No. _____

In the Supreme Court of the United States

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JON PHILLIP PAGE, JR.,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

_____

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

_____

APPENDIX

_____

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Appendix A – Revised Opinion and Order Denying Panel Rehearing and Rehearing En Banc, United States Court of Appeals for the Fifth Circuit, No. 23-40621 (July 8, 2026).

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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No. 23-40621

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JON PHILLIP PAGE, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:20-CR-296-2

ON REHEARING

Before SOUTHWICK, OLDHAM, and RAMIREZ, *Circuit Judges*.

LESLIE H. SOUTHWICK, *Circuit Judge*:

No judge in regular active service requested the court be polled on rehearing *en banc*; therefore, the petition for rehearing *en banc* is DENIED. *See* FED. R. APP. P. 40(c). The separate petition for panel rehearing is also DENIED. We withdraw our opinion, *United States v. Page*, 161 F.4th 875 (5th Cir. 2025), and substitute the following revised opinion.

After a week-long jury trial, Jon Phillip Page, Jr., was convicted of conspiring to commit bank fraud and conspiring to commit money

laundering. His co-conspirators were his brother Thomas Page and the star witness for the Government, Clayton Wertz. The Page brothers were jointly tried and convicted. On appeal, Jon Phillip Page. Jr. (referred to here as "Phillip") raises issues related to recusal, the handling of co-conspirators, evidentiary rulings, pre-indictment delay, rejected jury instructions, and the sufficiency of the evidence. We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

In 2010, Jon Phillip Page, Jr., and his brother Thomas Page (referred to here as "Thomas") sought a multimillion-dollar loan from a bank to fund their partnership's oil and gas investments. The bank would not approve the loan without collateral, prompting Thomas to offer a securities account as collateral. This securities account was worthless, but Thomas contacted Clayton Wertz, asking him to create fake statements showing that the securities account was worth millions of dollars. Over time, the Page brothers would pay Wertz tens of thousands of dollars for his services. They largely stopped paying him in mid-2013, arguably because they recognized he was in too deep to withdraw from the conspiracy. Even without compensation, Wertz continued to create fake statements.

From 2010 to 2012, the brothers borrowed millions of dollars from the bank. The loans required the brothers to use loan proceeds only for business purposes. Some of the funds were ostensibly used for business purposes, but the brothers did not fully honor this limitation. Instead, they used the funds for a variety of non-business purposes, such as paying Wertz to create fake statements. Some funds went to the brothers and their relatives. Other funds went to paying interest on the loan itself.

In early 2019, the bank became suspicious and asked Wertz for more information about the securities account. Sensing that discovery of the fraud was near, Wertz confessed to the bank what he and the brothers had done.

He memorialized what he told the bank in an affidavit. A year and a half later, Wertz and the brothers were charged with conspiring to commit bank fraud. The three defendants ended up in front of recently-appointed District Judge Sean Jordan. One of the arguments raised on appeal is that in private practice, the future judge had represented the defrauded bank in other matters. One of those matters was resolved on appeal after Judge Jordan took the bench. *See PlainsCapital Bank v. Gonzalez*, 598 S.W.3d 427 (Tex. App.—Corpus Christi 2020, no pet.).[1]

After his confession to the bank, Wertz assisted the Government in preparing its case. Even so, the brothers did not take the Government's initial offer, which would have required them both to plead guilty. In March 2022, Thomas entered an open guilty plea, filing his own factual basis in an apparent attempt to shield his brother from criminal liability. Six days later, the Government filed a superseding indictment, adding a charge of conspiracy to commit money laundering against all three defendants. Phillip moved to dismiss the indictment, arguing that the Government added the charge solely to prevent him from calling his brother as a witness. That motion was denied.

Over the next several months, Thomas and Wertz pled guilty to the conspiracy to commit bank fraud charge. Thomas did not plead guilty to the conspiracy to commit money laundering charge. That same charge was

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[1] By the time *Gonzalez* was decided in March 2020, Judge Jordan no longer represented the bank. *Gonzalez*, 598 S.W.3d at 428 (lawyer credits). He had been nominated and confirmed to his judgeship in 2019. His last clear representation of the bank was as lead appellate counsel on the appellant's brief filed on August 17, 2018, though he is also listed in the appellee's brief filed by opposing counsel on September 14, 2018. Appellant's Brief at i, *Gonzalez*, 598 S.W.3d 427 (No. 13-18-00272-CV); Appellee's Brief at ii, *Gonzalez*, 598 S.W.3d 427 (No. 13-18-00272-CV). Wertz and the Page brothers were indicted on October 15, 2020, and the trial began on January 30, 2023.

dismissed against Wertz under the terms of his plea agreement. Phillip moved to sever, citing complications presented by his brother's guilty plea to the conspiracy to commit bank fraud charge. That motion was also denied.

The case went to trial in early 2023, around a month after the bank produced some 12,000 pages of bank records. After a one-week jury trial, the brothers were convicted on all counts. We will not summarize the lengthy trial record here, except to say that Wertz was the Government's star witness. Phillip attempted to stake out a defense that he had no role in the conspiracy but had instead been tricked by Thomas and Wertz. The jurors' verdict revealed that they were not convinced.

On October 18, 2023, Phillip was sentenced to 63 months in prison on each count, to run concurrently, along with several years of supervised release thereafter. Judgment was entered the next day. Phillip timely appealed.

DISCUSSION

On appeal, Phillip raises issues related to (1) recusal, (2) the handling of co-conspirators, (3) evidentiary rulings, (4) pre-indictment delay, (5) rejected jury instructions, and (6) the sufficiency of the evidence. He also argues (7) that even if none of those issues are reversible error, the cumulative error doctrine justifies a new trial. We will address those issues in that order.

We begin with a few points about our standard of review. Most of the alleged errors are reviewed only for an abuse of discretion.[2] Only a few are

[2] *United States v. Johnson*, 943 F.3d 214, 220 (5th Cir. 2019) (evidentiary rulings); *United States v. Tarango*, 396 F.3d 666, 671 (5th Cir. 2005) (new trial); *United States v. Owens*, 683 F.3d 93, 98 (5th Cir. 2012) (severance); *United States v. Gray*, 105 F.3d 956, 968 (5th Cir. 1997) (recusal); *United States v. Shah*, 95 F.4th 328, 376 (5th Cir. 2024) (jury instructions); *United States v. Peterson*, 244 F.3d 385, 393 (5th Cir. 2001) (limiting

reviewed *de novo*.[3] The specifics of abuse of discretion review vary based on the underlying issue, but a court generally "abuses its discretion when its ruling is based on an erroneous view of the law or a clearly erroneous assessment of the evidence." *United States v. Ragsdale*, 426 F.3d 765, 774 (5th Cir. 2005) (quoting *Bocanegra v. Vicmar Servs., Inc.*, 320 F.3d 581, 584 (5th Cir. 2003)). Thus, our review of underlying legal conclusions is *de novo*, but our review of underlying findings of fact is for clear error. *Ayestas v. Davis*, 933 F.3d 384, 388 (5th Cir. 2019). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. Harris*, 740 F.3d 956, 967 (5th Cir. 2014) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985)).

Any unpreserved issues are reviewed for plain error. FED. R. CRIM. P. 52(b). Reversal for plain error requires (1) an error that (2) is "clear or obvious" and (3) "affected the appellant's substantial rights" (*i.e.*, it "affected the outcome of the district court proceedings"); if the first three steps are satisfied, (4) the court of appeals may exercise its discretion to correct the error, which is appropriate "only if the error seriously affect[s]

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instructions); *United States v. Powell*, 732 F.3d 361, 376 (5th Cir. 2013) (evidentiary decisions surrounding a *Bruton* issue).

[3] *United States v. Hope*, 487 F.3d 224, 227 (5th Cir. 2007) (sufficiency of the evidence); *United States v. Scully*, 951 F.3d 656, 668 (5th Cir. 2020) (pre-indictment delay). Regardless, review of these issues is still deferential. *See United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (*en banc*) (describing the sufficiency of the evidence standard); *Scully*, 951 F.3d at 668 (factual findings in evaluating pre-indictment delay are reviewed for clear error).

the fairness, integrity or public reputation of judicial proceedings." *Puckett v. United States*, 556 U.S. 129, 135 (2009) (alteration in original) (quotation marks omitted) (quoting *United States v. Olano*, 507 U.S. 725, 734, 736 (1993)).

A final note: we disregard any nonprejudicial errors. FED. R. CRIM. P. 52(a). The standard for finding that an error was prejudicial varies based on the nature of the error. A constitutional error is prejudicial unless the Government can show that it was harmless beyond a reasonable doubt. *United States v. Alexius*, 76 F.3d 642, 646 (5th Cir. 1996). By contrast, any "nonconstitutional trial error is harmless unless it had substantial and injurious effect or influence in determining the jury's verdict." *United States v. Lowery*, 135 F.3d 957, 959 (5th Cir. 1998) (quotation marks omitted) (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)).

I. Failure to Recuse

Phillip argues that the district judge was required to recuse himself because his prior relationship with the victim bank — having represented it in unrelated civil appellate proceedings a few years prior — made it so that "his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). He concedes that he did not preserve this issue and argues we should review for plain error. The Government contends that Phillip's failure to make a timely request for recusal entirely forecloses relief absent "good cause" or "exceptional circumstances" not present here. *See United States v. Sanford*, 157 F.3d 987, 988–89 (5th Cir. 1998). Phillip cannot show even plain error, as we explain.

District judges must recuse themselves when their "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The relevant statute also lists a set of specific circumstances in which district judges must recuse themselves. *Id.* § 455(b). We review a district judge's failure to recuse for

an abuse of discretion. *United States v. Gray*, 105 F.3d 956, 968 (5th Cir. 1997). If a district judge should have recused, reopening proceedings is still not strictly required; in deciding upon a remedy, we must consider several factors, including "the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988).

We do not reach this second step of the analysis because Phillip fails to show the district judge was clearly or obviously required to recuse himself under Section 455(a). He argues that recusal was required because the district judge represented the victim bank in unrelated civil appellate litigation two years before he was indicted. He does not explain how this unrelated prior representation clearly or obviously required recusal, nor does he cite any authority in his opening brief to substantiate this argument. The Government, on the other hand, cites meaningful authority demonstrating that recusal has not been required under similar circumstances.[4] We add that Section 455(b)(2) appears designed to deal with this kind of situation but does not require recusal here because the prior representation was unrelated to this criminal case. That, too, counsels against finding that the district judge was clearly or obviously required to recuse himself under Section 455(a). *See Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1166 (5th Cir.

[4] *See Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1166 (5th Cir. 1982) (unrelated prior representation of defendant did not require recusal); *National Auto Brokers Corp. v. Gen. Motors Corp.*, 572 F.2d 953, 958 & n.9 (2d Cir. 1978) (same); *Clemens v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 428 F.3d 1175, 1180 (9th Cir. 2005) (professional relationship with victims did not require recusal); *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003) (discussing a case in which unrelated prior representation of victim did not require recusal); *United States v. Saavedra*, No. 22-2149, 2024 WL 855199, at *3 (10th Cir. Feb. 29, 2024) (collecting cases holding that even an active working relationship with a victim in a criminal case does not require recusal).

1982) (inapplicability of Section 455(b)(2) was relevant in finding that Section 455(a) did not require recusal). The district court did not plainly err.

II. Handling of Co-conspirators

Phillip raises three categories of issues related to the handling of his co-conspirators, Thomas and Wertz: (1) a potential Confrontation Clause violation based on Thomas's partial guilty plea at rearraignment at the start of trial; (2) problems related to the Government's use of Thomas's and Wertz's guilty pleas without contemporaneous limiting instructions; and (3) a challenge to the denial of Phillip's motion to sever. We will address those issues in that order.

