

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-20400

In the Matter of

DAVID AARON ROCKWELL

Respondent.

DIVISION OF ENFORCEMENT’S MOTION FOR DEFAULT AND OTHER RELIEF

I. Introduction

The Division of Enforcement (the “Division”), pursuant to Rule 155(a) and 220(f) of the Commission’s Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent David Aaron Rockwell in default and determining this proceeding against him upon consideration of the record. The Division sets forth the grounds below.

II. History of the Case

The Commission issued the Order Instituting Proceedings (“OIP”) on July 15, 2021 pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”). In summary, the OIP alleges that Rockwell, while associated with broker-dealers and investment advisers, fraudulently converted to his own use more than \$1 million in client funds. These facts led to Rockwell’s guilty plea in the criminal case against him.

On November 1, 2021, the Division filed a Declaration confirming that Rockwell had been served with the OIP. As of this date, Rockwell has not filed an answer or any other response to the OIP.

III. Memorandum of Law

A. Rockwell's Criminal Case

On September 9, 2020, a federal grand jury in the Middle District of Florida returned an indictment against Rockwell charging him with six counts of wire fraud (18 U.S.C. § 1343) and two count of bank fraud (18 U.S.C. § 1344).¹ On January 13, 2021, Rockwell pled guilty to all of the charges (without a plea agreement),² and on January 21, 2021, the Court accepted his plea and adjudicated him guilty.³ On June 1, 2021, the Court sentenced Rockwell to 63 months imprisonment and forfeiture of \$1,018,000.⁴

B. Facts

Based on Rockwell's default, the allegations of the OIP "may be deemed to be true." 17 C.F.R. § 201.155(a). Moreover, Rockwell's guilty plea binds him to the facts he admitted. *See Gary L. McDuff*, Exch. Act Rel. No. 74803, at 5 & n.18, 2015 WL 1873119, at n.18 (Apr. 23, 2015); *Don Warner Reinhard*, Exch. Act Rel. No. 63720, at 11-12, 2011 WL 121451, at *7 (Jan. 14, 2011) (respondent who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual Basis for Plea Agreement"); *Gary M. Kornman*, Exch. Act Rel. No. 59403, at 12, 2009 WL 367635, at *8 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010).

¹Exh. 1 (Indictment, DE 1, *United States v. Rockwell*, No. 2:20-cr-107 (M.D. Fla.)).

²Exh. 2 (Minutes of Change of Plea Hearing, DE 33); Exh. 3 (Transcript of Change of Plea Hearing, 1/13/2021).

³Exh. 4 (Order Accepting Guilty Plea, DE 36).

⁴The Court subsequently ordered restitution of \$343,000. Exh. 5 (Amended Judgment of Conviction, DE 62).

The OIP and the facts admitted as part of Rockwell’s guilty plea establish the following:

During the relevant period, Rockwell was associated with two dually-registered broker-dealer and investment adviser firms—one from December 2015 through approximately November 2018 and the other from November 2018 through approximately June 2019. Rockwell also formed, owned, and operated Gralyn Financial Services LLC (“Gralyn”), purported to be a financial service firm. From 2000 through 2015, Rockwell was associated with other broker-dealers registered with the Commission. In February 2020, FINRA barred Rockwell from association with any FINRA member in any capacity for failing to respond to a FINRA request for information.⁵

In connection with his guilty plea,⁶ Rockwell admitted that beginning in October 2017, he began to convert and misappropriate monies belonging to his clients. Specifically, he applied for and obtained two lines of credit at a bank in the total amount of \$700,000 in his clients’ names without their knowledge or permission, using his clients’ assets as collateral. Rockwell caused the bank to transfer the loan proceeds to an account at another bank in the name of his clients but that Rockwell controlled. Between November 2017 and July 2018, he wrote checks on this bank account payable to Gralyn totaling approximately \$695,000, which he deposited into a Gralyn account he controlled. Rockwell used approximately \$400,000 of the misappropriated funds to purchase a home in Fort Myers, FL with his then girlfriend.

Rockwell further admitted that he convinced a client to invest in a real estate company, which Rockwell touted as a great opportunity to invest in low-income housing in Florida. In the Fall of 2018, Rockwell duped the client into providing Rockwell with \$418,000 for the purpose of

⁵OIP ¶ II.A.1.

⁶The following facts are from the transcript of Rockwell’s guilty plea (Exh. 3), at pp. 29:25-46:12.

making certain real estate investments. However, Rockwell used at least \$318,000 of the money for his own benefit (including paying credit card bills) rather than the intended use of real estate investments. He also bought Harley Davidson products and used funds to buy a home in Cape Coral, Florida in Gralyn's name.

C. Entry of Default is Appropriate

Under Rule 155(a) of the Commission's Rules of Practice, a party who fails to file a timely answer "may be deemed to be in default" and the Commission "may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true" 17 C.F.R. § 201.155(a). Here, Rockwell has not filed an answer, and therefore the proceeding should be determined against him based on the record.

The facts established by Rockwell's default and his guilty plea show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

With respect to any person . . . at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

Advisers Act Section 203(f) provides for an identical associational bar (but not a penny stock bar) for a person with a qualifying conviction who at the time of the misconduct was associated with an investment adviser. Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Rockwell was associated with a broker-dealer and/or an investment adviser—are satisfied here.

a. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Release No. 72031, at 4-6, 2014 WL 1665995, at 3 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Rockwell was convicted in January 2021 and the OIP was issued in July 2021. Therefore, this matter was timely filed.

b. Rockwell Was Convicted of a Qualifying Offense

Under both the Exchange Act and the Advisers Act, the Commission may sanction Rockwell for an offense that “involves” wire fraud, or “embezzlement, fraudulent conversion, or misappropriation of funds.” *See* Exchange Act Sections 15(b)(4)(B)(iv), 15(b)(6)(A)(ii); Advisers Act Sections 203(e)(2)(D), 203(f). Here, Rockwell was convicted of six wire fraud counts, and the underlying conduct involved fraudulent conversion and misappropriation of funds. Therefore this condition is satisfied.

c. Rockwell Was Associated with a Broker and Investment Adviser at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) each require that Rockwell have been associated with, respectively, a broker or investment adviser at the time of the misconduct. Here, deemed admitted is the OIP’s allegation that Rockwell was associated with

dually registered broker-dealers and investment advisers from December 2015 through June 2019. In his plea, he admitted engaging in a scheme to defraud that began in October 2017 and continued through the Fall of 2018. Thus, Rockwell was associated “at the time of the alleged misconduct.” *See Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) (“The Commission properly relied on the ordinary meaning of alleged ‘misconduct,’ which refers to allegedly ‘unlawful or improper behavior.’”).

d. An Industry Bar Is An Appropriate Sanction

In determining whether an industry bar is in the “public interest,” the Commission considers

the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.

Lawrence Deshetler, Advisers Act Rel. No. 5411, at 4, 2019 WL 6221492, at *2 (Nov. 21, 2019). “Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, Exch. Act Rel. No. 52467, at 8, 2005 WL 2291407, at *4 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, at 6, 2017 WL 782152, at *4 (Mar. 1, 2017).

