ROI and completion of this form:

- The information contained in this ROI should be disseminated on a need-to-know basis only.
- If Item 10 above indicates this report is being forwarded for "Appropriate Action and Response", after final adjudication has been issued by the deciding official, document the information requested in Items 17-21, scan Form 2076 & related documents and e-mail them to the ROI Unit (ROIU)
- In Item 17, include the Nature of Action Taken and provide a copy of any applicable documentation (Clearance and Closed Without Action Letters, Admonishments, Reprimands, Proposal and Decision Letters, etc.) concerning the action taken.
- In Item 18, include the ALERTS Issue Code(s) and description.

17. Nature of Action Taken – TIGTA Admin Action Codes (ALERTS Disposition Codes)

- 1-Clearance Letter (1-Clearance Letter)
- 2-Closed W/O Action Letter W/ Caution Stmt (103-Closed W/O Action Ltr W/Caution Stmt)
- 3-Closed Without Action Letter (3-Closed Without Action Letter)
- 4-Oral/Written Counseling (008 – Written Counseling)
- 5-Admonishment/Reprimand (9-Admonishment; 10-Reprimand)
- 6-Suspension days (11-Susp. 14 days or less; 12-Susp. More than 14 days)
- 7-Indefinite Suspension (24-Indefinite Suspension)
- 8-Reduction in Grade (13-Reduction in Pay/Grade; 113-Vol. Reduction in Pay/Grade)

- 9-Removal/Termination (14-Sep. of Temp; 15-Prob/Sep.; 16-Removal-Prob Complete)
- 10-Other (22-Reassignment; All Other Dispositions)
- 11-Resigned in Lieu of Termination/Disciplinary Action (18-Resigned/Retired SF50 Noted)
- 12-Separated During Investigation (38-Closed Without Adjudication)
- 13-Resigned Before Adjudication (17-Resigned/Retired SF50 Not Noted)
- 14-Alternative Discipline (30-AD in Lieu of Reprimand; 31-AD in Lieu of Suspension)

18. ALERTS Issue Code(s) and description	
19. Name and Title of Adjudicating Official	20. Date Final Action is Proposed
21. Name, Signature, Title and Office of Returning Official	22. Date Returned

REPORT OF INVESTIGATION

Title (Name and address): SAULSBERRY, BRIAN PO BOX 381871 GERMANTOWN, TN 381830000	Type of Investigation: 2 - EMPLOYEE INVESTIGATION	Type of Activity: <input type="checkbox"/> Final <input checked="" type="checkbox"/> Supplemental	
Social Security Number: 554-47-6432	<input type="checkbox"/> Employee <input type="checkbox"/> Non-employee <input type="checkbox"/> Former employee		
Date of Birth: 1/10/1976	Date Entered on Duty: 11/21/2011		
Position and Grade: Program Evaluation & Risk Analyst /GS-11	Post of Duty: MEMPHIS, TN		
Division and Office: Office of Human Resource Strategy/Human Capital Office			
Period of Investigation: January 14, 2021 through July 18, 2022			
See next page for Investigative Synopsis			
Potential Violation(s): CARES ACT FRAUD THEFT/EMBEZZLEMENT-IRS FUNDS OR PROPERTY (NON-IT ASSET)			
Distribution	No.	Case Number:	Signature of Agent Making Report:
Inspector General for Tax Administration	1	76-2102-0018-I	Stacey A. Belmarsh
Internal Revenue Service	1	Signature of Person Examining Report: Joel D. Weaver	
Assistant U.S. Attorney		Title:	Office (City): ASAC, Memphis

		Assistant Special Agent-in-Charge	
Other (Specify):		Division Office: SAC, South East Field Division	Date of Report: July 20, 2022

REPORT OF INVESTIGATION

INVESTIGATIVE SYNOPSIS

On January 14, 2021, the Treasury Inspector General for Tax Administration (TIGTA) received an allegation of theft of time/pay involving Internal Revenue Service (IRS) employee BRIAN SAULSBERRY. It was alleged that during the time period of October 2019 through May 2020, SAULSBERRY disappeared from work for almost four hours daily.

IRS management identified a total of 201.95 hours that SAULSBERRY was unaccounted for during his official work hours. The alleged calculated theft of time amount based on SAULSBERRY's grade was \$5,048.75. At the time the allegation was reported, SAULSBERRY was employed as a Facilities Management Security Specialist. During the investigation SAULSBERRY was promoted to a Grade 11, Program Evaluation & Risk Analyst in the Office of Human Resource Strategy, Human Capital Office. The investigation identified that SAULSBERRY did have approved outside employment activities dating back to August 2015. The type of business activities was identified as real estate development and acquisition company. Records showed IRS management updated their approval of SAULSBERRY's outside employment in March 2020.