A. Confrontation Clause

Phillip argues that his Confrontation Clause rights were violated when Thomas pled guilty to the conspiracy to commit bank fraud charge at the start of trial. A brief explanation is in order. The indictment was read aloud during *voir dire*, and the jury was allowed to take it into the jury room for deliberations.[5] That indictment charged Thomas, Phillip, and Wertz with conspiring together to commit bank fraud. Phillip contends that when Thomas pled guilty to that charge at the start of trial, the jury would have interpreted his plea as confessing to facts alleged in the indictment, including

[5] Phillip challenges these uses of the indictment based on a supposedly "inflammatory" paragraph therein, but he fails to cite any authority in his opening brief to explain how the district court erred. Phillip forfeited his argument by failing to brief it adequately on appeal. *See United States v. Scroggins*, 599 F.3d 433, 447 (5th Cir. 2010). In any event, the complained-of paragraph spans less than a page and straightforwardly describes the manner and means of the conspiracy. We fail to see how it was inflammatory and denied Phillip a fair trial, especially when the jury was repeatedly instructed that the indictment was not evidence. *See United States v. Tucker*, 526 F.2d 279, 283 (5th Cir. 1976) (finding no error when a properly instructed jury was furnished with a copy of the indictment before trial).

that Phillip participated in the conspiracy. Because Phillip could not effectively call Thomas to testify — Thomas was on trial for the conspiracy to commit money laundering charge and could have invoked his Fifth Amendment right against self-incrimination — Phillip argues that his constitutional rights under the Confrontation Clause were violated, citing *Bruton v. United States*, 391 U.S. 123 (1968).

"While we review constitutional challenges *de novo*, the trial court's evidentiary decisions on a *Bruton* issue are reviewed for abuse of discretion." *United States v. Powell*, 732 F.3d 361, 376 (5th Cir. 2013) (quoting *United States v. Jimenez*, 509 F.3d 682, 691 (5th Cir. 2007)). At the threshold, we are inclined to agree with the Government that because neither Thomas's guilty plea nor the indictment is evidence, they are not testimonial within the meaning of the Confrontation Clause.[6] *See Crawford v. Washington*, 541 U.S. 36, 50 (2004). The jury was repeatedly instructed not to consider the indictment as evidence.

We leave that question open for another day because Phillip's Confrontation Clause argument fails for a different reason: Thomas's guilty plea did not directly implicate Phillip in the conspiracy. Instead, the jury had to make an inference using other available information. As both the Supreme Court and this court have held, with one narrow exception not applicable here, there can be no *Bruton* violation when the jury must make an inference

[6] Although it is true that in *Douglas v. Alabama*, 380 U.S. 415, 419–20 (1965), a prosecutor's questions — which are not evidence, *United States v. Pando Franco*, 503 F.3d 389, 395 (5th Cir. 2007) — were the basis for a Confrontation Clause violation, that case is distinguishable. In *Douglas*, a witness invoked his Fifth Amendment rights and in response, the prosecutor read his confession line by line in question form. *Douglas*, 380 U.S. at 416–17. The prosecutor's questions were not evidence, but the underlying confession was plainly testimonial. Neither the indictment nor a bare plea is clearly testimonial in the same way.

of this kind. *See Richardson v. Marsh*, 481 U.S. 200, 208–11 (1987); *Samia v. United States*, 599 U.S. 635, 652–55 (2023); *United States v. Nanda*, 867 F.3d 522, 527–28 (5th Cir. 2017). Because Thomas's guilty plea did not directly implicate Phillip, there was no *Bruton* violation.

B. Guilty Plea Paperwork and Limiting Instructions

Next, Phillip argues that the Government improperly used (1) Thomas's and Wertz's guilty pleas and (2) Wertz's factual basis and plea agreement. We will address those issues in that order.

1. Guilty Pleas

Phillip argues that it was error for Thomas's and Wertz's guilty pleas to be introduced at his trial as substantive evidence, especially without a contemporaneous limiting instruction from the district court. The Government counters that Phillip cannot show plain error because the district court provided limiting instructions on the use of the guilty pleas, if not contemporaneous ones, and it was Thomas's attorney, not the Government, who was the "primary source of alleged prejudice." We conclude that Phillip did not preserve this issue in the district court.[7] Accordingly, we review for plain error.

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[7] Phillip objected both pre-trial and at trial to the introduction of Thomas's guilty plea on the grounds that the plea was hearsay, that the plea's introduction would be a *Bruton* violation, and that the plea would be "inflammatory." In addition, Phillip filed motions *in limine* objecting to the introduction of co-conspirators' hearsay testimony without a *James* hearing and Wertz's plea as bolstering. Phillip requested severance on the basis of Federal Rule of Criminal Procedure 14(a), *Bruton*, and the Confrontation Clause. All such objections were denied by the district court. "Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal." FED. R. EVID. 103(b).

Nonetheless, an objection must "state[] the specific ground" for excluding evidence, "unless it was apparent from the context." FED. R. EVID. 103(a)(1)(B). Phillip never squarely raised the issue here: the improper introduction of the guilty pleas as

One person's guilty plea is not admissible evidence against someone else allegedly involved in the commitment of the same crime to prove any of the factual elements of that crime: "[A] defendant is entitled to have the questions of his guilt determined upon the evidence against him, not on whether a government witness or a codefendant has pled guilty to the same charge." *United States v. Fleetwood*, 528 F.2d 528, 532 (5th Cir. 1976) (quoting *Babb v. United States*, 218 F.2d 538, 542 (5th Cir. 1955)). There are limited permissible uses of a guilty plea, and courts must be vigilant in allowing their introduction.

Our analysis of error in the use of a co-conspirator's guilty plea at trial is guided by four factors:

> (1) the presence or absence of a limiting instruction;
>
> (2) whether there was a proper evidentiary purpose for introduction of the guilty plea;
>
> (3) whether the plea was improperly emphasized or used as substantive evidence of guilt; and
>
> (4) whether the introduction of the plea was invited by defense counsel.

United States v. Murray, 988 F.2d 518, 523 (5th Cir. 1993) (numbering and restating the factors listed in, and citing to, *United States v. Black*, 685 F.2d.

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substantive evidence. The district court asked Phillip's attorney directly at trial, "Is there authority for the proposition that simply the fact that Thomas has pleaded guilty, been adjudged guilty, as to that count, and it involves a conspiracy with Phillip Page, that alone in and of itself, and the jury knowing, just knowing that he has pled guilty, is sufficient to say we can't go forward without a severance?" Counsel responded, "Not something on point. There's no golden unicorn. If there was, I would have it for you." Phillip also did not object at trial to the Government's closing statement referencing the guilty pleas. Phillip's failure to articulate until briefing in this court an objection on the specific grounds that the pleas were improperly used as substantive evidence leads us to review for plain error. *See United States v. Huntsberry*, 956 F.3d 270, 282 (5th Cir. 2020).

132, 135 (5th Cir. 1982)). As a result of their source, I will label these the *Black* factors. Phillip contends that under the *Black* factors the district court committed plain error by allowing the improper use of Thomas and Wertz's guilty pleas.

The first factor is the presence or absence of a limiting instruction. Contemporaneous limiting instructions on the use of guilty pleas are preferred, but a later limiting instruction can suffice. *United States v. Devers*, 4 F.3d 990, 1993 WL 360813, at *2 (5th Cir. 1993) (unpublished but precedential under 5TH CIR. R. 47.5.3) (citing *United States v. Borchardt*, 698 F.2d 697, 701 (5th Cir. 1983)). Though they were not contemporaneous, limiting instructions were given here. The district court instructed the jury in the closing charge that "[t]he fact that an accomplice has entered a plea of guilty to the offense charged is not evidence of the guilt of any other person." Accordingly, this factor favors the Government.

The second factor is whether there was a proper evidentiary purpose for the introduction of the plea. The Government may introduce a plea "to thwart a defense strategy" or to "negate expected impeachment efforts." *United States v. Moparty*, 11 F.4th 280, 293 (5th Cir. 2021). Here, it was the district court that first told the jury of Thomas's guilty plea, at Thomas's behest, during the opening of trial. Thomas, of course, had a proper evidentiary purpose for requesting introduction: to build his defense, namely, that he had accepted responsibility for the crime he had committed and would not have contested the second money laundering charge unless he truly was innocent.

While it was Thomas who caused jurors to be informed of his guilty plea, Phillip argues there was error in the Government's use of that plea. The Government may not step outside its "permissible bounds" by using a guilty plea, even one properly introduced, for an improper purpose in closing. *See*

United States v. Miranda, 593 F.2d 590, 595 (5th Cir. 1979). There was one erroneous use by the Government — the prosecutor in closing argument exhorted jurors not to take his word for the existence of a bank fraud conspiracy, instead urging reliance on the fact that "Thomas Page and Clayton Wertz have already pleaded guilty to it," adding, "[a]ll we had to show you was that Phillip Page was part of that conspiracy." That argument erroneously told jurors that the guilty plea substituted for evidence of a conspiracy. This was a clarion-clear use of the plea as substantive evidence, *i.e.*, as evidence that a conspiracy existed. It is true the government argued it still needed to prove Phillip was part of the conspiracy, but it misled jurors by insisting it did not need to prove there was a conspiracy. Yes, the Government did. The impact on the case, however, was all but nonexistent, as Phillip conceded there was a conspiracy.

Technically, this factor could be seen as favoring Phillip. We give it no weight, though, because the improper use of the plea was to prove a factual issue that was not contested.

The third factor is whether the plea was improperly emphasized or used as substantive evidence of guilt. The Government may not impermissibly "linger on the fact that the witnesses had pled guilty." *United States v. Jordan*, 945 F.3d 245, 258 (5th Cir. 2019). Here, the prosecuting attorney only directly mentioned Thomas's plea once in his closing statement. We are guided by the Supreme Court's instructions to be wary of faulting the Government for "[i]solated passages of a prosecutor's argument, billed in advance to the jury as a matter of opinion not of evidence," when "improvisation frequently results in syntax left imperfect." *Donnelly v. DeChristoforo*, 416 U.S. 637, 646–47 (1974). We have on-point precedent to apply, too; in *United States v. Roland*, a panel of this court found this factor weighed in favor of the Government in similar circumstances. *Roland*, 130 F.4th at 487. This factor favors the Government.

The fourth factor is whether the introduction of the plea was invited by defense counsel. "[A] defendant will not be heard to complain of [a guilty plea's] admission when he instigates such admission, or attempts to exploit the evidence by frequent, pointed, and direct references to the coconspirators' guilty plea." *United States v. Leach*, 918 F.2d 464, 467 (5th Cir. 1990). This court's precedents emphasize that a defendant's willing choice to "employ" a co-defendant's guilty plea will be at the expense of any later complaint about its admission. *E.g.*, *United States v. Handly*, 591 F.2d 1125, 1128 (5th Cir. 1979).

The Government argues that it was *a* defense counsel, albeit Thomas's attorney, who insisted jurors learn Thomas had pled guilty to the bank fraud count and repeatedly referred to the plea in opening and closing. We discovered only one precedent that evaluates the *Black* factors in the context of one defendant's introducing the guilty pleas at the expense of another defendant. In the precedential though unpublished panel opinion we have discussed already, *Devers*, a co-defendant of the appellant had, while cross-examining the prosecution's first witness, brought out testimony regarding the guilty pleas of a number of testifying and non-testifying co-conspirators. 4 F.3d 990, 1993 WL 360813, at *1. The district court had instructed the jury that an accomplice's guilty plea was not evidence of the guilt of any other person. *Id.* at *2. Nonetheless, the appellant urged the court to apply the same four factors we have been discussing here to the conduct of counsel for a co-defendant.[8] *Id.*

[8] The *Devers* court did not cite *Black* for the factors, instead relying on *United States v. Leach*, 918 F.2d 464, 467 (5th Cir.1990). *Devers*, 4 F.3d 990, 1993 WL 360813 at *2. *Leach*, though, cited *Black* as its source. *Leach*, 918 F.2d at 467 (citing *Black,* 685 F.2d at 132).