Here, these factors weigh in favor of an industry bar. As to the first, second and third factors, Rockwell’s actions were egregious, recurrent, and involved a high degree of scienter: he has admitted to filing fraudulent credit applications in clients’ names and tricking a client into believing Rockwell would be using the client’s funds for real estate investing. His convictions for wire and bank fraud “require[] a specific intent to defraud.” *Deshetler*, Advisers Act Rel. No. 5411, at 4, 2019 WL 6221492, at *3.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Rockwell has not participated in this matter, thus providing no assurances that he will avoid future violations of the law. *Kimm Hannan*, Advisers Act Rel. No. 5906, at 4, 2021 WL 5161855, *3 (Nov. 5, 2021) (“Because Hannan failed to answer the OIP or respond to the order to show cause or to the Division’s motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct.”); *Oscar Ferrer Rivera*, Advisers Act Rel. No. 5759, at 6, 2021 WL 2593642, *4 (June 24, 2021) (“Although his guilty plea indicates that Ferrer might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the investing public.”). While “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar, . . . the existence of a violation raises an inference that it will be repeated.” *Tzernach David Netzer Korem*, Exchange Act Rel. No. 70044, at 10 n.50, 2013 WL 3864511, at n.50 (July 26, 2013) (quotation and alternations omitted). Rockwell has offered no evidence to rebut that inference.

Sixth, although Rockwell is currently in custody, he will be released in approximately 2025, and unless he is barred from the securities industry he will have the chance to again harm investors. *Hannan*, Advisers Act Rel. No. 5906, at 4, 2021 WL 5161855, *3 (“Although Hannan is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.”).

IV. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Rockwell by barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and by imposing a penny stock bar.

February 15, 2022

Respectfully submitted,

Andrew O. Schiff
Senior Trial Counsel
Direct Line: (305) 982-6390
schiffa@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 15th day of February 2022, on the following persons entitled to notice:

PRIORITY MAIL
Mr. David Aaron Rockwell RN 73833-018



Andrew O. Schiff
Senior Trial Counsel



FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2020 SEP -9 PM 2:26
CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

UNITED STATES OF AMERICA

v.

CASE NO. 2:20-cr-107-FM-66MRM
18 U.S.C. § 1343
18 U.S.C. § 1344

DAVID AARON ROCKWELL

INDICTMENT

The Grand Jury charges:

COUNTS ONE THROUGH SIX

A. Introduction

At times material to this Indictment:

1. Defendant, DAVID AARON ROCKWELL was a financial advisor with a Financial Advisory Business ("FAB-1") in Fort Myers, Florida from in or about December 2015 through in or about November 2018. The defendant managed investment and retirement accounts for clients as well as handled their finances, and the defendant had access to his clients' bank accounts and investment accounts. The defendant did not notify his clients when he was terminated from FAB-1.
2. Gralyn Financial Services LLC was a company owned and operated by the defendant, DAVID AARON ROCKWELL, that was purported to be a financial service that handled real estate funds, and clients were unaware of

the defendant's involvement with the company.

3. TriState Capital Bank was a federally insured financial institution as defined in 18 U.S.C. § 20, with its corporate headquarters located in Pittsburgh, Pennsylvania.

4. A line of credit is a loan with a preset borrowing limit which allows a borrower to take out money as needed until the limit is reached, and as money is repaid it can be borrowed again.

5. SunTrust Bank was a federally insured financial institution headquartered in Atlanta, Georgia, with branch banks located throughout the State of Florida, including the Middle District of Florida, as well as other states.

6. Comerica Bank was a federally insured financial institution headquartered in Dallas, Texas, with retail banking operations in the State of Florida, as well as other states.

7. Bank of America was a federally insured financial institution headquartered in Charlotte, North Carolina, with branch banks located throughout the State of Florida, including the Middle District of Florida, as well as other states.

8. JPMorgan Chase Bank was a federally insured financial institution headquartered in New York, New York, with branch banks located

throughout the State of Florida, including the Middle District of Florida, as well as other states.

B. The Scheme to Defraud

9. From in or about October 2017, through in or about June 2019, in the Middle District of Florida, and elsewhere, the defendant herein,

DAVID AARON ROCKWELL,

did knowingly and with intent to defraud, devise, and intend to devise, a scheme and artifice to defraud, and for obtaining money by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of the Scheme

10. It was part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, rather than do those things for his clients that he represented and promised he would do, without the clients' authority, permission, or consent, converted and misappropriated monies belonging to his clients and other beneficiaries, for his own purpose.

11. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, in order to conceal the fact that he had fraudulently converted and misappropriated monies belonging to his clients and their beneficiaries, for his own purposes, would and did make materially false, fraudulent, and misleading lulling representations to certain

of those clients about, among other things, what he had done with money they entrusted to him and that the loans were interest earning investment accounts that would gain money.

12. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, misappropriated and converted to his own uses, approximately \$700,000 belonging to TriState Capital Bank.

13. It was further part of the scheme to defraud and to obtain money that on or about October 10, 2017, the Defendant, DAVID AARON ROCKWELL, would and did email a loan application ending in number 3647 to apply for a line of credit in the amount of \$200,000 in the name of MJW and DM, without their knowledge or consent, with TriState Capital Bank, a federally insured financial institution.

14. It was further part of the scheme to defraud and to obtain money that on or about October 27, 2017, the Defendant, DAVID AARON ROCKWELL, would and did email a loan application ending in number 8724 to apply for a line of credit in the amount of \$500,000 in the name of MJW and MJW's Living Trust, without the client's knowledge or consent, with TriState Capital Bank, a federally insured financial institution.

15. It was further part of the scheme to defraud and to obtain money that

the Defendant, DAVID AARON ROCKWELL, submitted loan applications with forged signatures of clients and attached a copy of the clients' driver's license.

16. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, fraudulently submitted a Credit, Pledge, and Security Agreement for loans which placed the clients' assets from their FAB-1 account as collateral if loans defaulted without the clients knowledge and consent.

17. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, would and did utilize a joint checking account at SunTrust Bank in the names of MJW and DM that the defendant had opened without their knowledge to receive disbursements from the fraudulent lines of credit from TriState Capital Bank.

18. It was further part of the scheme to defraud and to obtain money that on or about November 13, 2017, the Defendant, DAVID AARON ROCKWELL, would and did cause \$200,000 to be wire transferred from TriState Capital Bank to SunTrust Bank account ending in number 6266 to fund the loan ending in number 3647.

19. It was further part of the scheme to defraud and to obtain money that on or about November 17, 2017, the Defendant, DAVID AARON

ROCKWELL, would and did cause \$500,000 to be wire transferred from TriState Capital Bank to SunTrust Bank account ending in number 6266 to fund the loan ending in number 8724.

20. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, would and did open a bank account in the name of Gralyn Financial Services LLC at JP Morgan Chase Bank, and the defendant was the only listed depositor and signer for the account; and the defendant wire transferred line of credit funds deposited in SunTrust account to this fictitious business account for his own use.

21. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, would and did have a client open an Advanta IRA account as an investment account that the defendant would manage.

22. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, would and did advise a client to invest in "low income housing" with the company RMW1, LLC, and the defendant represented that the client would make 5% to 7% income annually through real estate investments.

23. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, would and did advise a

client to open a bank account at Comerica Bank in the name of RMW1, LLC, with the defendant advising the client how to manage client's investment and directing the client to transfer funds for real estate investments.

24. It was further part of the scheme to defraud and to obtain money that the Defendant, DAVID AARON ROCKWELL, would and did open a bank account at Bank of America in the business name of Gralyn Financial Services LLC, in which the defendant was the only listed depositor and signer on the account, and the defendant used this account to receive wire transfer money from his client's Advanta IRA account for his own use and benefit.

25. It was further part of the scheme to defraud and to obtain money that on or about October 31, 2018, the Defendant, DAVID AARON ROCKWELL, caused \$120,000, which belonged to RW, to be wire transferred from an account at Comerica Bank to his company Gralyn Financial Services LLC account ending in 0525 at Bank of America.

26. It was further part of the scheme to defraud and to obtain money that on or about December 7, 2018, the Defendant, DAVID AARON ROCKWELL, caused \$198,000, which belonged to RW, to be wire transferred from an account at Comerica Bank to his company Gralyn Financial Services LLC account ending in 5355 at JP Morgan Chase.

27. It was further part of the scheme to defraud and to obtain money that

the Defendant, DAVID AARON ROCKWELL, misappropriated and converted to his own uses, approximately \$318,000 belonging to RW's Advanta IRA account.

D. The Wires

COUNTS ONE THROUGH SIX

On or about the dates set forth below, in the Middle District of Florida, and elsewhere, the defendant herein,

DAVID AARON ROCKWELL,

having knowingly and willfully devised and intending to devise a scheme and artifice to defraud and to obtain money, for the purpose of executing such scheme and artifice to defraud and to obtain money, did knowingly transmit and cause to be transmitted by wire in interstate commerce, certain writings, signs, signals, pictures, sounds, and communications, as set forth below:

COUNT	DATE	DEFENDANT	WIRE COMMUNICATION
ONE	10/10/2017	DAVID AARON ROCKWELL	Emailed loan application ending in number 3647 to TriState Capital Bank in the name of MJW and DM, requesting a line of credit in the amount of \$200,000.
TWO	10/27/2017	DAVID AARON ROCKWELL	Emailed loan application ending in number 8724 to TriState Capital Bank in the name of MJW and MJW's Living Trust, requesting a line of credit in the amount of \$500,000.
THREE	11/13/2017	DAVID AARON ROCKWELL	\$200,000 wire transferred from TriState Capital Bank for loan ending in number 3647 to SunTrust Bank account ending in number 6266.
FOUR	11/17/2017	DAVID AARON ROCKWELL	\$500,000 wire transferred from TriState Capital Bank for loan ending in number 8724 to SunTrust Bank account ending in number 6266.
FIVE	10/31/2018	DAVID AARON ROCKWELL	\$120,000 wire transferred from RW's account number ending in 2368 at Comerica Bank to the Gralyn Financial Services LLC account ending in 0525 at Bank of America.
SIX	12/7/2018	DAVID AARON ROCKWELL	\$198,000 wire transferred from RW's account number ending in 2368 at Comerica Bank to the Gralyn Financial Services LLC account ending in 5355 at JPMorgan Chase.

In violation of 18 U.S.C. §§ 1343 and 2.

E. Bank Fraud

COUNTS SEVEN THROUGH EIGHT

A. Introduction

1. Part A of Counts One through Six of this Indictment, entitled “Introduction,” is realleged and incorporated by reference as if fully set forth herein.

B. The Scheme to Defraud

2. From in or about October 2017 through in or about June 2019, in the Middle District of Florida and elsewhere,

DAVID AARON ROCKWELL,

the defendant herein, devised and participated in a scheme and artifice to defraud a federally insured financial institution and to obtain monies and funds and attempt to obtain monies and funds owned by and under the custody and control of a federally insured financial institution by means of materially false and fraudulent pretenses and representations.

C. Manner and Means

3. The substance of the scheme and artifice is set forth in Part C of Counts One through Six of this Indictment, “Manner and Means of the Scheme,” the allegations of which are realleged and incorporated by reference as if fully set

forth herein.

D. Execution of the Scheme

4. On or about the dates listed below, in the Middle District of Florida and elsewhere,

DAVID AARON ROCKWELL,

the defendant herein, knowingly executed and attempted to execute the aforesaid scheme and artifice to defraud, by soliciting and obtaining loans in the name of others without the individual's knowledge or consent from a federal insured financial institution described below:

Count	Date	Financial Institution	Victim	Financial Instrument	Amount
SEVEN	10/10/2017	TriState Capital Bank	MJW and DM	A loan application with number ending in 3647, requesting a line of credit.	\$200,000
EIGHT	10/27/2017	TriState Capital Bank	MJW and MJW Living Trust	A loan application with number ending in 8724, requesting a line of credit.	\$500,000

All in violation of 18 U.S.C. §§ 1344 and 2.

FORFEITURE

1. The allegations contained in Counts One through Eight of this Indictment are hereby realleged and incorporated by reference for the purposes of alleging forfeiture pursuant to the provisions of 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2), and 28 U.S.C. § 2461(c).

2. Upon a conviction of a violation of 18 U.S.C. § 1343, punishable by imprisonment for more than one year, the defendant,

DAVID AARON ROCKWELL

shall forfeit to the United States of America, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all of his right, title, and interest in any property, real or personal, which constitutes or is derived from proceeds traceable to such violations.

3. Upon conviction of a violation of 18 U.S.C. § 1344,

DAVID AARON ROCKWELL,

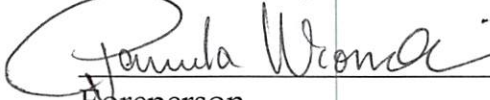
the defendant herein, shall forfeit to the United States of America, pursuant to 18 U.S.C. § 982(a)(2)(A), any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of such violations.

4. The property to be forfeited includes, but is not limited to, an order of forfeiture in the amount of \$1,018,000.


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,

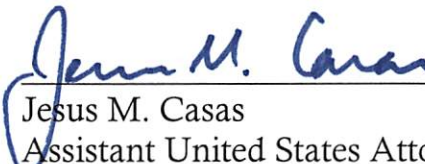
The United States of America shall be entitled to forfeiture of substitute property under the provisions of 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c) and 18 U.S.C. § 982(b)(1).

A TRUE BILL,


Foreperson

MARIA CHAPA LOPEZ
United States Attorney

By: 
Yolande G. Viacava
Assistant United States Attorney

By: 
Jesus M. Casas
Assistant United States Attorney
Chief, Fort Myers Division

No. 2:20-cr-

UNITED STATES DISTRICT COURT
Middle District of Florida
Fort Myers Division

THE UNITED STATES OF AMERICA

vs.