During the investigation it was identified between April 2020 through August 2020, SAULSBERRY applied for multiple Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL) and Payroll Protection Program (PPP) loans and received funding based on fraudulent information that he reported on the loan applications. On or around April 1, 2020, SAULSBERRY applied for two separate EIDLs under two different business names, DSG COMMERCIAL ECO SYSTEMS and THE DSG GROUP. SAULSBERRY transmitted these two EIDL loan applications electronically using the Internet Protocol (IP) address registered to the IRS. For the first EIDL, DSG COMMERCIAL ECO

SYSTEMS, SAULSBERRY was funded \$18,400, plus a \$3,000 advance. The second EIDL, THE DSG GROUP, SAULSBERRY was funded \$149,900.

A review of EIDL documents identified that SAULSBERRY submitted two additional EIDLs in an attempt to obtain additional money, and these applications were denied. These applications were for the same two businesses as the prior two EIDLs that were approved but reflected grossly inflated information than what was reported in the original two loans SAULSBERRY submitted.

SAULSBERRY declined to be interviewed in response to a target letter issued by the United States Attorney's Office, Western District of Tennessee.

On May 19, 2022, SAULSBERRY was indicted by the U.S. District Court for the Western District of Tennessee Grand Jury. SAULSBERRY was Indicted on two counts of 18 U.S.C. § 1343 – Wire Fraud, and two counts of Title 18 U.S.C § 1957- Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity.

EXHIBIT LIST SHEET	
Description	Pages
Memorandum of Interviewed dated January 14, 2021, with ROSS SICKLER	4-5
Memorandum of Activity dated August 31, 2021, regarding a review of IRS Excel Spreadsheet related to IRS Velocity Door Reports and Single Entry Time Reporting (SETR) records identifiable with BRIAN SAULSBERRY	6
Memorandum of Activity dated August 31, 2021, regarding a review of IRS Excel Spreadsheet related to IRS Velocity Door Reports and SETR records identifiable with BRIAN SAULSBERRY	7
Memorandum of Activity dated August 31, 2021, regarding a review of Office of Personnel Management (OPM) Salary Tables for Years 2019-2020	8
Memorandum of Activity dated October 19, 2021, regarding a review of outside employment approval information identifiable with BRIAN SAULSBERRY	9
Memorandum of Activity dated January 14, 2022, regarding a review of Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL) documents identifiable with BRIAN SAULSBERRY	10-100
Memorandum of Activity dated January 18, 2022, regarding a review of the State of Tennessee Secretary of State Business Entity Search	101-102
Memorandum of Activity dated February 11, 2022, Target Letter from the United States Attorney's Office served on BRIAN SAULSBERRY	103
Memorandum of Activity dated May 4, 2022, regarding attempt to interview BRIAN SAULSBERRY	104
Memorandum of Activity dated July 18, 2022, regarding a review of PACER records identifiable with BRIAN SAULSBERRY	105-117

Case Number: 76-2102-0018-I

Case Title: SAULSBERRY, BRIAN

TIGTA Form OI 2028A (Rev. 04/2007)

Treasury Inspector General for Tax Administration

MEMORANDUM OF INTERVIEW OR ACTIVITY	
Type of Activity: <input type="checkbox"/> Personal Interview <input checked="" type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: January 14, 2021 12:34 PM CST
Activity or Interview of: ROSS SICKLER, Territory Manager Internal Revenue Service Facilities Management & Security Services (FMSS) 5333 Getwell Road Memphis, Tennessee	Conducted by: Special Agent Stacey A. Belmarsh ASAC Joel Weaver Location of Interview/Activ- ity: Telephonic/TIGTA Nashville, Tennessee

Subject Matter/Remarks

On January 14, 2021, Internal Revenue Service (IRS), Facilities Management & Security Services (FMSS), Territory Manager ROSS SICKLER alleged theft of time by IRS, FMSS Security Specialist BRIAN SAULSBERRY. He reported SAULSBERRY disappears nearly every day for at least four (4) hours and is non-responsive to his whereabouts. SICKLER was placed under oath and waived confidentiality. SICKLER provided the following information:

SICKLER advised he was promoted to the position of FMSS Territory Manager in March 2020; he has been onsite at the Memphis Campus since October 19, 2020.

He reported SAULSBERRY was hired as a Security Specialist in 2019, before he (SICKLER) was hired as the Territory Manager.