The appellant's argument was that the harm to a defendant does not turn on which party, the Government or a co-defendant, introduced another person's guilty plea. *See id.* Because there had been no objection to the introduction, the *Devers* court required the defendant-appellant to show plain error and concluded he failed to do so. *Id.* In finding no plain error, the court explained that the fact that "the prejudicial information was not elicited by the prosecution but rather by Devers' co-defendant" was a "significant distinction, at least in the plain error analysis." *Id.* In addition, the court relied on three details about the trial: 1) there was "no suggestion of any antagonism or conflicting defenses between the two defendants"; 2) the reference to the guilty pleas left open the inference that several conspirators were acquitted; and 3) the Government did not use the pleas to "create an inference of the [appellant's] guilt." *Id.*

Here, it may be that all three additional considerations identified in *Devers* favor Page. More important to this analysis, though, is that the final *Black* factor is almost a waiver issue — did the party now complaining about error actually cause the introduction of the guilty plea? When that is so, the defendant "will not be heard to complain." *Leach*, 918 F.2d at 467. Unless that is the case, the fourth factor really has no relevance, and our decision is controlled by the first three factors alone. Because Phillip did not employ, reference, or exploit Thomas's guilty plea, and instead sought to keep Thomas's plea out at every step, the fourth factor is inapplicable.

In summary, no factor favors reversal. There were limiting instructions. The one errant effort to use the plea as substantive evidence was on an uncontested fact. The Government did not improperly emphasize the guilty plea. The *Black* factors have been raised and considered, and they do not favor Phillip.

Turning to Wertz's guilty plea, at least three of the four factors favor the Government: (1) there was a limiting instruction even if not a contemporaneous one; (2) there was a proper evidentiary purpose for the initial introduction, *i.e.*, undercutting an inevitable line of impeachment; and (3) the Government used his guilty plea to buttress his testimony, not as substantive evidence of guilt. *See Borchardt*, 698 F.2d at 701 (finding these factors favored the Government on similar facts). The fourth factor alone might favor Phillip because the Government elicited Wertz's guilty plea. Even so, it is of limited weight because Phillip was inevitably going to refer to Wertz's guilty plea to paint him as an unreliable witness — and indeed, Phillip did exactly that. *See United States v. Delgado*, 401 F.3d 290, 300 (5th Cir. 2005) (fourth factor favored the Government when the defendant used guilty pleas elicited by the Government to impeach the witnesses' credibility).

There was no plain error in the use of the guilty pleas.

2. Wertz's Plea Agreement and Factual Basis

Phillip challenges the admission of Wertz's plea agreement and factual basis as impermissible bolstering. We find no bolstering in Wertz's plea agreement. On the contrary, Wertz's plea agreement, particularly the provision about the possibility of a substantial assistance motion, provided fertile grounds for impeachment. Phillip did not miss his opportunity to use Wertz's plea agreement to paint him as an unreliable witness.

With respect to Wertz's factual basis, Phillip fails to explain how the factual basis was not merely cumulative of Wertz's live testimony (and therefore harmless). In fact, Phillip seems to concede that the factual basis was cumulative. Wertz's factual basis was limited and general, taking up just over a page of space and discussed on only three pages of the transcript of his direct examination. Wertz's direct examination spans roughly 80 pages of

the trial transcript. It was not error to admit Wertz's plea agreement and factual basis.

C. Denial of Severance

Phillip also argues the district court erred in denying his motion to sever his case from his brother's. "This court reviews a denial of a motion for severance for abuse of discretion." *United States v. Owens*, 683 F.3d 93, 98 (5th Cir. 2012). Phillip's severance arguments largely echo the arguments just discussed. To the extent that they overlap, they fail for the same reasons. Phillip's only new argument is that there was prejudicial spillover evidence that was admissible only against Thomas. We will discuss some of this evidence later, but for now it suffices to say that Phillip fails to explain how any prejudicial evidence was admissible against Thomas but not against him. At most, he demonstrates that a single WhatsApp message would be inadmissible against him, but as we will explain later, any prejudice from that message was minimal.

This court has already held that joint trials are preferred, "particularly in conspiracy cases," and review of the denial of a motion to sever is highly deferential. *United States v. Daniel*, 933 F.3d 370, 380 (5th Cir. 2019) (quoting *United States v. Musquiz*, 45 F.3d 927, 931 (5th Cir. 1995)). Absent "a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence," severance is not warranted. *Zafiro v. United States*, 506 U.S. 534, 539 (1993). Curative instructions are the preferred remedy for problems caused by joint trials. *Id.* Phillip has not carried his heavy burden of showing that severance was required here.

III. Other Evidentiary Rulings

Phillip argues that the district court erred in admitting five groups of evidence: (1) Wertz's 2019 affidavit; (2) a WhatsApp message from Thomas

to Wertz; (3) Wertz's testimony that the Page brothers told Wertz "This is what you get for dancing with the devil"; (4) photographs of the brothers' homes; and (5) summary charts produced by the Government documenting the brothers' financial transactions. "We review a district court's evidentiary rulings for abuse of discretion subject to harmless error analysis." *United States v. Johnson*, 943 F.3d 214, 220 (5th Cir. 2019).

A. Wertz's 2019 Affidavit

Phillip argues that Wertz's 2019 affidavit detailing his involvement in the conspiracy was inadmissible as a prior consistent statement under Federal Rule of Evidence 801(d)(1)(B) because it was made after his motive to lie arose, *i.e.*, he was already in legal jeopardy after having been caught by the bank. He also argues that the affidavit's admission violated Rule 403 because of the possibility that it could be taken for its truth, thus directly implicating him rather than merely rehabilitating Wertz's credibility. The second argument collapses into the first: evidence that is admissible under Rule 801(d)(1)(B) is not hearsay and can therefore be taken for its truth. FED. R. EVID. 801(d)(1)(B); *Tome v. United States*, 513 U.S. 150, 157 (1995).

To be admissible under Rule 801(d)(1)(B), a prior consistent statement "must have been made before the alleged influence, or motive to fabricate, arose." *Tome*, 513 U.S. at 157. "A prior consistent statement need not rebut all motives to fabricate, but only the specific motive alleged at trial." *United States v. Wilson*, 355 F.3d 358, 361 (5th Cir. 2003). The Government argues that, even if Wertz's affidavit was not made before his motive to mitigate his liability arose, *i.e.*, when he was caught by the bank, it was made before his motive to mitigate his sentence arose, *i.e.*, when he had a plea agreement with the Government raising the possibility of a substantial assistance motion. The Government asserts that rebutting that more recent

motive to fabricate is sufficient, even if the affidavit was made after the earlier motive to fabricate arose. In an unpublished opinion, a panel of this court noted the majority view that when multiple motives to fabricate are raised at trial, a prior consistent statement is admissible so long as it was made before at least one of those motives arose. *United States v. Quinn*, 826 F. App'x 337, 340–41 (5th Cir. 2020) (collecting cases).

Even if we were to adopt the majority position, we would still need to determine whether the Government is right that the two motives are actually different. Our precedents suggest that we do not define motives so narrowly. For example, this court has held that when witnesses confessed to law enforcement, the "hopes of receiving leniency from the government" existed even though the witnesses did not yet have "specific plea agreements." *United States v. Portillo*, 969 F.3d 144, 173–74 (5th Cir. 2020). The Government in that case made substantially the same argument that it makes here: the motive to fabricate to avoid charges is not the same as the motive to fabricate to obtain a substantial assistance motion. Appellee's Brief at 93–94, *Portillo*, 969 F.3d 144 (No. 18-50793), 2020 WL 584597. This court rejected that argument, finding that the two motives were one and the same. *Portillo*, 969 F.3d at 173–74. In fairness, Wertz was confessing to the bank, not to Government agents. That might matter under our precedents. *See id.* at 174. Still, we are hesitant to hold that the similar motives here were distinct.

Consequently, we assume *arguendo* that admitting Wertz's 2019 affidavit was an abuse of discretion. Any error was harmless because the affidavit was consistent with Wertz's trial testimony. We have not been referred to anything in the record that would demonstrate the affidavit was "considerably more detailed and persuasive than the testimony introduced at trial." *Id.* at 177. Further, the Government only briefly mentioned the affidavit during its closing argument, and even then, the Government focused

only on the fact that Wertz had confessed to the bank, not on the affidavit's contents or on its consistency with Wertz's trial testimony. Under the circumstances, any error was harmless. *See id.* (finding harmless error when "the government did not heavily rely" on inadmissible prior consistent statements that were duplicative of lengthy trial testimony).

B. WhatsApp Message

Phillip argues that a December 4, 2019 WhatsApp message from Thomas to Wertz, implicating Phillip as a member of "the team", was erroneously admitted under Rule 801(d)(2)(E) because the conspiracy had already ended by that time. He adds that it should have been excluded under Rule 403 because it casts Thomas, and by extension Phillip, in a bad light.[9] The parties disagree on whether Phillip preserved these objections, but Phillip's arguments fail even if he preserved them.

Phillip's first argument fails because any error was harmless. The message never implicates Phillip by name, instead referring only to "the team." The jury only learned that "the team" included Phillip through Wertz's testimony. On its own, the message offers only tenuous support for Phillip's guilt. By contrast, Wertz testified extensively as to Phillip's

[9] Phillip makes his arguments against the admission of several pieces of evidence by reference to Federal Rule of Evidence 404, the rule about impermissible uses of character evidence. Even so, the argument is ultimately one under Rule 403. There are two steps for analyzing the admissibility of evidence that could be taken for an impermissible character purpose. "First, it must be determined that the . . . evidence is relevant to an issue other than the defendant's character. Second, the evidence must possess probative value that is not substantially outweighed by its undue prejudice." *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir. 1978); *see also* FED. R. EVID. 404 advisory committee's note to proposed rule (setting forth the same test). The first step is not at issue here because the Government offered each piece of evidence for a relevant, non-character purpose. All that remains is the question whether the evidence should have been excluded under Rule 403.

involvement, separate and apart from the message. Only if the jury already believed Wertz's testimony would the message have spoken to Phillip's guilt. In that case, the message would be meager addition to the weight of evidence. Thus, the message cannot be said to have played any significant role in Phillip's conviction.

As to whether the probative value of the evidence was substantially outweighed by unfair prejudice under Rule 403, it certainly was probative in combination with Wertz's testimony, *i.e.*, that Phillip was part of "the team." This court has upheld the admission of even highly inflammatory evidence when it is sufficiently probative. *See, e.g.*, *United States v. Shows Urquidi*, 71 F.4th 357, 373–74 (5th Cir. 2023) (upholding admission of gruesome photographs of victims of cartel murders). Whether any prejudice is considered directly, with Phillip as a member of the gloating "team," or indirectly, through Phillip's family and business relationships with his gloating brother, it did not substantially outweigh the message's probative value.

C. "Dancing with the Devil"

Phillip argues that Wertz's testimony that the Page brothers laughed at him and told him "[t]his is what you get for dancing with the devil" should have been excluded under Rule 403. He concedes that he did not preserve this issue, so we review for plain error.

Wertz's testimony was highly probative of Phillip's knowledge of and involvement in the conspiracy. Wertz testified that he went with the brothers to a restaurant and pleaded with them to pay off the loan because his "whole career [was] in jeopardy." In response, the brothers "laughed and said, 'This is what you get for dancing with the devil.'" That response was highly incriminating. Phillip argues that because the brothers' response made them look unsympathetic — even "unethical and sinister," as he puts it — it

should have been excluded. In essence, he argues that perhaps some more abstract version of the conversation would have been admissible, but the brothers' actual response was too inflammatory to admit.