DAVID AARON ROCKWELL

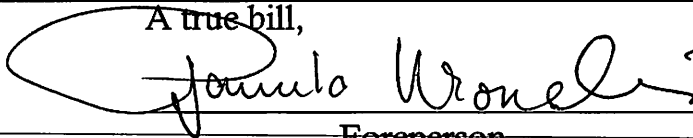
INDICTMENT

Violations:

18 U.S.C. § 1343

18 U.S.C. § 1344

A true bill,



Foreperson

Filed in open court this 9th day

of September, 2020.

Clerk

Bail \$ _____



UNITED STATES DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 2:20-cr-107-FtM-66MRM

DAVID AARON ROCKWELL

Judge:	Mac R. McCoy	Counsel for Government	Yolande G. Viacava
Deputy Clerk:	Jackie Clay	Counsel for Defendant:	George Ellis Summers, Jr.
Court Reporter	Digital	Pretrial/Probation	No Officer Present
Date/Time	January 13, 2021 10:32 AM-11:35 AM	Interpreter	N/A
Bench Time	63 Minutes		

Change of Plea Hearing by VC

Defendant agrees to conduct plea hearing by video conference. The Court, after inquiry, will move forward with the video conference hearing finding that if the hearing was delayed, the result would be a serious delay of justice. The Defendant, on the record, and in writing, consents to proceed with the plea before the Magistrate Judge and waives the 14-day objection period.

Defendant sworn. Court advised defendant of rights, minimum/maximum penalties, elements of the offense and sentencing guidelines. Defendant entered a plea of guilty to each count of the Indictment. Proffer of facts by the Government. Factual basis established.

Court will recommend plea be accepted. Sentencing to be set by separate notice before the District Court Judge.

All conditions previously imposed remain in full force and effect.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,) Fort Myers, Florida
)
) Case 2:20-CR-107-FtM-60MRM
Plaintiff)
) Wednesday, January 13, 2021
vs.)
) 10:32 a.m. to 11:35 a.m.
DAVID AARON ROCKWELL,)
)
Defendant)
_____)

TRANSCRIPT OF CHANGE OF PLEA HEARING VIA VIDEO CONFERENCE
HELD BEFORE THE HONORABLE MAC R. MCCOY,
United States Magistrate Judge

Official Court Reporter:
Jeffrey G. Thomas, RPR, CRR
2110 First Street, Suite 2-194
Fort Myers, FL 33901
Telephone: (239) 461-2033

(Proceedings recorded by Digital Recording Equipment.
Transcript produced using computer-aided transcription.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

COUNSEL FOR GOVERNMENT:

United States Attorney's Office
Middle District of Florida
United States Courthouse
2110 First Street
Room 3-137
Fort Myers, FL 33901
(239) 461-2200
BY: YOLANDE G. VIACAVA, ESQ.

COUNSEL FOR DEFENDANT:

Federal Public Defender's Office
2075 West First Street, Suite 300
Fort Myers, FL 33901
(239) 334-0397
BY: G. ELLIS SUMMERS, JR., ESQ.

* * *

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

January 1, 2021	Vol.	Page
Preliminary Discussions	1	4
Colloquy of Defendant by the Court	1	9
Proffer of Facts by Ms. Viacava	1	29
Objections by Mr. Summers	1	38
Colloquy of Defendant by the Court	1	43
Findings of the Court	1	46
Colloquy of Defendant by the Court	1	47
Findings of the Court	1	50
Certificate of Court Reporter	1	53

* * *

1 * * * P R O C E E D I N G S * * *

2 - - -

3 COURTROOM DEPUTY: Calling Case on 2:20-CR-owe
4 107-JLBMRM, United States of America versus David Aaron
5 Rockwell.

6 THE COURT: Good morning.

7 Counsel, please state your appearances, beginning
8 with counsel for the United States.

9 MS. VIACAVA: Good morning. Yolande Viacava
10 representing the government.

11 THE COURT: Good morning.

12 And for the defense?

13 MR. SUMMERS: Good morning, Your Honor. Ellis
14 Summers on behalf of David Rockwell.

15 THE COURT: Good morning.

16 Good morning, Mr. Rockwell.

17 THE DEFENDANT: Good morning, Your Honor.

18 THE COURT: Everyone is appearing by video conference
19 today, the Court having set this change of plea hearing to
20 occur by video conference under the authority granted by the
21 Court's administrative orders implementing the CARES Act. It
22 appears that Mr. Rockwell is currently on pretrial release, and
23 is in his vehicle, participating via mobile device.

24 Mr. Summers, before we go any further, have you
25 conferred with Mr. Rockwell regarding his right to have his

1 change of plea hearing in person?

2 MR. SUMMERS: Yes, Your Honor, I have.

3 THE COURT: And following that consultation, does
4 Mr. Rockwell consent to proceed by video conference?

5 MR. SUMMERS: Yes, he does, Your Honor.

6 THE COURT: And, for the record, the defense did file
7 a notice to conduct change of plea hearing by video conference,
8 indicating Mr. Rockwell's consent, at Docket Entry Number 28 in
9 this case.

10 Mr. Rockwell, at this time, sir, I need to address
11 you directly. First of all, it's not typical that someone
12 would participate in a hearing of this nature from inside a
13 vehicle. Can you confirm for me that you are not driving at
14 this time?

15 THE DEFENDANT: No, sir, I'm not driving, Your Honor.

16 THE COURT: And that the vehicle is stationary?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Sir, it's important that you understand
19 that you have the right to have this hearing in person,
20 physically in the courtroom, in front of me, with your counsel
21 present and with the prosecutor present. Mr. Summers has just
22 told me he discussed these matters with you, and after that
23 conversation you've agreed to consent by -- or you've agreed to
24 proceed by video conference today.

25 I want to make sure, sir, that you understand that,

1 if you agree to proceed by video conference today, you will
2 waive and give up your right to have this hearing in person.
3 Additionally, I want to make sure that you understand that, if
4 you want to speak privately with Mr. Summers at any point
5 during the hearing this morning, all you have to do is
6 interrupt me and let me know that's what you want to do, and
7 I'll be happy to take a break and give you as much time as you
8 may need to speak privately with Mr. Summers, and we can do
9 that using this video conferencing system.

10 Sir, do you understand these things?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Also, sir, I want to make sure that you
13 understand that if you have any technical difficulties on your
14 end that prevent you from seeing or hearing everything that's
15 been said during the proceeding this morning, you should let me
16 know immediately, so that we could repeat everything and ensure
17 that you've adequately seen heard everything that's occurred.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And, sir, after discussing these matters
21 with Mr. Summers, and after hearing everything that I've said,
22 do you consent to proceed by video conference can today?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you make that decision knowingly and
25 voluntarily, sir?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: The Court finds that Mr. Rockwell, after
3 conferring with counsel, has knowingly and voluntarily
4 consented to proceed by video conference with his felony plea
5 hearing, and waived his right to appear in person for the
6 hearing.