Case Number: 76-2102-0018-I	Case Title: SAULSBERRY, BRIAN
TIGTA Form OI 2028A (Rev. 04/2007) Treasury Inspector General for Tax Administration	

SICKLER reported there are ongoing performance issues with SAULSBERRY that are being handled through IRS Labor Relations. SICKLER identified SAULSBERRY's immediate manager as TIMOTHY MARSHALL.

It was reported that SAULSBERRY would disappear from the office area and perhaps the Memphis Campus building almost daily for about four (4) hours during each event. It was reported during SAULSBERRY's "disappearances", that he was non-responsive about his whereabouts.

SICKLER alleged SAULSBERRY was having an affair with a non-employee during this time and alleged it could be the reason he allegedly was leaving the Memphis Campus for hours at a time.

SICKLER reported when SAULSBERRY was asked about his whereabouts for hours at a time,

MEMORANDUM OF INTERVIEW OR ACTIVITY
(continuation sheet)

SAULSBERRY said he was conducting security reviews around the Memphis Campus. SICKLER instructed SAULSBERRY to stop doing the reviews because he was not authorized to conduct these reviews.

SICKLER reported on another occasion in January 2020, SAULSBERRY was alleged to have visited the Fayetteville, Arkansas office to conduct a security review. He alleged to be on travel for 2-3 days and filed a voucher for reimbursement. SICKLER alleged SAULSBERRY never went to the office, nobody saw

him there and whoever he was supposed to meet on-site said he (SAULSBERRY) never showed up.

SICKLER also reported SAULSBERRY has outside employment authorization on file. It was rumored that SAULSBERRY conducted his outside employment during his official duty hours.

SICKLER reported SAULSBERRY knows he is being watched and that he (SAULSBERRY) must be able to account for his time. He also advised SAULSBERRY was no longer allowed to telework; he is being issued a Performance Improvement Plan (PIP) letter the week of January 11, 2021.

He reported SAULSBERRY's tour of duty is Monday through Friday, 9:30 AM to 6:00 PM. His primary job duties involve primarily providing security deliverables to the Arkansas office; however, he can be tasked as needed to assist with security items at the Memphis Campus.

The above was recapped with SICKLER and no affidavit was provided.

MEMORANDUM OF INTERVIEW OR ACTIVITY	
Type of Activity: <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input checked="" type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: August 31, 2021 11:00 AM
Activity or Interview of: Review of: Excel Spreadsheet Data Analysis identifiable with IRS employee BRIAN SAULSBERRY theft of time allegation (Velocity Door Report & Single Entry Time Reporting (SETR) records) provided by IRS Supervisor ROSS SICKLER on March 5, 2021	Conducted by: Special Agent Stacey A. Belmarsh Location of Interview/Activ- ity: TIGTA Nashville, Tennessee

Subject Matter/Remarks

On August 31, 2021, a review of analysis of Internal Revenue Service (IRS) Velocity Door Reports and Single Entry Time Reporting (SETR) data related to the theft of time allegation involving IRS employee BRIAN SAULSBERRY was completed and revealed the following:

Velocity Reports related to the IRS SMART ID to control physical access to facilities. Velocity Panel Reports are part of the Enterprise Physical Access Control System.

SETR is the online payroll system, which enables the accurate and timely input of time, and attendance data to the National Finance Center (NFC) for generation of an employee's pay check every pay period.

Case Number: 76-2102-0018-I	Case Title: SAULSBERRY, BRIAN
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SICKLER completed an analysis of the period from October 1, 2019 through January 31, 2020, related to the Velocity and SETR reports related to SAULSBERRY. His analysis was based on the Velocity Reports of SAULSBERRY's exits/entries to the IRS Memphis Campus and the time and attendance records SAULSBERRY entered into SETR during this time period.

SICKLER's findings identified a total of 130.95 hours of alleged theft of time/pay by SAULSBERRY.

MEMORANDUM OF INTERVIEW OR ACTIVITY	
Type of Activity: <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input checked="" type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: August 31, 2021 12:10 PM
Activity or Interview of: Review of: Excel Spreadsheet Data Analysis identifiable with IRS employee BRIAN SAULSBERRY theft of time allegation (Velocity Door Report & Single Entry Time Reporting (SETR) records) provided by IRS Supervisor ROSS SICKLER on March 9, 2021	Conducted by: Special Agent Stacey A. Belmarsh Location of Interview/Activ- ity: TIGTA Nashville, Tennessee

Subject Matter/Remarks

On August 31, 2021, a review of analysis of Internal Revenue Service (IRS) Velocity Door Reports and Single Entry Time Reporting (SETR) data related to the theft of time allegation involving IRS employee BRIAN SAULSBERRY was completed and revealed the following:

Velocity Reports related to the IRS SMART ID to control physical access to facilities. Velocity Panel Reports are part of the Enterprise Physical Access Control System.