That the testimony was probative means that Phillip must clear an incredibly high bar to show that the testimony should have been excluded. *See Shows Urquidi*, 71 F.4th at 372. Phillip cannot clear that bar. The prosecution is not forbidden from demonstrating the defendant's guilt through detailed evidence just because the crime was committed in a manner that will offend the jury's moral sensitivities. *Cf. Old Chief v. United States*, 519 U.S. 172, 187–88 (1997). That the Page brothers chose to express their disregard for Wertz's plight in a particularly disdainful way does not mandate its exclusion.

D. Photographs of the Page Brothers' Homes

Phillip argues that photographs of the Page brothers' lavish homes improperly invited the jury to convict him for appearing greedy and corrupt, such that the photographs should have been excluded under Rule 403. He concedes that he did not preserve this issue, so we review for plain error.

The Government introduced the photographs as evidence that two witnesses knew the brothers well enough to know what their houses looked like. We reiterate that our standard of review is highly deferential, especially on plain error review. *See Shows Urquidi*, 71 F.4th at 372. Phillip fails to cite relevant case law showing that the admission of the photographs was clear or obvious error, and we are aware of none. Nor does the admission of the photographs present an error so obvious that we would be able to correct it even in the absence of binding precedent. *See United States v. Rao*, 123 F.4th 270, 281 (5th Cir. 2024). Separately, Phillip fails to show that any error affected his substantial rights. The trial record is replete with evidence of Phillip's guilt, and the Government did not emphasize Phillip's wealth

during its closing argument. Nothing in the record suggests that the jury's verdict was improperly influenced by the photographs.

E. Summary Charts

Finally, Phillip argues that the district court abused its discretion in admitting summary charts of financial transactions under Federal Rule of Evidence 1006 without sufficient assurances of accuracy.[10] Phillip argues that inaccuracies and a flawed "first-in, first-out tracing method" made the charts fatally unreliable.

This court's cases set forth only four requirements for the admissibility of summary charts under Rule 1006:

> (1) they are based on competent evidence already before the jury,
>
> (2) the primary evidence used to construct the charts is available to the other side for comparison so that the correctness of the summary may be tested,
>
> (3) the chart preparer is available for cross-examination, and
>
> (4) the jury is properly instructed concerning use of the charts.

United States v. Bishop, 264 F.3d 535, 547 (5th Cir. 2001). All four requirements were met here.

In addition, summary charts, like all other forms of evidence, are subject to balancing under Rule 403. FED. R. EVID. 1006 advisory committee's note to 2024 amendment. Thus, "if the summary does not accurately reflect the underlying voluminous evidence, or if it is

[10] Phillip argues that exhibits 71, 72, 73, and 76 should have been excluded, but his arguments only address flaws in exhibit 73. Thus, Phillip has forfeited any arguments that exhibits 71, 72, and 76 should have been excluded. *See United States v. Scroggins*, 599 F.3d 433, 447 (5th Cir. 2010).

argumentative, its probative value may be substantially outweighed by the risk of unfair prejudice or confusion." *Id.* Phillip makes that kind of argument here.

Phillip faults the charts for "excluding relevant revenue sources, omitting a $500,000 wire transfer from Colt Ventures, and failing to account for overlapping account transactions." More generally, he criticizes the charts' "first-in, first-out tracing method," noting "the difficulty of definitively linking expenditures to specific loan proceeds due to the fungibility of money."[11]

The only true inaccuracy in the original summary charts — attributing two payments to Phillip that had actually been received by his father (who shares his name) — was corrected in the jury's presence, and substitute charts were admitted. Nothing in the record suggests that the jury relied on these errors in the original charts.

The remainder of Phillip's arguments criticize the methodology used to produce the charts, *i.e.*, how expenditures were traced to loan funds as opposed to other funds. To briefly explain, the Government's methodology was as follows:

> (1) when loan funds were deposited into an account, any preexisting balance was noted;

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[11] These two arguments are for the most part one and the same. The charts excluded "relevant revenue sources" and "overlapping account transactions" because of the "first-in, first-out tracing method" the Government used. As far as the $500,000 wire from Colt Ventures is concerned, the witness who prepared the summary charts acknowledged that one of many charts was difficult to prepare because she lacked a particular bank statement for a particular account. She did not concede that the chart was flawed, and she testified that at least the final $88,000 reflected on a later bank statement was loan funds rather than part of a preexisting balance. Given the jury's awareness of the potential flaws in this one chart, any error in admitting the chart was harmless.

> (2) withdrawals were attributed to those preexisting funds until those funds were exhausted; and
>
> (3) once those preexisting funds were exhausted, further withdrawals were attributed to loan funds until the loan funds were exhausted, even if new funds from other sources had been deposited in the time since.

As Phillip puts it, the Government used a "first-in, first-out tracing method." The Government used its charts to show that some of the loan proceeds were laundered or otherwise used for impermissible non-business purposes. Phillip extensively critiqued this methodology during cross-examination.

The district court did not abuse its discretion in admitting the summary charts. Of course, the jury was free to reject the charts as unreliable, and it was well aware of Phillip's criticisms. That is a question properly left to the jury, if not otherwise an issue to be dealt with in a challenge to expert testimony under Rule 702 (an argument Phillip does not raise on appeal). *Cf. United States v. Means*, 695 F.2d 811, 817 (5th Cir. 1983) (assumptions are permissible in preparing summary charts so long as they are based on supporting evidence and the jury is instructed that it is the sole judge of how much weight to give to the charts).

Even if the district court had erred, it would be harmless. The charts' shortcomings were made known to the jury through cross-examination, and the jury was appropriately instructed that it should independently consider whether the charts were accurate.[12] *Bishop*, 264 F.3d at 547. We have

[12] Phillip asserts that the jury was not properly instructed on the proper use of the summary charts, but he does not explain how the district court's cautionary instruction was insufficient. To the extent that he faults the instruction for not specifying that the charts were not evidence, such an instruction would have been erroneous. *See Spalding*, 894 F.3d

routinely found error in admitting summary charts to be harmless when similar guardrails were present. *See, e.g.*, *United States v. Spalding*, 894 F.3d 173, 186 (5th Cir. 2018); *United States v. Mazkouri*, 945 F.3d 293, 301 n.1 (5th Cir. 2019).

IV. Prosecutorial Delay

Phillip makes two arguments relating to prosecutorial delay: (1) that the count for conspiracy to commit money laundering, which was added in the superseding indictment, should have been dismissed for pre-indictment delay; and (2) that the Government violated his due process rights when it did not produce 12,000 pages of bank records until a few weeks before trial.

Regarding delay before indictment, Phillip argues that the Government added the conspiracy to commit money laundering count as a bad-faith tactic designed to prevent him from being able to call Thomas as a witness in his defense.[13] To explain, six days before the Government added the conspiracy to commit money laundering charge, Thomas had attempted to plead guilty to the conspiracy to commit bank fraud charge. Without the new charge, it is at least arguable that Phillip could have called Thomas to

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at 185 (summary charts are substantive evidence); FED. R. EVID. 1006 advisory committee's note to 2024 amendment (same).

[13] Phillip and the Government frame this issue as one of pre-indictment delay. Like the district court, we are skeptical that this is the right framing, as the argument here is less about delay and more about unfairly depriving Phillip of a witness by charging Thomas with a crime. Still, we accept the parties' framing because, among other things, we are convinced that a more general due process analysis would consider similar factors, *i.e.*, bad faith and prejudice. *Cf. United States v. Insaulgarat*, 378 F.3d 456, 461 (5th Cir. 2004) (explaining the standard of review for in-trial prosecutorial misconduct); *United States v. Valdes*, 545 F.2d 957, 959–60 (5th Cir. 1977) (prosecutor's good-faith dialogue with a defense witness about the possibility of perjury was neither improper nor prejudicial); *United States v. Fricke*, 684 F.2d 1126, 1130 (5th Cir. 1982) (considering similar principles in evaluating the Government's investigation of possible defense witnesses).

testify without Thomas invoking his Fifth Amendment right against self-incrimination.

"We review *de novo* a district court's denial of a motion to dismiss the indictment, including any underlying constitutional claims, and review the district court's underlying factual findings for clear error." *United States v. Scully*, 951 F.3d 656, 668 (5th Cir. 2020) (quotation marks omitted) (quoting *United States v. Cordova-Soto*, 804 F.3d 714, 718 (5th Cir. 2015)).

> To show that a pre-indictment delay violated the due process clause, a defendant must establish: (1) that the Government intended to delay obtaining an indictment for the purpose of gaining some tactical advantage over the accused . . . or for some other bad faith purpose, and (2) that the improper delay caused actual, substantial prejudice to his defense.

Id. (alterations adopted and quotation marks omitted) (quoting *United States v. Seale*, 600 F.3d 473, 479 (5th Cir. 2010)).

The district court found that (1) Phillip did not show "that the Government's filing of the superseding indictment was prompted by the mere possibility of Thomas Page testifying," *i.e.*, the Government filed the superseding indictment in bad faith; and (2) Phillip could not show prejudice because he did not make a proffer of what Thomas would testify to. We review these findings for clear error. *Id.*

First, Phillip's simple assertion of the Government's motive was insufficient to override the district court's findings on clear error review. We agree the timing was suspicious, but we are not "left with the definite and firm conviction that a mistake has been committed." *U.S. Gypsum Co.*, 333 U.S. at 395. The district court credited the Government's plausible explanation "that upon beginning its preparation in earnest in March 2022 for the June 2022 trial setting, it reviewed the evidence and, after considering effective trial strategies, presented the additional money-laundering

conspiracy charge to a grand jury." This was a permissible view of the evidence, and thus we cannot say that the district court's finding was clearly erroneous. *Harris*, 740 F.3d at 967.

Second, Phillip cannot show prejudice because he does not make a proffer of Thomas's likely testimony. "A mere loss of potential witnesses is insufficient absent a showing that their testimony would have actually aided the defense." *United States v. Crouch*, 84 F.3d 1497, 1500 (5th Cir. 1996) (*en banc*) (quotation marks omitted) (quoting *United States v. Beszborn*, 21 F.3d 62, 66 (5th Cir. 1994)). Given Thomas's relationship to Phillip and his apparent willingness to testify that Phillip was not involved, it is reasonable to assume that Thomas might have testified to that effect.[14] Regardless, there must be a proffer of what the now-unavailable witness would have said, even under similar circumstances. *See United States v. Proctor*, 505 F.3d 366, 370 (5th Cir. 2007). Absent such a proffer, the district court's finding was not clearly erroneous. The district court did not err in denying Phillip's motion to dismiss the conspiracy to commit money laundering count for pre-indictment delay.[15]

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[14] It remains unclear whether Thomas would have invoked his Fifth Amendment right not to testify. That the Government had not yet charged Thomas with conspiracy to commit money laundering does not mean that it could not have done so in future, separate proceedings. *See United States v. Dixon*, 509 U.S. 688, 703–04 (1993) (holding a later prosecution for an offense involving the same underlying conduct does not violate the Double Jeopardy Clause unless one of the offenses is a lesser-included offense of the other). Absent a plea agreement precluding this possibility — recall Thomas attempted to plead guilty without a plea agreement — Thomas might have seen the writing on the wall and refused to testify.