7 Additionally, under the Court's administrative
8 orders, I'm implementing the CARES Act. The Court finds that
9 the plea in this case could not be further delayed without
10 serious harm to the interests of justice because delaying the
11 proceedings further to accommodate an in-person plea hearing is
12 impracticable given that there's no ascertainable end to the
13 current national emergency stemming from the COVID-19 virus,
14 and the interests of justice will be seriously harmed by
15 prolonged indefinite delays of a plea hearing in light of
16 Mr. Rockwell's stated desire to plead guilty.

17 Additionally, the Court finds that delay of the
18 felony plea in this case will also delay the sentencing
19 proceedings for an indeterminate period of time, which delay
20 may, depending upon the sentence to be imposed, result in
21 Mr. Rockwell remaining incarcerated for a longer period of time
22 than if we proceed with the guilty plea hearing today.

23 Additionally, the Court finds that proceeding with
24 the plea hearing at this time by video conference reduces the
25 potential that any necessary participant in the hearing,

1 including specifically Mr. Rockwell, his counsel, and the lead
2 Assistant United States Attorney, may become unavailable or
3 unable to attend the plea hearing in person due to illness.

4 Mr. Summers, for the record, the defense does consent
5 to proceed by video conference today; is that correct?

6 MR. SUMMERS: Yes, Your Honor.

7 THE COURT: And do you wish to state anything further
8 for the record concerning the Court's findings under the CARES
9 Act?

10 MR. SUMMERS: No, Your Honor.

11 THE COURT: Ms. Viacava, does the government wish to
12 state anything further for the record concerning the Court's
13 findings under the CARES Act?

14 MS. VIACAVA: No, Your Honor.

15 THE COURT: Before we go any further, the Court will
16 ask the Courtroom Deputy to swear Mr. Rockwell.

17 Mr. Rockwell, sir, in a moment my Courtroom Deputy is
18 going to place you under oath. I tell you this, sir, because
19 it's very important that you understand the consequences of
20 taking the oath this morning.

21 If, in responding to any of my questions today, you
22 should provide any false or misleading information or answers,
23 you could be charged with additional crimes, such as perjury or
24 obstruction of justice. Those crimes would carry additional
25 penalties beyond any other penalties you are facing in this

1 case.

2 Sir, do you understand these things?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Madam Deputy, please administer the oath.

5 COURTROOM DEPUTY: Please raise your right hand.

6 Do you solemnly swear or affirm that the answers you
7 give during these proceedings will be the truth, the whole
8 truth, and nothing but the truth?

9 THE DEFENDANT: I do.

10 THE COURT: Thank you, sir. You may lower your hand.

11 Mr. Rockwell, would you please tell me your full and
12 complete name for the record?

13 THE DEFENDANT: David Aaron Rockwell.

14 THE COURT: Sir, it's my understanding that you wish
15 to plead guilty to each of the counts of the indictment against
16 you, that's Count 1 through 8, without the benefit of a plea
17 agreement; is that correct?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Sir, the purpose of this hearing this
20 morning is to allow me to ask you questions about your decision
21 to plead guilty to ensure that your decision is being made
22 knowingly and voluntarily, and that there's a factual basis for
23 your plea. So I'm going to have a number of questions for you,
24 but also some questions for your attorney and for the
25 government's attorney.

1 Mr. Rockwell, it's absolutely imperative that you
2 understand everything that we're going to discuss this morning.
3 If you do not understand something, you should feel free to
4 interrupt me and let me know so that either I or your lawyer
5 can explain it to you.

6 Additionally, sir, as I mentioned earlier, you can
7 speak privately at any point with your counsel, Mr. Summers.
8 If you want to speak with him at any point, feel free to
9 interrupt me and let me know, and I'll be happy to give you as
10 much time as you may need to speak privately with Mr. Summers
11 to have all of your questions answered.

12 Sir, do you understand all these things?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Ms. Viacava, for the record, does the
15 Crime Victims Rights Act apply; and, if so, has the government
16 complied with it?

17 MS. VIACAVA: Yes, it does apply in this particular
18 case, and the victims in this particular case have been kept
19 notified of all major proceedings and hearings set in this
20 particular case.

21 THE COURT: Including this hearing?

22 MS. VIACAVA: Yes, Your Honor.

23 THE COURT: Thank you.

24 Mr. Rockwell, before we go any further, I need to
25 explain to you that if, at the end of this hearing, you do

1 decide to enter a plea of guilty, and your plea is accepted by
2 the Court, it will become very difficult, if not impossible,
3 for you to later change your mind.

4 Do you understand that, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay, sir. Now, at this time I need to
7 ask you some questions that you may consider to be personal in
8 nature. I'd like you to understand the reason I'm asking you
9 these questions is to ensure for the record that you are
10 competent to enter a plea of guilty.

11 Do you understand what I mean by that, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay, sir, let's start with this. How
14 old are you?

15 THE DEFENDANT: Forty-five years of age.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: Bachelor's degree.

18 THE COURT: Can you -- I assume you can read, write,
19 and understand the English language; is that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are you under the influence of any drugs,
22 alcohol, medication, or other intoxicant?

23 THE DEFENDANT: Just medication that's prescribed by
24 my . . . my doctor.

25 THE COURT: Have you taken any of that medication in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] of

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

1 Sir, if you agree to allow me to take your guilty
2 plea today, you will be waiving and giving up your right to
3 have the District Judge hear your guilty plea directly.

4 Mr. Rockwell, have you discussed these matters with
5 your attorney?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you consent to proceed before a
8 Magistrate Judge today?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Sir, I have before me on the bench a form
11 that appears to have been signed by you and by your attorney,
12 it was filed at Docket Entry Number 27, and in this form you
13 agree to allow me to take your guilty plea today.

14 Sir, did you sign this form?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Before you signed the form, did you read
17 it?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And, before you signed the form, did you
20 discuss it with your attorney?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Mr. Summers, for the record, is that also
23 your signature appearing on the consent and waiver form at
24 Docket Entry Number 27?

25 MR. SUMMERS: Yes, Your Honor.

1 THE COURT: Mr. Rockwell, did anyone force you,
2 threaten you, coerce you, intimidate you, or promise you
3 anything to get you to agree to proceed before a Magistrate
4 Judge today?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Is it your independent decision to
7 consent to proceed before a Magistrate Judge today?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: The Court finds Mr. Rockwell's waiver and
10 consent were made knowingly, freely, intelligently, and
11 voluntarily, and I will therefore go forward with the plea
12 hearing.

13 Mr. Rockwell, the Court must advise that you have
14 certain rights in connection with this proceeding.

15 Sir, you have the right to have the assistance of an
16 attorney at the trial and every stage of these criminal
17 proceedings whether or not you can afford one. That right
18 continues whether you plead guilty or not guilty.

19 Sir, you have the right to plead not guilty, and to
20 maintain that plea. If you maintain a plea of not guilty, you
21 would have the followings rights under the Constitution and the
22 laws of the United States:

23 You would have the right to a speedy and public
24 trial, and to be tried by a jury of 12 persons, or by the
25 District Judge if you waive a jury trial. If you are tried by

1 a jury, all 12 of the jurors would have to unanimously agree on
2 your guilt before you could be convicted.