SETR is the online payroll system, which enables the accurate and timely input of time, and attendance data to the National Finance Center (NFC) for generation of an employee's pay check every pay period.

Case Number: 76-2102-0018-I	Case Title: SAULSBERRY, BRIAN
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SICKLER completed an analysis of the period from February 3, 2020 through May 19, 2020, related to the Velocity and SETR reports related to SAULSBERRY's. His analysis was based on the Velocity Reports of SAULSBERRY's exits/entries to the IRS Memphis Campus and the time and attendance records SAULSBERRY entered into SETR during this time period.

SICKLER's findings identified a total of 71 hours of alleged theft of time/pay by SAULSBERRY.

MEMORANDUM OF INTERVIEW OR ACTIVITY	
Type of Activity: <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input checked="" type="checkbox"/> Other	Date and Time: August 31, 2021 1:00 PM
Activity or Interview of: Review of: Office of Personnel Management Salary Tables for years 2019 & 2020 related to the theft of time allegation involving IRS employee BRIAN SAULSBERRY	Conducted by: Special Agent Stacey A. Belmarsh Location of Interview/Activity: TIGTA Nashville, Tennessee

Subject Matter/Remarks

On August 31, 2021, a review of the Office of Personnel Management (OPM), Policy, Data, Oversight, Fact Sheet: How to compute rates of pay procedures was completed and used to calculate the hourly rate of pay for IRS employee BRIAN SAULSBERRY related to the theft of time allegation:

A review of the OPM Fact Sheet to calculate rates of pay identified the procedures as:

Hourly Rate = Divide the annual rate of basic pay by 2,087

Following the OPM General Salary Table, "Rest of the U.S." Year 2019, for a Grade 9, Step 1, the annual salary is \$51,440. Based on the above calculation above SAULSBERRY's hourly rate of pay in 2019 was: \$51,440/ 2,087= \$24.65.

Following the OPM General Salary Table, "Rest of the U.S." Year 2020, for a Grade 9, Step 1, the annual salary is \$52,905. Based on the above calculation above

Case Number: 76-2102-0018-I	Case Title: SAULSBERRY, BRIAN
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SAULSBERRY's hourly rate of pay in 2020 was:
 $\$52,905 / 2,087 = \25.35 .

The allegation identified 201.95 hours of alleged theft of time multiplied by the average \$25.00 (hourly pay rate), identified SAULSBERRY's alleged theft of time amount as \$5,048.75.

MEMORANDUM OF INTERVIEW OR ACTIVITY	
Type of Activity: <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input checked="" type="checkbox"/> Other	Date and Time: October 19, 2021 12:17 PM
Activity or Interview of: Review of: E-mail confirmation related to outside employment approval for IRS employee BRIAN SAULSBERRY Provided by IRS Supervisor ROSS SICKLER on January 15, 2021	Conducted by: Special Agent Stacey A. Belmarsh Location of Interview/Activity: TIGTA Nashville, Tennessee

Subject Matter/Remarks

On October 19, 2021, a review of the information provided by Internal Revenue Service (IRS) Supervisor ROSS SICKLER regarding outside employment authorization for IRS employee BRIAN SAULSBERRY revealed the following:

On March 11, 2020, e-mail communication between IRS Facilities Management & Security Services (FMSS), Management & Program Analyst, LENA KIM and Acting Chief Physical Security JOE MCGHGHY disclosed IRS employee BRIAN SAULSBERRY had outside employment authorization dating back to August 31, 2015. The description of outside employment or business activity was recorded as: Real Estate Development & Acquisition Company.

MCGHGHY approved SAULSBERRY's outside employment verification update as the "Reviewer" on March 1, 2020.

Case Number: 76-2102-0018-I	Case Title: SAULSBERRY, BRIAN
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MEMORANDUM OF INTERVIEW OR ACTIVITY	
Type of Activity: <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input checked="" type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: January 14, 2022 2:15 PM
Activity or Interview of: Review of: Small Business Admin- istration (SBA) Economic Injury Disaster Loan (EIDL) documents identifiable with BRIAN SAULSBERRY	Conducted by: Special Agent Stacey A. Belmarsh Location of Interview/Activ- ity: Telework Location

Subject Matter/Remarks

On January 14, 2022, the reporting agent reviewed the Small Business Administration (SBA), Economic Injury Disaster Loan (EIDL) documents related to the allegation BRIAN SAULSBERRY applied for multiple Economic Injury Disaster Loans (EIDL) and Paycheck Protection Program (PPP) loans based on fraudulent information reported on loan documents to obtain funds. The review revealed the following:

A review of EIDL Application documents identifiable with SAULSBERRY confirmed he applied for two EIDL's and was funded \$18,400 and \$150,000. SAULSBERRY filed two additional EIDL applications, which were identified as duplicates and were not funded.