[15] Phillip also argues the district court should have deferred ruling on his motion to dismiss until after the trial, so as to see how any prejudice might play out in practice. The purpose of our preference for deferral is to prevent premature dismissals and unnecessary appeals. *Crouch*, 84 F.3d at 1516–18. In other words, a district court should defer the motion until after trial when it is inclined to grant it but not necessarily when it is inclined to deny it. Either way, further development on prejudice would not have helped Phillip

As for the late-produced bank records, Phillip fails to explain how the late production would have justified dismissal rather than some lesser remedy, such as a continuance or the exclusion of evidence. *See* FED. R. CRIM. P. 16(d)(2) (listing a continuance and the exclusion of evidence as the ordinary remedies for failure to comply with discovery rules). Nor does he explain why the bank's late production of records should be attributed to the Government. Indeed, he fails to cite any case law whatsoever on how to evaluate his argument. We find the argument forfeited. *See United States v. Scroggins*, 599 F.3d 433, 447 (5th Cir. 2010).

V. Proposed Jury Instructions

Phillip argues that the district court abused its discretion by denying several requested defensive theory instructions. Specifically, Phillip requested (1) either an apparent authority instruction or a good-faith reliance instruction and (2) an instruction describing his theory of the case. The district court denied those instructions because (1) the willfulness instructions adequately covered his good faith and apparent authority theories and (2) Phillip could receive the equivalent benefit of a theory-of-the-case instruction through closing argument.

We review the denial of requested jury instructions for an abuse of discretion. *United States v. Shah*, 95 F.4th 328, 376 (5th Cir. 2024). A district court abuses its discretion in denying a requested jury instruction when three requirements are met:

(1) the requested instruction is substantively correct;

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because he failed to demonstrate that the Government acted in bad faith, which provided an independent ground to deny his motion. To the extent Phillip's deferral argument is about the late-produced bank records, he has not adequately preserved that argument, as we discuss below.

> (2) the requested instruction is not substantially covered in the charge given to the jury; and
>
> (3) it concerns an important point in the trial so that failure to give it seriously impairs the defendant's ability to effectively present a particular defense.

Id. at 376–77 (quoting *United States v. St. Gelais*, 952 F.2d 90, 93 (5th Cir. 1992)).

Phillip's defensive theory was that he did not know the securities account was worthless, *i.e.*, he was tricked by Thomas and Wertz. This court recently held that a requested good-faith instruction was unnecessary because it was adequately covered by the instructions for "knowingly" and "willfully." *Id.* at 377. Those instructions were identical to the ones here. Phillip attempts to distinguish *Shah* by arguing *Shah* did not involve good-faith reliance on specific people. That distinction is unpersuasive. The willfulness instruction allowed Phillip to argue that he did not act willfully because he did not know the securities account was worthless. That he relied on the representations of others does not change the basic thrust of that argument. The district court did not abuse its discretion by refusing to give Phillip's apparent authority and good-faith instructions.

The district court did not abuse its discretion by refusing to give Phillip's theory-of-the-case instruction either. This court has drawn a distinction between instructions that provide a distinct legal principle central to the defense and instructions that are purely narrative and cumulative of existing instructions. A defendant is entitled to the former, but not the latter. *Compare United States v. Washington*, 688 F.2d 953, 957–58 (5th Cir. 1982) (important legal principle not elsewhere in the instructions), *with United States v. Barham*, 595 F.2d 231, 244–45 (5th Cir. 1979) (pure "judicial narrative"). Phillip's theory-of-the-case instruction falls in the latter category. "[T]he requested instruction was more in the nature of a jury

argument than a charge. It was for defense counsel to make, not the Judge." *Barham*, 595 F.2d at 245.

VI. Motions for Acquittal and for a New Trial

Phillip argues there was insufficient evidence that he knowingly participated in the conspiracies to commit bank fraud and money laundering, *i.e.*, that he knew the securities account was worthless and the payments to Wertz and the bank were tied to illicit activity. Relatedly, he argues the district court erred in denying his motion for a new trial because the verdict was against the great weight of the evidence. Given the deferential standard of review applicable to the latter issue, the two issues effectively merge into a basic insufficiency inquiry. *See United States v. Gentle*, 361 F. App'x 575, 581 (5th Cir. 2010) (unpublished) (articulating the standard for a new trial as roughly equivalent to the standard for an unpreserved sufficiency issue).

The essence of Phillip's argument is that Wertz was an unreliable witness. Weighing the credibility of witnesses is beyond the scope of our review; "the jury is the final arbiter of the credibility of witnesses." *United States v. Bermea*, 30 F.3d 1539, 1552 (5th Cir. 1994). "[A] guilty verdict may be sustained if supported only by the uncorroborated testimony of a coconspirator, even if the witness is interested due to a plea bargain or promise of leniency, unless the testimony is incredible or insubstantial on its face." *Id.* This is not a case where Wertz's testimony was so incredible that the jury had to disregard it. The district court did not err in denying Phillip's motion for a judgment of acquittal and his related motion for a new trial.

VII. Cumulative Error

Finally, Phillip argues the cumulative error doctrine justifies a new trial even if other errors are considered harmless. "[T]he cumulative error doctrine . . . provides that an aggregation of non-reversible errors (*i.e.*, plain errors failing to necessitate reversal and harmless errors) can yield a denial of

the constitutional right to a fair trial, which calls for reversal." *United States v. Delgado*, 672 F.3d 320, 343–44 (5th Cir. 2012) (*en banc*) (quoting *United States v. Munoz*, 150 F.3d 401, 418 (5th Cir. 1998)). The cumulative error doctrine rarely justifies reversal, especially when there is "substantial evidence of guilt." *Id.* at 344. Fundamentally, the question we must answer is whether Phillip received a fair trial. *Id.* He did.

AFFIRMED.

Appendix B – Judgment on Petition for Rehearing, United States Court of Appeals for the Fifth Circuit, No. 23-40621 (July 8, 2026).

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 8, 2026
Lyle W. Cayce
Clerk

No. 23-40621

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JON PHILLIP PAGE, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:20-CR-296-2

JUDGMENT ON PETITION FOR REHEARING

Before SOUTHWICK, OLDHAM, and RAMIREZ, *Circuit Judges*.

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

for stay of mandate, whichever is later. See FED. R. APP. P. 41(B). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

Appendix C – Order Denying Petitioner's Motion to Supplement the Record, United States Court of Appeals for the Fifth Circuit, No. 23-40621 (Dec. 12, 2024).

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 12, 2024
Lyle W. Cayce
Clerk

No. 23-40621

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JON PHILLIP PAGE, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:20-CR-296-2

ORDER:

IT IS ORDERED that Appellant's Opposed Motion to supplement the record on appeal with documentation concerning the district court judge's failure to recuse under 28 U.S.C. § 455(a), is DENIED.

Dana M. Douglas

DANA M. DOUGLAS
United States Circuit Judge

Appendix D – First Superseding Indictment, United States District Court for the Eastern District of Texas, No. 4:20-CR-296 (Apr. 6, 2022).

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

APR - 6 2022

BY
DEPUTY

UNITED STATES OF AMERICA	§	
	§	Case No. 4:20CR296
	§	
v.	§	Judge Jordan
	§	
THOMAS HUGHES PAGE (1)	§	
JON PHILLIP PAGE, JR. (2)	§	
CLAYTON HOLMAN WERTZ (3)	§	

FIRST SUPERSEDING INDICTMENT

THE UNITED STATES GRAND JURY CHARGES:

General Allegations

At all times material to this Indictment:

1. Page Capital Group, LLC ("Page Capital") was an investment company located in Dallas, Texas.

2. Defendants **Thomas Page** and **Jon Phillip Page, Jr.** ("Phillip Page") were brothers, and each owned 50 percent of Page Capital.

3. Southwest Securities, Inc. ("SWS") was a financial investment firm located in Dallas, Texas.

4. Defendant **Clayton Holman Wertz** ("Wertz") was a former classmate and longtime friend of **Thomas Page** and **Phillip Page**. Between approximately 2007 and 2012, Wertz worked for SWS as a stock broker. In his role, **Wertz** managed investor accounts and had access to account details and investor monthly statements.

5. PlainsCapital Bank ("PCB") is a financial institution insured by the Federal Deposit Insurance Corporation ("FDIC"). PCB has a branch location at 18111 Preston Road, Suite 110, Dallas, Texas in Collin County, Texas, in the Eastern District of Texas.

6. As part of its services, PCB provides business loans to companies. During the loan application and qualification process, companies must pledge collateral assets securing and guaranteeing the loan amount.

Count One

Violation: 18 U.S.C. § 1349, 1344
(Conspiracy to Commit Bank Fraud)

7. The Grand Jury incorporates and re-alleges the General Allegations of the Indictment.

8. From in or around 2008 and continuing through in or around 2019, in the Eastern District of Texas and elsewhere, defendants **Jon Phillip Page, Jr.**, **Thomas Page**, and **Clayton Wertz** knowingly and willfully combined, conspired, and agreed together with each other, to commit bank fraud, a violation of 18 U.S.C. § 1344, against PlainsCapital Bank, an FDIC-insured financial institution, by means of materially false and fraudulent pretenses, representations, and promises.

Overview

9. Over the course of the conspiracy, Page Capital obtained and renewed multiple business loans from PCB. To qualify for these loans, **Thomas Page** and **Phillip Page** fraudulently represented to PCB that the loans would be secured and guaranteed by

a SWS brokerage account worth at least $2 million. In reality, neither **Thomas Page** nor **Phillip Page** had access to such funds, as the brokerage account was never actually funded. However, **Thomas Page** and **Phillip Page** directed **Clayton Wertz**, a friend and employee at SWS, to create and submit to PCB fraudulent brokerage statements for the SWS account reflecting significant value in the account. Once **Thomas Page** and **Phillip Page** received the money from PCB, they used the funds on various business and personal expenses. In addition, **Thomas Page** and **Phillip Page** took affirmative steps, such as providing occasional payments on the loan, to conceal and disguise their activity. As a result of the defendants' fraudulent conduct, the bank loaned Page Capital approximately $3.6 million and eventually lost approximately $3.25 million over the course of the scheme.

Purpose of the Conspiracy

10. It was the general purpose of the conspiracy for the defendants to unlawfully obtain money from financial institutions, including PCB, through false and fraudulent pretenses, representations, and promises.

Manner and Means of the Conspiracy

11. The manner and means by which the defendants sought to accomplish the purpose of the conspiracy included, among other things, the following:

a. The defendants altered brokerage statements for accounts from SWS to show that **Thomas Page's** account had significant value.

b. Defendants **Thomas Page** and **Phillip Page** paid **Wertz** for his help in doctoring and submitting the SWS brokerage statements.

c. The defendants submitted at least 75 false brokerage statements to PCB for the purpose of obtaining and renewing loans for Page Capital.

d. **Thomas Page** and **Phillip Page** made periodic payments on the loan to keep the bank from suspecting the fraud and to disguise and conceal their scheme.

e. **Thomas Page** and **Phillip Page** used the loan funds for various personal and business purposes that did not generate sufficient revenue to pay back the loan.

f. The defendants obtained and renewed multiple loans, totaling approximately $3.6 million, from PCB by means of false and fraudulent pretenses, representations, and promises.

Acts in Furtherance of the Conspiracy

Establishing the Fraudulent Brokerage Account

12. On or about February 5, 2008, **Thomas Page** opened a SWS brokerage account with number ending in 2809 ("SWS Account 2809"). Throughout the duration of the conspiracy, SWS Account 2809 was never funded and never had a current account market value above $0.

13. In or around 2010, **Thomas Page** and **Phillip Page** began the process of obtaining a $1.8 million business loan from PCB for their company, Page Capital. During the loan application process, **Thomas Page** reached out to **Wertz** to assist with fabricating loan documents that would be submitted to PCB. At the time, **Wertz** was an employee with SWS with access to brokerage statements and SWS client account information.