3 Sir, you are presumed innocent, and before you could
4 be found guilty, the burden of proof is on the United States to
5 prove your guilt by competent and sufficient evidence beyond a
6 reasonable doubt. You do not have to prove that you are
7 innocent.

8 At your trial, the witnesses for the United States
9 would have come to court and testify in front of you. You
10 would have the right to confront those witnesses against you.
11 That means you have the right to see, hear, question, and
12 cross-examine them.

13 Sir, you have a right to present evidence and to
14 present witnesses of your own. If any witness refuses to
15 appear voluntarily, the Court could issue orders to make them
16 appear. That means the Court could compel their attendance.

17 Sir, you have a right to testify at your trial. You
18 also have a right not to testify. That is, you have a right to
19 remain silent. No one can force you to incriminate yourself.
20 The choice to testify would be entirely up to you.

21 Mr. Rockwell, do you understand your rights as the
22 Court explained them to you?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have any questions about anything
25 I've explained so far?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Mr. Rockwell, I'm going to pause at this
3 point and acknowledge the fact that, because you're in your
4 vehicle, I'm not sure where you're parked, but if there is any
5 sort of outside distraction that takes your attention away from
6 this hearing, please let me know immediately, and I'll repeat
7 anything that I've said to ensure that you've heard everything.

8 Is that clear, sir?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Now, Mr. Rockwell, if you plead guilty to
11 each of the counts in the indictment in this case without the
12 benefit of a plea agreement, you will waive and give up those
13 rights I just told you about. There will not be a trial, and,
14 on your guilty plea, the District Judge will find you guilty on
15 each those offenses, and will convict you of each of those
16 offenses.

17 Sir, a plea of guilty admits the truth of each of the
18 charges against you, but a plea of not guilty denies the
19 charges. Has your attorney explained that difference to you,
20 and do you understand the difference between a plea of guilty
21 and not guilty?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Sir, if you choose to plead guilty, you
24 must give up the right not to incriminate yourself, because I
25 have to ask you questions about the crimes to which you're

1 pleading guilty to satisfy myself that there's a factual basis
2 for your plea.

3 By pleading guilty, you also waive and give up your
4 right to trial, to confrontation and cross-examination of
5 government witnesses, and to compulsory process for attendance
6 of defense witnesses at trial. Because there would be no trial
7 in your case, sir, the next proceeding would be the sentencing
8 hearing before the District Judge.

9 Mr. Rockwell, you may have defenses to the charges
10 against you, but if you plead guilty, you will waive and give
11 up your right to assert any defenses.

12 Has your attorney explained to you the defenses you
13 might have?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: By pleading guilty, you also waive and
16 give up your right to challenge the way in which the government
17 obtained any evidence, statement, or confession in your case.
18 In addition, by pleading guilty, you may lose the right to
19 challenge on appeal any rulings that the Court has made in your
20 case.

21 Mr. Rockwell, do you fully understand all of the
22 rights that you have, and the rights that you waive by pleading
23 guilty?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any questions about anything

1 I've explained so far?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Sir, by pleading guilty to these
4 felonies, you may lose certain civil rights, such as the right
5 to vote, to hold public office, to serve on juries, and to own
6 and possess firearms. A felony conviction may also prevent you
7 from obtaining or keeping certain occupational licenses.

8 Sir, do you fully understand these consequence of
9 pleading guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Mr. Rockwell, did you previously receive
12 a copy of the indictment, that is, the written document setting
13 forth the charges against you in this case?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Has your attorney explained the charges
16 to you?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Have you discussed the charges and the
19 case in general with your attorney?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Did your attorney answer all of your
22 questions?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Did you explain everything you know about
25 your case to your lawyer?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Sir, the charges against you in the
3 indictment to which you intend to plead guilty are as follows:

4 Counts 1 through 6 charge you with wire fraud, in
5 violation of Title 18, United States Code, Sections 1343 and 2.
6 Counts 7 and 8 charge you with bank fraud, in violation of
7 Title 18, United States Code, Sections 1344 and 2.

8 Mr. Rockwell, do you fully understand the charges in
9 the indictment to which you're intending to plead guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any questions about those
12 charges at this time?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Sir, the necessary elements that the
15 government must prove beyond a reasonable doubt for you to be
16 convicted of each of those offenses are as follows, and at this
17 time I'm going to read from a document titled the Notice of
18 Maximum Penalties, Elements of Offense, Personalization of
19 Elements, and Factual Basis, filed by the government as Docket
20 Entry Number 32 in your case. And I'm reading from Page 1,
21 carrying over to Page 2, under the heading Essential Elements:

22 The essential elements of a violation of Title 18,
23 United States Code, Sections 1343 and 2, wire fraud, charged in
24 Counts 1 through 6, are as follows:

25 First, the defendant knowingly devised or

1 participated in a scheme to defraud, or to obtain money or
2 property by using false pretenses, representations or promises.

3 Second, the false pretenses, representations or
4 promises were about a material fact.

5 Third, the defendant acted with the intent to
6 defraud.

7 And fourth, the defendant transmitted or caused to be
8 transmitted, by wire, some communication in interstate commerce
9 to help carry out the scheme to defraud.

10 The essential elements of a violation of Title 18,
11 United States Code, Sections 1344 and 2, bank fraud, charged in
12 Counts 7 and 8, are as follows:

13 First, the defendant knowingly carried out or
14 attempted to carry out a scheme to defraud a financial
15 institution, or to get money, assets, or other property from a
16 financial institution by using false or fraudulent pretenses,
17 representations, or promises about a material fact.

18 Second, the false or fraudulent pretenses,
19 representations or promises were material.

20 Third, the defendant intended to defraud the
21 financial institution or someone.

22 And fourth, the financial institution was federally
23 insured or chartered.

24 Mr. Rockwell, do you fully understand the elements of
25 the charges that the United States would have to prove beyond a

1 reasonable doubt for you to be convicted in this case?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you have any questions about those
4 elements, sir?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Now, sir, the crimes with which you've
7 been charged are punishable as follows, and at this time I'm
8 going to read again from the government's notice, but this time
9 I'm reading from Page 2, carrying over to the top of Page 3,
10 under the heading Penalty.

11 The penalties for offenses charged in Counts 1
12 through Number 6 of the indictment are a maximum term of
13 20 years imprisonment, a fine of up to \$250,000, a term of
14 supervised release of up to three years, and \$100 special
15 assessment for each count.

16 The penalties for the offense charged in Counts 7
17 and 8 of the indictment are a maximum term of 30 years
18 imprisonment, a fine of up to \$1 million, a term of supervised
19 release of up to five years, and a \$100 special assessment for
20 each count. Additionally, the defendant must forfeit property
21 pursuant to Title 18 United States Code Sections 981(a)(1)(C)
22 and 982(a)(2), and Title 28, United States Code,
23 Section 2461(c), as outlined in the indictment. The property
24 to be forfeited includes but is not limited to an order of
25 forfeiture in the amount of \$1,018,000.