A review of the first EIDL Application identifiable with SAULSBERRY:

SAULSBERRY created Intake Application Number 3301260073 on April 1, 2020. The application

Case Number: 76-2102-0018-I	Case Title: SAULSBERRY, BRIAN
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identified the business name as, DSG Commercial ECO Systems, Employer Identification Number (EIN) 55-4476432, which is SAULSBERRY's Social Security Number (SSN). The Gross Revenue for the twelve (12) months prior to the disaster (January 31, 2020) identified for the business was recorded as \$76,500; and the Cost of Goods Sold for the 12 months prior to the disaster (January 31, 2020) was \$33,700.

SAULSBERRY's Intake Application Number 3301260073, recorded the primary business address as SAULSBERRY's residence, 3287 Darby Dan Cove Germantown, Memphis, Tennessee 38138. SAULSBERRY recorded the contact e-mail as dsgcommodities@outlook.com. The application showed the business start date as August 1, 2017, and the business activity was recorded as Business Services. The number of employees as of January 31, 2020, was recorded as three.

MEMORANDUM OF INTERVIEW OR ACTIVITY
(continuation sheet)

On SAULSBERRY's application, he identified his financial institution as Regions Bank; he provided routing number 064000017 and account number 0244993412. The creation date and timestamp of his application was April 1, 2020, at 5:29:31 PM. The Rapid SBA EIDL Notes included with SAULSBERRY's EIDL documents confirmed that loan funding was successful on June 22, 2020, and disbursed to SAULSBERRY for the amount of \$18,400.

A review of the second EIDL Application identifiable with SAULSBERRY:

SAULSBERRY created Intake Application Number 3301197918 on April 1, 2020, at 3:36:11 PM. The application identified the business name as The DSG

Group, Inc., EIN 83-4618434. The Gross Revenue for the 12 months prior to the date of the disaster (January 31, 2020) identified for the business was recorded as \$475,000; and the Cost of Goods Sold for the 12 months to the disaster (January 31, 2020) was \$125,750. The business establishment date was recorded as January 1, 2019, and the business activity was Construction and Contractors. The number of employees for the business as of January 31, 2020, recorded fifteen employees. On SAULSBERRY's application, he identified his financial institution as Regions Bank; he provided routing number 064000017 and account number 0267296556. The SBA Form 1391, Loan Authorization and Agreement was electronically signed by SAULSBERRY on December 3, 2020. The loan was funded for \$150,000 on December 6, 2020.

A review of the third EIDL Application identifiable with SAULSBERRY:

SAULSBERRY created Intake Application Number 3313668035 on August 16, 2020, at 9:51:17 PM. The application identified the business name as DSG Commercial Cleaning Group, EIN 47-4961570. The Gross Revenue for the 12 months prior to the date of the disaster (January 31, 2020) identified for the business was recorded as \$311,537; and the Cost of Goods Sold for the 12 months to the disaster (January 31, 2020) was \$101,537. The business establishment date was recorded as June 1, 2016, and the business activity was Business Services. The number of employees for the business as of January 31, 2020, recorded five employees. On SAULSBERRY's application, he identified his financial institution as Regions Bank; he provided routing number 064000017 and account number 0265232992. The SBA Rapid Decision Summary Page identified the loan request amount was \$420,000 and was identified as a "Duplicate".

A review of the fourth EIDL Application identifiable with SAULSBERRY:

SAULSBERRY created Intake Application Number 33039066274 on April 14, 2020, at 4:00:42 PM. The application identified the business name as The DSG Group, Inc., EIN 83-4618434. The Gross Revenue for the 12 months prior to the date of the disaster (January 31, 2020) identified for the business was recorded as \$450,000; and the Cost of Goods Sold for the 12 months to the disaster (January 31, 2020) was \$0. The business establishment date was recorded as January 15, 2019, and the business activity was Miscellaneous Services. The number of employees for the business as of January 31, 2020, recorded five employees. On SAULSBERRY's application, he identified his financial institution as Regions Bank; he provided routing number