14. Specifically, **Thomas Page** asked **Wertz** to create documents showing that **Thomas Page** had sufficient assets in SWS Account 2809 to gain loan approval from PCB. To accomplish this, **Wertz** altered the brokerage statement for another SWS client (hereinafter, "Client A") with a large enough account to support the deception. **Wertz**

altered the account number and ownership details on the statement to make it appear as though Client A's account was actually **Thomas Page's** SWS Account 2809.

15. In or around March 2010, in exchange for his work in fabricating the loan documents, **Phillip Page** paid **Wertz** $10,000. Between approximately 2008 and 2017, **Phillip Page** and **Thomas Page** paid **Wertz** approximately $50,000 for assisting with the scheme to defraud PCB.

Obtaining the Initial Loan

16. In or around March 2010, **Thomas Page** and **Phillip Page** submitted the fabricated brokerage statement prepared by **Wertz** to PCB as part of Page Capital's loan application, and the information submitted indicated that SWS Account 2809 had a current market value of approximately $2.3 million.

17. On or about March 1, 2010, Page Capital obtained an initial loan for approximately $1,870,400 from the PCB branch located at 18111 Preston Road, Suite 220, Dallas, Texas 75252, in the Eastern District of Texas. The "Security" section contained within the loan documentation stated, "This Note is secured by a certain Security and Pledge Agreement (the "Security Agreement"), executed by Thomas Hughes Page for the benefit of Payee (PCB) pledging to Payee the securities owned by Thomas Hughes Page held by Southwest Securities, Inc. or Payee. This Note is guaranteed by the unlimited personal guaranties of Jon Phillip Page, Jr., and Thomas Hughes Page." The internal PCB "Executive Summary / Credit Approval Worksheet" stated "Collateral: Loan will be secured by pledging an account held with Southwest Securities: Acct# 584972809. Current

market value: $2,338,213.00." Both **Thomas Page** and **Phillip Page** signed the promissory notes.

Additional Loans and Renewals

18. On multiple instances between approximately 2010 and 2019, **Thomas Page** and **Phillip Page** renewed Page Capital's loan and secured additional credit from PCB at the branch location at 18111 Preston Road, Suite 220, Dallas, Texas 75252, in the Eastern District of Texas. For the renewals and additional loans, **Thomas Page** and **Phillip Page** continued to misrepresent the value of the SWS Account 2809 pledged as security, as reflected below:

Date (on or about)	**Transaction (approximate)**	**Fraudulently Represented Value of SWS Account 2809 (approximate)**
July 20, 2010	Additional $425,000 loan	$2,727,270.80
December 18, 2010	Additional $200,000 loan	$3,156,452.10
December 29, 2011	Additional $350,000 loan	$3,876,759.28
December 14, 2017	Renewal of $3,259,450.59 loan	$4,234,336.10

For each of the above transactions with PCB, both **Thomas Page** and **Phillip Page** signed the corresponding promissory notes.

19. As part of monitoring the loan, PCB required Page Capital to provide regular SWS Account 2809 brokerage statements showing the value of the pledged collateral. At the direction of **Thomas Page** and **Phillip Page**, **Wertz** prepared these brokerage

statements, again fraudulently altering the account ownership details and inflating the value of the account by millions of dollars.

20. **Wertz** then sent these fraudulent brokerage statements via email to a loan officer at PCB, even after his employment with SWS ended in 2012. For instance, on or about September 15, 2016, **Wertz**, utilizing claytonwertz.swst@gmail.com, courtesy copying **Thomas Page** at thpage1@gmail.com, and blind copying **Phillip Page** at jppage@pagecg.com, submitted a .pdf attachment to a PCB loan officer showing a current account market value for SWS Account 2809 of $4,252,964.65.

Avoiding Termination of the Loan and Detection of the Fraud

21. In or around 2017, Page Capital was delinquent in paying back the loan. As such, PCB moved the loan to a probationary status, whereby it would be managed and serviced by the "Special Asset Group." Further delinquency on the loan would have caused the loan to be "called" and PCB to access the collateral that **Thomas Page** and **Phillip Page** offered to obtain the loan. Because the collateral offered, SWS Account 2809, was actually non-existent, **Thomas Page** and **Phillip Page** made payments on the loan in order to avoid detection of and conceal their scheme. Based on these payments, PCB continued to service the loan for approximately 18 more months.

22. Over the course of the scheme, the defendants submitted at least 75 fraudulent statements to PCB misrepresenting the true value of the collateral SWS Account 2809. As a result of the defendants' fraudulent conduct, PCB loaned Page Capital approximately $3.6 million and lost approximately $3.25 million.

All in violation 18 U.S.C. § 1349.

Count Two

Violation: 18 U.S.C. § 1956(h)
(Conspiracy to Commit Money Laundering)

22. Paragraphs 1 through 21 of this Indictment are realleged and incorporated by reference as though fully set forth herein, as constituting and describing the defendants' fraudulent scheme.

23. From in or around 2008 and continuing through 2019, in the Eastern District of Texas and elsewhere, defendants **Thomas Page** and **Jon Phillip Page, Jr.**, did knowingly combine, conspire, and agree with each other to commit offenses against the United States in violation of Title 18, United States Code, Section 1956, to wit: to knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, bank fraud in violation of Title 18 United States Code Section 1344, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

All in violation of 18 U.S.C. § 1956(h).

NOTICE OF INTENT TO SEEK CRIMINAL FORFEITURE

1. The allegations contained in Count One of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures to the United States of America of certain property in which the defendant has an interest.

2. Upon convictions for a violation of Title 18, United States Code, Sections 1349, the defendants, **Jon Phillip Page, Jr.**, **Thomas Page**, and **Clayton Wertz**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

3. Upon convictions for a violation under Title 18, United States Code, Sections 1344, the defendants, **Jon Phillip Page, Jr.**, **Thomas Page**, and **Clayton Wertz**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(1)(A) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

4. A sum of money equal to $3,259,450.59 in United States currency, and all interest and proceeds traceable thereto, representing the amount of proceeds obtained by the defendant as a result of Count One alleged in this Indictment.

5. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

RIA

GRAND JURY FOREPERSON

BRIT FEATHERSON
UNITED STATES ATTORNEY

ANAND VARADARAJAN
G.R. JACKSON

Assistant United States Attorneys

4-6-22

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	Case No. 4:20CR296
v.	§	Judge Jordan
	§	
THOMAS HUGHES PAGE (1)	§	
JON PHILLIP PAGE, JR. (2)	§	
CLAYTON HOLMAN WERTZ (3)	§	

NOTICE OF PENALTY

Count One

Violation:	18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)
Penalty:	Not more than thirty years imprisonment, a fine not to exceed $1,000,000, or both; supervised release of not more than five years.
Special Assessment:	$100.00

Count Two

Violation:	18 U.S.C. §§ 1956(h) (Conspiracy to Commit Money Laundering)
Penalty:	Imprisonment for a term not more than twenty years, a fine not to exceed $500,000, or twice the value of the property involved in the transaction, whichever is greater, or both imprisonment and fine; supervised release of not more than three years.
Special Assessment:	$100.00

Appendix E – Initial Elements of the Offense and Factual Basis for Thomas Page, E.D. Tex. Document 92 (Mar. 31, 2022).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:20CR296
	§	Judge Jordan
THOMAS HUGHES PAGE	§	

ELEMENTS OF THE OFFENSE AND FACTUAL BASIS

I.

ELEMENTS OF THE OFFENSE

The defendant, **Thomas Hughes Page**, is charged in Count One of the Indictment witha violation of 18 U.S.C. § 1349, Conspiracy to Commit Bank Fraud. The essential elements which must be proven beyond a reasonable doubt are:

1. That the defendant agreed with one or more persons to commit bank fraud;
2. That the defendant knew the unlawful purpose of the agreement; and
3. That the defendant joined the agreement with the intent to further the unlawful purpose.

II.

FACTUAL BASIS

The defendant, **Thomas Hughes Page**, hereby stipulates and agrees that at all times relevant to the Indictment herein, the following facts were true:

1. **Thomas Hughes Page**, who is entering a plea of guilty, is the same person charged in the Indictment;

2. The events and conduct described in the Indictment occurred in the Eastern District of Texas and elsewhere;

3. **Thomas Page** willfully conspired with his co-defendant Clayton Wertz to devise a scheme to defraud PlainsCapital Bank ("PCB"), a financial institution insured by the Federal Deposit Insurance Corporation ("FDIC");

4. **Thomas Page** owned 51 percent of his business called Page Capital;

5. Between 2010 and 2017, **Thomas Page's** business, Page Capital, obtained and renewed multiple business loans from PCB. To qualify for these loans, **Thomas Page** fraudulently represented to PCB that the loans would be secured and guaranteed by a brokerage account worth at least $2 million, when in reality, that brokerage account was never funded.

6. Over the course of the conspiracy, Clayton Wertz created and submitted false brokerage account statements to the bank, with the knowledge of **Thomas Page**, which reflected significant value in the collateral account.

7. Thomas Page agrees that he committed all the essential elements of the offense. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count One of the Indictment.

III.

Acknowledgments of Elements of the Offense and Factual Basis

Thomas Hughes Page
Defendant

Date: 3/31/2022

Kevin B. Ross
Attorney for Thomas Hughes Page

Date: 3/31/2022

Appendix F – Revised Elements of the Offense and Factual Basis for Thomas Page, E.D. Tex. Document 121 (July 1, 2022).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:20CR296
	§	Judge Jordan
THOMAS HUGHES PAGE	§	

ELEMENTS OF THE OFFENSE AND FACTUAL BASIS

I.

ELEMENTS OF THE OFFENSE

The defendant, **Thomas Hughes Page**, is charged in Count One of the Superseding Indictment witha violation of 18 U.S.C. § 1349, Conspiracy to Commit Bank Fraud. The essential elements which must be proven beyond a reasonable doubt are:

1. That the defendant agreed with one or more persons to commit bank fraud;

2. That the defendant knew the unlawful purpose of the agreement; and

3. That the defendant joined the agreement with the intent to further the unlawful purpose.

II.

FACTUAL BASIS

The defendant, **Thomas Hughes Page**, hereby stipulates and agrees that at all times relevant to the Superseding Indictment herein, the following facts were true:

1. **Thomas Hughes Page**, who is entering a plea of guilty, is the same

person charged in the Indictment;

2. The events and conduct described in the Indictment occurred in the Eastern District of Texas and elsewhere;

3. **Thomas Page** willfully conspired with at least one other person to devise a scheme to defraud PlainsCapital Bank ("PCB"), a financial institution insured by the Federal Deposit Insurance Corporation ("FDIC");

4. Between 2010 and 2017, Page Capital, which **Thomas Page** had an ownership interest in, obtained and renewed multiple business loans from PCB. To qualify for these loans, **Thomas Page** admits that he fraudulently represented to PCB that the loans would be secured and guaranteed by a brokerage account, when in reality, that brokerage account was never funded.

5. Over the course of the conspiracy, false brokerage account statements were submitted to the bank which reflected significant value in the collateral account.

6. Thomas Page agrees that he committed all the essential elements of the offense. The purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count One of the Superseding Indictment.

III.

Acknowledgments of Elements of the Offense and Factual Basis

Thomas Hughes Page
Defendant

Date: 6/30/2022

Kevin B. Ross
Attorney for Thomas Hughes Page

Date: 6/30/22

Appendix G – Transcript of Thomas Page's Change-of-Plea Hearing, E.D. Tex. Document 147 (July 11, 2022; filed Oct. 13, 2022).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Case No.:
	§	4:19-cr-00296-1
THOMAS HUGHES PAGE,	§	
	§	
Defendant.	§	

TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS
BEFORE THE HONORABLE SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

Monday, July 11, 2022; 1:02 p.m.
Plano, Texas

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

Anand Varadarajan
Glenn Roque Jackson
OFFICE OF THE U.S. ATTORNEY - Plano
101 East Park Boulevard, Suite 500
Plano, Texas 75074

FOR THE DEFENDANT:

Kevin Blake Ross
Kristen Beckman
LAW OFFICE OF KEVIN B. ROSS, PC
8150 N. Central Expressway, Suite M2070
Dallas, Texas 75206

****

GAYLE WEAR, RPR, CRR
Federal Official Court Reporter
7940 Preston Road
Plano, Texas 75024
214.872.4867

July 11, 2022 1:02 p.m.