1 In addition, Mr. Rockwell, the Court may assess and
2 require that you pay the cost of your imprisonment, the cost of
3 your supervised release, and the cost of your probation if any.

4 Sir, the Court is obligated to impose the \$100
5 special assessments that I mentioned for each felony count
6 charged in the indictment.

7 If you violated any supervised release conditions,
8 sir, you would face additional prison time and supervised
9 release.

10 If applicable, the District Judge may order you to
11 pay restitution to any victim of the crime; and, as I
12 mentioned, the District Judge may require you to forfeit
13 property to the United States.

14 Additionally, sir, if the crime involved fraud,
15 deceit, or any other intentionally deceptive practices, the
16 District Judge may order you to provide notice of the
17 conviction to the victims of the crimes.

18 Mr. Rockwell, at this time I'm going to pause, sir.
19 I want to make sure that you heard everything I just said. Did
20 you hear everything?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Ms. Viacava, have I accurately stated
23 maximum penalties associated with each of the counts in the
24 indictment?

25 MS. VIACAVA: Yes, Your Honor.

1 THE COURT: Mr. Summers, same question, sir.

2 MR. SUMMERS: Yes, Your Honor.

3 THE COURT: Mr. Rockwell, sir, do you understand the
4 maximum penalties that apply under each of the counts of the
5 indictment to which you intend to plead guilty?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And, sir, do you understand that, because
8 there is more than one count, that in some circumstances the
9 Court can sentence you consecutively for these charges?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Sir, do you understand that these
12 penalties are the logical consequences of your guilty plea?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And do you have any questions about
15 anything I've explained so far?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Mr. Rockwell, the United States
18 Sentencing Guidelines apply in your case. Have you discussed
19 the guidelines with your attorney and how they might apply?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: I want to make absolutely sure that you
22 understand certain things about how the sentencing process
23 works. To begin with, Mr. Rockwell, as I mentioned earlier, I
24 am not the Judge who will preside over your sentencing hearing.
25 The Judge who will preside over your sentencing hearing is

1 District Judge John Badalamenti.

2 Judge Badalamenti will not be able to determine your
3 guideline sentence until after the United States Probation
4 Office has finished preparing the presentence investigation
5 report for your case. After the District Judge determines what
6 guidelines apply to your case, sir, he has the authority to
7 impose a sentence that is more severe or less severe than the
8 sentence that the guidelines recommend. In fact, he has the
9 authority to impose any sentence up to the maximum allowed by
10 law. In other words, Mr. Rockwell, the District Judge will not
11 be bound by the sentencing guidelines, because the sentencing
12 guidelines are only advisory.

13 Sir, has your attorney explained to you the various
14 factors the Court can consider in determining a guidelines
15 range in your case, which would include your criminal history,
16 whether there were victims, the role you played in the
17 offenses, the amount of any monetary loss, and whether you have
18 accepted responsibility for your acts?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Sir, the United States may appeal a
21 sentence that the District Judge imposes in your case. That
22 means the United States may ask the Court of Appeals to reverse
23 your sentence as being too low or as being based on a
24 guidelines miscalculation.

25 Parole has been abolished, and if the District Judge

1 sentences you to prison, you will not be released on parole.

2 Sir, the sentence that the District Judge imposes in
3 your case may be different than any estimated sentence that
4 your attorney or anyone else has given you. In fact, it might
5 be higher than you expect. If that happens, you will still be
6 bound by your guilty plea, and you will not have the right to
7 withdraw.

8 Sir, do you understand all these things that I just
9 explained to you about the sentencing process?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any questions about anything
12 I've explained so far?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Ms. Viacava, has your office extended any
15 prior formal plea offers to Mr. Rockwell?

16 MS. VIACAVA: No, Your Honor.

17 THE COURT: Mr. Summers, do you agree with that
18 representation?

19 MR. SUMMERS: Yes, Your Honor.

20 THE COURT: Mr. Rockwell, to summarize, do you
21 understand everything we've discussed up to this point,
22 including your rights, the rights that you give up by pleading
23 guilty, the charges against you, the potential penalties, the
24 potential consequence, and the sentencing guideline?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Let me ask you directly then, sir, how do
2 you plead, guilty or not guilty, to Counts 1, 2, 3, 4, 5, 6, 7,
3 and 8 of the indictment?

4 THE DEFENDANT: Guilty.

5 THE COURT: Do you plead guilty to each and every one
6 of those charges; is that correct?

7 THE DEFENDANT: I plead guilty to one through eight.

8 THE COURT: Just so the record is abundantly clear,
9 Mr. Rockwell, you plead guilty to all of the charges in the
10 indictment; is that correct?

11 THE DEFENDANT: Yes, I plead guilty to all the
12 charges in the indictment.

13 THE COURT: At this time, Mr. Rockwell, the Court
14 will hear from the prosecutor a proffer of facts that the
15 United States must prove beyond a reasonable doubt for you to
16 be convicted of each of those offenses. Please listen very
17 carefully to everything the prosecutor is about to say, because
18 when she's done speaking I'll ask you whether you admit to all
19 of the facts she's proffered and whether you admit to doing the
20 things she says you've done. It's also important,
21 Mr. Rockwell, because this information will be used by the
22 United States Probation Office when it prepares your
23 presentence investigation report.

24 Ms. Viacava, when you're ready.

25 MS. VIACAVA: The government would be relying on the

1 factual basis as provided in Docket Number 32, the Notice of
2 Maximum Penalties, Elements of Offense, Personalization of the
3 Elements, and Factual Basis, beginning on Page 3.

4 From in or about December, 2015, through in or about
5 November, 2018, the defendant, David Aaron Rockwell, was a
6 financial adviser with a financial advisory business, also
7 referred to as FAB-1, in Fort Myers, Florida. The defendant
8 managed investment and retirement accounts for clients as well
9 as handled their finances. Defendant had access to his
10 client's bank accounts and investment accounts.

11 More specifically, Rockwell managed financial
12 accounts and conducted financial planning for MJW and her
13 grandson DM. Further, Rockwell managed investment and
14 retirement accounts for RW.

15 The defendant did not notify his clients when he was
16 terminated from FAB-1 in November, 2018. Instead, Rockwell
17 continued to maintain access to MJW, DM, and RW's financial
18 accounts, and continued to manage their accounts.

19 Beginning in or about October, 2017, Rockwell began
20 to defraud these select clients without his clients' authority,
21 permission, or consent. The defendant converted and
22 misappropriated monies belonging to MJW, DM, and RW for his own
23 purpose.

24 Furthermore, the defendant defrauded TriState Capital
25 Bank, a financially insured financial institution that is

1 headquartered in Pittsburgh, Pennsylvania, by applying for and
2 obtaining two lines of credit in the names of MJW and DM
3 without their knowledge or permission.

4 In October, 2017, Rockwell fraudulently applied for
5 and secured two lines of credit in the total amount of \$700,000
6 from TriState Capital Bank on or about October 23rd, 2017. A
7 loan with the number ending 3647, hereinafter Loan 3647, for
8 \$200,000 was opened and loan application forged in the names of
9 MJW and DM.