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P R O C E E D I N G S

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THE COURT: Good afternoon. You can be seated.

The Court calls criminal action number 4:20-cr-206, Defendant 1, United States of America versus Thomas Hughes Page.

We're here for a change of plea hearing as to Mr. Page. Are the parties ready to proceed?

MR. VARADARAJAN: Yes, Your Honor. Anand Varadarajan and Glenn Jackson for the United States.

MR. ROSS: We are, Your Honor. Kevin Ross for Mr. Page, and Kristen Beckman for Mr. Page.

THE COURT: All right. Thank you.

So, good, we've got a microphone in front of Mr. Page. So at this time, Mr. Page, would you go ahead and raise your right hand, stand and raise your right hand. And let's have the defendant sworn.

THOMAS HUGHES PAGE,

was duly sworn.

THE COURT: You can be seated, Mr. Page.

All right. So, Mr. Page, would you please state your full name for the record.

THE DEFENDANT: Thomas Hughes Page.

THE COURT: And, Mr. Page, since you have taken the oath, you now are -- you are now under the penalties of perjury. If you give false answers during this hearing, your answers may be used against you in a prosecution for perjury or false statement. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So how old are you, sir?

THE DEFENDANT: 46.

THE COURT: And what is the last grade of school that you've completed?

THE DEFENDANT: It was some college.

THE COURT: Some college?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And so you're a high school graduate.

THE DEFENDANT: Yes, Your Honor.

THE COURT: What is your occupation?

THE DEFENDANT: Investments.

THE COURT: Do you read and write English?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And have you ever been diagnosed with a mental illness of any kind or problem, or mental problem?

THE DEFENDANT: No, Your Honor.

THE COURT: Have you ever been treated for an addiction to narcotic drugs of any kind?

THE DEFENDANT: Alcohol.

THE COURT: All right. So, what, you had an alcoholism issue?

THE DEFENDANT: Yes, sir. I've been to outpatient rehab for alcohol.

THE COURT: Are you currently under the influence of any drug, medication, or alcoholic beverages of any kind?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Mr. Ross, do you believe your client is competent to proceed today?

MR. ROSS: I do, Your Honor.

THE COURT: Mr. Varadarajan, does the government have any doubt as to the defendant's competence to proceed today?

MR. VARADARAJAN: No, Your Honor.

THE COURT: All right. So, Mr. Page, you have been charged with violations of federal criminal law as described in the first superseding indictment in this cause, which is cause number 4:20-cr-296. Have you received a copy of the first superseding indictment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you have the right to have your indictment read aloud, or you can waive that right. So what would you like to do, Mr. Page?

THE DEFENDANT: I'll waive the right, Your Honor.

THE COURT: All right. So Mr. Page, I understand

that today it is your desire to plead guilty to Count 1 of the first superseding indictment; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand the nature of the charges that are alleged against you in Count 1 of the first superseding indictment?

THE DEFENDANT: I do, Your Honor.

THE COURT: Have you had sufficient time to review and discuss your case with your attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you discussed all the facts in this case with your attorney as well as any defenses that you might have to the charges that are alleged against you in Count 1 of the first superseding indictment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And are you satisfied that your attorney has fully considered your case as well as any defenses that you may have for the charges that were alleged against you in Count 1 of the first superseding indictment?

THE DEFENDANT: I am. Yes, sir, Your Honor.

THE COURT: And are you satisfied with the advice and representation that you've been given in this case?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: All right. Mr. Varadarajan, at this time I am going to ask that you advise the defendant,

Mr. Page, of the elements of the offense that he desires to plead guilty to, conspiracy to commit bank fraud, in violation of Title 18, United States Code, Sections 1349 and 1344.

MR. VARADARAJAN: Yes, Your Honor. So the defendant is intending to plead guilty to, as you stated, 18 United States Code, Section 1349, conspiracy to commit bank fraud, which is a violation of 18, United States Code, Section 1344. The elements which the government would have to prove if this case went to trial are as follows:

First, that the defendant agreed with one or more persons to commit bank fraud; second, that the defendant knew the unlawful purpose of the agreement, and; third, that the defendant joined in the agreement with the intent to further that unlawful purpose.

THE COURT: All right. So, Mr. Page, as Mr. Varadarajan just indicated, what he has just recited to you are the elements the government would be required to prove beyond a reasonable doubt to establish your guilt if you were to go to trial. Do you understand the elements set forth as to Count 1 of the first superseding indictment as has just been explained to you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If you plead guilty to the offense charged, you will be admitting each of these elements. Do

you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you admit that you committed each one of the elements that Mr. Varadarajan just recited?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, I have received plea documents submitted by the defendant. The Court notes that these documents were submitted by the defendant only and do not reflect a plea agreement with the government, but rather an open plea by you, Mr. Page, as to Count 1 of the first superseding indictment.

The two documents received by the Court are the Defendant's Notice of Guilty Plea, which is document number 120 in the electronic record; and the Elements of the Offense and Factual Basis, which is document number 121 in the electronic record.

Mr. Page, would you please confirm for the record that you signed a Notice of Guilty Plea, which is document number 120 in the electronic record?

THE DEFENDANT: Yes, Your Honor, I did.

THE COURT: And did you review the Notice of Guilty Plea with your attorney before you signed it?

THE DEFENDANT: Yes, sir, I did.

THE COURT: Mr. Page, would you also confirm for the record, did you sign the Elements of the Offense and

Factual Basis, which is document number 121 in the electronic record?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And did you review the Elements of the Offense and Factual Basis with your attorney before you signed it?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: All right. At this time I'm going to review some of the paragraphs of the Notice of Guilty Plea document filed by you, Mr. Page, and discuss your constitutional rights.

On page 1 of the Notice of Guilty Plea, there is an unnumbered paragraph that is entitled, quote, "Rights Of the Defendant," close quote, which is I believe intended to be paragraph number 1 of the document. This paragraph lists constitutional rights that you have in this case.

You have the right to plead not guilty and to proceed, to persist in the plea of not guilty. You have the right to a trial by jury. You have the right to have your guilt proved beyond a reasonable doubt. You have the right to confront and cross-examine witnesses and to call witnesses in your defense. And you have the right to not be compelled to testify against yourself.

Do you understand that you have these constitutional rights?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: If you plead guilty as to any charge against you in this case, you will waive these constitutional rights as to any such charges. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So if you plead guilty as to Count 1 of the first superseding indictment, you will be waiving all these constitutional rights as to Count 1. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And if you plead not guilty, you understand that the Constitution would entitle you to a jury trial on those charges.

THE DEFENDANT: Yes, Your Honor.

THE COURT: The Court would instruct such a jury that the defendant in a criminal case is presumed to be innocent and that the presumption of innocence goes with the defendant throughout the trial of the case and extends to every fact issue in the case.

The Court would also instruct the jury that the presumption of innocence can be overcome by the government only if it establishes to the satisfaction of the jury beyond a reasonable doubt that it has proved all of the elements of the offense charged against you. The elements of the offense are the matters which must be proved by the government before

the existence of a crime can be legally established.

Do you understand that you have all these rights?

THE DEFENDANT: I do. Yes, sir.

THE COURT: Now, paragraph 3 of your Notice of Guilty Plea document lists the statutory penalties that may be imposed on you, Mr. Page, if you are found guilty on Count 1 of the first superseding indictment. The statutory penalties as to Count 1 are imprisonment for a period of up to 30 years, a fine not to exceed $1 million, or both, a term of supervised release of not more than five years, which may be mandatory under the law and will follow any term of imprisonment. If you violate the conditions of supervised release, the consequence could be imprisonment for the entire term of supervised release.

A mandatory special assessment of $100, which must be paid to the United States District Clerk. Forfeiture of property involved in or traceable to the criminal offense. Restitution to victims or to the community, and costs of incarceration and supervision.

Mr. Page, do you understand the penalties that may be imposed on you if you're found guilty on Count 1 of the first superseding indictment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you also understand that as a United States citizen, by pleading guilty to Count 1 of the first

superseding indictment, which is a felony offense, you may give up valuable rights such as the right to vote, the right to hold public office, the right to sit on a jury, and the right to possess any kind of firearm?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Mr. Page, do you also realize and understand that although the sentencing guidelines are advisory, a guideline sentence will be calculated as to any charge of which you are found guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you discussed with your attorney the sentencing guidelines and how they may be used?

THE DEFENDANT: We have, Your Honor. Yes.

THE COURT: Do you understand that the sentencing guidelines are not mandatory and the sentencing judge is not obligated to follow them in this case?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Do you understand that the Court will not be able to determine the guideline sentence for your case until after the presentence report has been completed and you and the government have had an opportunity to challenge the facts and the calculations reported by the probation officer?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: And do you understand that the sentence imposed may be different from any estimate that your

attorney, the government, or the probation office may have given you?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: And since the sentencing guidelines are not binding on the Court, the sentencing judge may depart from them and sentence you up to the statutory maximum in this case. Is that clear?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: If the sentence you receive is more severe than you expect, you will still be bound by your plea. Do you understand this?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand that parole has been abolished in the federal system and that if you're sentenced to a term of imprisonment, you will not be released on parole.

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: And do you understand that under some circumstances, you or the government may have the right to appeal any sentence imposed?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: All right. Paragraph 4 of your Notice of Guilty Plea says that your plea is freely and voluntarily made. I ask you, for the record, has anyone tried to force you or threaten you to plead guilty in this case?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Have any promises or assurances been made to you in an effort to induce your plea of guilty?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: I am now going to go ahead and review the underlying Elements of the Offense and Factual Basis document that you submitted to the Court.

And since this is an open plea, not a plea agreement with the government, Mr. Ross, I'm going to ask you to summarize what is recited in that document, meaning the Elements of the Offense and Factual Basis submitted by the defendant.

MR. ROSS: Yes, Your Honor. The elements of the offense, Your Honor. The defendant, Thomas Hughes Page, is charged with Count 1 of the superseding indictment for violation of 18 U.S.C. 1349, conspiracy to commit bank fraud. The essential elements which the government has to prove beyond a reasonable doubt are, one, that the defendant agreed with one or more persons to commit bank fraud; two, that the defendant knew the unlawful purpose of the agreement; and, three, that the defendant joined the agreement with the intent to further the unlawful purpose.

In regards to the factual basis, the defendant, Thomas Hughes Page, hereby stipulates and agrees that at all times relevant to the superseding indictment in Count 1, that

the fact -- that the following facts are true:

Thomas Hughes Page, who is entering a plea of guilty, is the same person charged in the indictment. The events and conduct described in the indictment occurred in the Eastern District of Texas and elsewhere.

Number three, that Thomas Page willfully conspired with at least one other person to devise a scheme to defraud PlainsCapital Bank, PCB, a financial institution insured by the Federal department -- by the Federal Deposit Insurance Corporation, FDIC; that between 2010 and 2017, Page Capital, which Thomas Page had an ownership interest in, obtained and renewed multiple business loans from PNC -- PCB, I'm sorry. To qualify for those loans, Thomas Page admits that he fraudulently represented to PCB that the loans would be secured and guaranteed by a brokerage account when in reality the brokerage account was never funded.

Over the course of the conspiracy, false brokerage account statements were submitted to the bank which reflected significant value in the collateral account. Thomas Page agrees that he committed all of the essential elements of the offense, and the purpose of the statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count 1 of the superseding indictment.

Acknowledged and signed by Thomas Page on June 30th

of 2022, and myself.

THE COURT: All right. Thank you, Mr. Ross.

Mr. Page, is everything in your Elements of the Offense and Factual Basis document true and correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. I have some, just a few, specific questions for you on that. You say in paragraph 2 of the factual basis that the events and conduct described in the indictment occurred in the Eastern District of Texas and elsewhere. You mean, the events and conduct described in the first superseding indictment; correct?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: And that includes the general allegations in the first superseding indictment which are paragraphs 1 through 6 of the indictment; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are there any changes that you would like to make to this document at this time, meaning the Elements of the Offense and Factual Basis document? Are there any changes you would like to make to it at this time?

THE DEFENDANT: Can I ask one question?

MR. ROSS: May we have one moment, Your Honor?

THE COURT: Yes.

(Counsel and defendant confer.)

THE COURT: Any questions?

MR. ROSS: Maybe just a clarification, Your Honor --

THE COURT: Yes.

MR. ROSS: -- in that where it talks about multiple loans, the clarification would be that there was one loan but multiple renewals of that loan. So it was kind of like one loan but there was multiple renewals of the loan that kept on adding funding to it.

THE COURT: Right. So my understanding is the renewals were that he was getting additional loan funds; correct?

MR. ROSS: That's correct, Your Honor.

THE COURT: Mr. Page, is that the intent of your factual basis, is to state that you initially got a loan but then you had renewals which were giving you additional funds, additional loan funds?

THE DEFENDANT: Yes, sir. We had the option to get additional funds based off of I guess a type of credit limit, but it was always -- it was one initial loan that we continued to renew.

THE COURT: And you did receive those additional funds; correct?

THE DEFENDANT: On a few occasions, yes, sir, Your Honor.

THE COURT: Well, these are -- this is why in

response to my first question -- I think you may have already answered this because you state the events and conduct described in the first superseding indictment occurred; and, indeed, in the first superseding indictment it specifically states you received these additional funds; is that correct?

THE DEFENDANT: I did. Yes, sir, Your Honor.

THE COURT: All right. So, Mr. Page, in your own words, in your own words, would you please describe the criminal conduct that you're pleading guilty to.

THE DEFENDANT: Certainly, Your Honor. I very irresponsibly asked a friend of mine who was a stock broker at the time to take someone else's bond account statement and put my name on that statement, and then I asked him to submit it to a former classmate of mine and long-time friend who worked at the bank, so that I could use it as collateral for a business loan.

THE COURT: All right. Mr. Ross, have you had sufficient time to review and discuss this case with your client?

MR. ROSS: I have, Your Honor.

THE COURT: And has Mr. Page been able to cooperate with you?

MR. ROSS: He has, Your Honor.

THE COURT: Have you discussed the facts of this case in detail with Mr. Page?

MR. ROSS: I have, Your Honor.

THE COURT: Are you aware of any reason why Mr. Page would not be able to enter a knowing and intelligent plea at this time?

MR. ROSS: I do not, Your Honor.

THE COURT: And do you join in your client's decision to plead guilty to Count 1 of the first superseding indictment?

MR. ROSS: I do, Your Honor.

THE COURT: Mr. Page, do you understand everything that has gone on here today?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Do you have any questions?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: And are you pleading guilty to Count 1 of the first superseding indictment because you are guilty of Count 1 in the first superseding indictment?

THE DEFENDANT: That is correct. Yes, sir, I am.

THE COURT: All right. Let me ask if defense counsel is satisfied there is a factual basis to support this plea.

MR. ROSS: I do, Your Honor. I do believe that the factual basis meets every essential element of the offense.

THE COURT: Let me ask if the government is satisfied there is a factual basis to support this plea.

MR. VARADARAJAN: Your Honor, the government is satisfied that the factual basis document is sufficient to satisfy the plea; however, it's not satisfied that the allocution by the defendant is sufficient. And if the Court would indulge, I would like to ask the defendant a few questions to clarify the statements made in allocution.

MR. ROSS: And, Your Honor, I'm going to object to that. The question for the Court is everything that the Court has heard, does that meet the essential elements of the offense. It's not a fishing expedition for the government to try to elicit more information from Mr. Page. It's strictly now within the Court's decision if the factual basis and what he has said meets the elements of the offense for a conspiracy to commit bank fraud in 18 U.S.C. 1349.

MR. VARADARAJAN: Your Honor, if I may be heard. With all due respect, the factual basis is prepared with the assistance of counsel. When the Court asks the defendant to state in his own words the offense conduct, that is the defendant's own words. So at that point, Your Honor, the government does ask for the ability to ask some questions to clarify the statement that the defendant just made.

THE COURT: All right. Well, let me ask you what specific areas you would like to question him on, because the defendant has affirmed that everything in the first superseding indictment at least through Count 1, he's

acknowledging occurred, including the general allegations in paragraphs 1 through 6, including all of the content -- and you're very familiar with it I'm sure, Mr. Varadarajan --

MR. VARADARAJAN: Right.

THE COURT: -- of Count 1 which includes description of the conspiracy and description of covert acts furthering the conspiracy.

MR. VARADARAJAN: Right, Your Honor, but he mentioned that he worked with some specific people to accomplish that. And to clarify who those people are and what their role was is something that we were going to -- were hoping to explore as it pertains to Count 1. We understand he's not pleading guilty to Count 2, but as it pertains to the bank fraud conspiracy.

THE COURT: All right. Well -- go ahead, Mr. Ross. Do you want to -- let me ask a question before I get to you, Mr. Ross.

Which is the only question I have, Mr. Varadarajan, is that having -- with Mr. Page having said now under oath that everything that is alleged in Count 1 in the general allegations actually occurred, which means the acts and the individuals who were named, he's acknowledged that those events have occurred and whoever is involved in that was involved in it per the indictment, do you still feel you need ask questions?

MR. VARADARAJAN: We would like to very briefly, Your Honor, because the general allegation is just paragraphs 1 through 6, and obviously the substantive count is --

THE COURT: Right, right. I'll just note he has also stated that everything that is set forth in Count 1 itself as well also occurred.

MR. VARADARAJAN: If that's the Court's understanding that he has set forth that all of the allegations in Count 1 of the superseding indictment are true and accurate, we do not have any questions, Your Honor.

THE COURT: That's precisely my understanding, is that he has stated under oath that everything that's stated in the entirety of Count 1 actually occurred and all the general allegations actually occurred.

MR. VARADARAJAN: If that is what happened, Your Honor, we have no questions.

THE COURT: I think that's plainly what he stated under oath, and I'm sure Mr. Ross doesn't disagree.

Do you, Mr. Ross?

MR. ROSS: Your Honor, I just make a point of clarification. The indictment is what the government has alleged has happened. As far as what Mr. Page has pled guilty to and those representations, it is his representations meet the elements of the offense. Instead of saying that this is an all encompassing that he's saying that

everything that occurred in the indictment between 2010 and 2017, and all those individuals, Your Honor, I think that's a little broad.

I think he's stating -- he is stating that what the indictment says, that he's read it, that he understands it, that these events have occurred. Then his factual basis, Your Honor, is specifically as to what he is pleading to that meets the elements of the offense.

THE COURT: Well, I understand that he's pleading the elements of the offense, but I will tell you I think this is plain English. He says that the events -- and I confirmed with him that the events stated in Count 1 of the indictment occurred; that means they happened; that means what it is stated occurred as is stated. And I asked him under oath, and he affirmed that.

So, in my view, that quite clearly is a statement both in the factual basis and confirmed under oath on the record here that what is alleged through Count 1 of the indictment has occurred. And so that is the way I read this and that is the way I read his testimony unequivocally.

And I think, under the circumstances, that's why I was asking Mr. Varadarajan what he would need to ask him about, about Count 1, because he's affirmed all of that occurred.

So if you don't have any questions, then --

MR. VARADARAJAN: No. With that, Your Honor, we don't have any questions.

THE COURT: All right. And let me ask if both counsel -- I'll start with you, Mr. Ross -- are satisfied that the Court has complied with the requirements of Rule 11.

MR. ROSS: I do, Your Honor, except for one matter. I don't believe that the Court talked about the applicability of forfeiture. I think there is a forfeiture count in this.

THE COURT: Oh. Well, I thought we talked about that when I described the penalties to him.

MR. VARADARAJAN: That's what I recall, Your Honor.

MR. ROSS: I'm sorry, Your Honor. I may have just misheard. I just wanted it to be on the record.

THE COURT: No. In fact, that's why I was tracking the document that you submitted, Mr. Ross, which I checked against the statute, and I think that what you submitted was consistent with the statute. And so amongst the penalties that include imprisonment and the $1 million fine and the supervised release of not more than five years, et cetera, I mentioned forfeiture of property involved in or traceable to the criminal offense.

MR. ROSS: Understood, Your Honor. Thank you.

THE COURT: And just to be sure, you do understand that, Mr. Page, that among the penalties that may be imposed on you is forfeiture of property involved in or traceable to

the criminal offense of which you are adjudged guilty.

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Thank you.

Mr. Ross, if there's any doubt in your mind, I want you to bring it up. So is there anything else that you think the Court has not done to comply with Rule 11?

MR. ROSS: Nothing further, Your Honor.

THE COURT: So, Mr. Page, I'm now going to ask you how you plead to the charges against you in the first superseding indictment in cause number 4:20-cr-206, United States of America versus Thomas Hughes Page. And if you would stand at this time, Mr. Page.

As to Count 1 of the first superseding indictment which charges a violation of Title 18, United States Code, Sections 1349 and 1344, conspiracy to commit bank fraud, how do you plead? Guilty or not guilty?

THE DEFENDANT: Guilty, Your Honor.

THE COURT: As to Count 2 of the first superseding indictment which charges a violation of Title 18, United States Code, Section 1956(h), conspiracy to commit money laundering, how do you plead? Guilty or not guilty?

THE DEFENDANT: Not guilty, Your Honor.

THE COURT: All right. You can be seated, Mr. Page.

I'm going to accept each of Mr. Page's pleas to

each count of the first superseding indictment. The Court makes the following findings on the record and particularly as to Mr. Page's guilty plea as to Count 1 of the first superseding indictment:

The Court finds that Mr. Page is competent to plead; that he has had the assistance of counsel; that he understands his trial rights and the nature of the charges alleged against him.

The Court further finds that Mr. Page understands the statutory penalties that may be imposed as to Count 1; and that while the Court will refer to the sentencing guidelines when Mr. Page is sentenced, these guidelines are not binding on the Court.

Finally, I also find that Mr. Page's plea is knowing and voluntary, and that there is a factual basis to support the plea.

Mr. Page is therefore adjudged guilty of the offense charged in Count 1 of the first superseding indictment, conspiracy to commit bank fraud, in violation of Title 18, United States Code, Sections 1349 and 1344. I will note that a written order will follow.

Is there anything else from the government?

MR. VARADARAJAN: No, Your Honor.

THE COURT: Anything else from the defendant?

MR. ROSS: Nothing further, Your Honor.

THE COURT: All right. Then, Mr. Page, you're going to go back into the custody of the marshals pending your trial on Count 2 of the first superseding indictment.

And we will stand in recess.

THE COURT SECURITY OFFICER: All rise.

(Adjourned 1:30 p.m.)

* * * * *

CERTIFICATION OF OFFICIAL REPORTER

I, Gayle Wear, Federal Official Court Reporter, in and for the United States District Court for the Eastern District of Texas, do hereby certify that pursuant to Section 753, Title 28 United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated 13th day of October 2022.

/s/ Gayle Wear
GAYLE WEAR, RPR, CRR
FEDERAL OFFICIAL COURT REPORTER