10 On November 9, 2017, a loan with the number ending
11 8724, hereinafter referred to as Loan 8724, for \$500,000, was
12 opened and loan application documents forged in the name of MJW
13 and MJW Living Trust.

14 From in or about October, 2017, through in or about
15 June, 2019, in the Middle District of Florida, the defendant,
16 David Aaron Rockwell, did knowingly, and with intent to
17 defraud, willfully devise a scheme and artifice to defraud and
18 for obtaining money by means of materially false and fraudulent
19 pretenses, representations and promises.

20 The defendant did knowingly transmit and cause to be
21 transmitted by wire in interstate commerce loan application and
22 money. Specifically, David Aaron Rockwell communicated via
23 e-mail with TriState Capital Bank loan representatives to open
24 and establish the loans.

25 For instance, on October 10th, 2017, Rockwell

1 e-mailed and submitted a signed copy of a loan application for
2 Loan 3647 to TriState Bank loan representatives requesting a
3 line of credit for \$200,000 in the name of MJW and DM, which is
4 Count 1.

5 On October 27, 2017, David Aaron Rockwell e-mailed
6 and submitted the loan application for Loan 8724 to TriState
7 Capital Bank loan representatives requesting a line of credit
8 for \$500,000 in the name of MJW and MJW's Living Trust, which
9 is Count 2. The defendant had forged MJW and DM's signatures
10 on the loan applications, and he attached copies of MJW and
11 DM's State of Michigan driver's licenses to the loan
12 applications, all without their knowledge or authorization.

13 Further, as part of the TriState Capitol Bank loan
14 application process, David Aaron Rockwell fraudulently
15 completed a Credit, Pledge, and Security Agreement for
16 Loan 3647 signed on October 23rd, 2017. The Credit, Pledge,
17 and Security Agreement placed MJW and DM's assets managed with
18 FAB-1 account at the time as collateral if Loan 3647 defaulted.

19 Additionally, David Aaron Rockwell fraudulently
20 completed a Credit, Pledge, and Security Agreement for
21 Loan 8724, signed on November 9, 2017. This Credit, Pledge,
22 and Security Agreement placed MJW and MJW's Living Trust assets
23 managed with FAB-1 account as collateral if Loan 8724
24 defaulted. MJW and DM never authorized David Aaron Rockwell to
25 pledge their assets within FAB-1 accounts as collateral for any

1 loans. Further, neither MJW nor DM sought any such loan or
2 received any benefit from these loans.

3 According to TriState Capital Bank records,
4 approximately two months prior to the loan application
5 submissions, David Aaron Rockwell had been e-mailing TriState
6 Capital Bank loan representatives to discuss the terms of the
7 anticipated loan application before he submitted it. Once
8 TriState Capital Bank approved the loans, the defendant caused
9 money to be wire transferred into a bank account at SunTrust
10 Bank that he was able to access.

11 In or about April, 2015, David Aaron Rockwell opened
12 a SunTrust Bank account ending 6266, hereinafter referred to as
13 SunTrust 6266, in MJW and DM's name that was controlled solely
14 by the defendant. MJW and DM were unaware of this joint
15 checking account being opened in their names at SunTrust Bank.

16 In October, 2017, David Aaron Rockwell designated the
17 SunTrust 6266 account on the two TriState Capital Bank
18 applications to receive the disbursements from the fraudulent
19 lines of credit from Tristate Capital Bank.

20 On November 13th, 2017, a wire transfer for \$200,000
21 from TriState Loan 3647 was wired into SunTrust 6266, which is
22 Count 3.

23 On November 17, a wire transfer from TriState
24 Loan 8724 for \$500,000 was wired to into SunTrust 6266, which
25 is Count 4.

1 Subsequently, the defendant emptied the SunTrust 6266
2 account and converted the money to his own benefit. Between on
3 or about November 15th, 2017, to July 3rd, 2018, approximately
4 \$694,867.65 in checks drawn on SunTrust 6266 account were
5 written to Gralyn Financial Services, LLC and deposited into a
6 JPMorgan Chase account ending in 5355, hereinafter referred to
7 as Chase 5355.

8 Gralyn Financial Services, LLC was a company owned
9 and operated by the defendant, David Aaron Rockwell, that was
10 purported to be a financial service that handled real estate
11 funds; but the defendant's clients, to include MJW, DM, and RW,
12 were unaware of the defendant's involvement with this company.
13 Further, JPMorgan Chase bank records revealed that David Aaron
14 Rockwell was the only listed depositor and signer on the
15 business signature card for Chase 5355 in the business name of
16 Gralyn Financial Services, LLC.

17 David Aaron Rockwell used proceeds from the TriState
18 loans that were wired into Chase 5355 for his own use and
19 benefit. For instance, on November 27, 2017, David Aaron
20 Rockwell wired approximately \$399,936.60 from Chase 5355 to a
21 title company for the cash purchase of a home in Fort Myers,
22 Florida, with his then girlfriend.

23 In or about September, 2018, to December, 2018, MJW
24 started receiving delinquent payment notices in the mail from
25 TriState Capital Bank which stated the loans defaulted for

1 nonpayment, and their assets would be seized as a result.

2 While the defendant was financial adviser for RW, in
3 or about 2017, David Aaron Rockwell persuaded RW to invest in a
4 company called RMW1, LLC, which the defendant said was a great
5 investment opportunity for RW to invest in low income housing
6 in Florida, where RW would make five to seven percent income
7 annually.

8 In or about September, 2017, the defendant set up the
9 corporation in Florida and listed Gralyn Financial Services,
10 LLC and RW as the managers.

11 In or about spring, 2018, David Aaron Rockwell asked
12 RW to open a shared bank account with him at Comerica Bank in
13 the name of RMW1, LLC, account number ending 2368, hereinafter
14 known as Comerica 2368. Comerica Bank is a federally insured
15 financial institution headquartered in Dallas, Texas.

16 The defendant instructed RW to provide him with
17 access to this account so that Rockwell could access the funds
18 in the account as his financial adviser. More specifically,
19 the defendant told RW that Comerica 2368 was going to be an
20 investment account that would make it easier for Rockwell to
21 manage RW's investment and to transfer funds to and from RW's
22 accounts for real estate investments.

23 Between in or about April, 2018 to December, 2018, RW
24 deposited \$418,000 into Comerica 2368. The defendant, however,
25 accessed the money in this account and used the money for his

1 own benefit rather than the intended use of real estate
2 investments.

3 For instance, on October 31st, 2018, the defendant
4 caused \$120,000 to be wired from Comerica 2368 account to
5 Gralyn Financial Services, LLC at a Bank of America account
6 ending in 0525, hereinafter known as BOA 0525, which is
7 Count 5.

8 On December 7, 2018, the defendant caused \$198,000 to
9 be wired from Comerica 2368 account to Gralyn Financial
10 Services, LLC at Chase 5355 account, which is Count 6.

11 Bank of America account records indicate that the
12 defendant was the only listed depositor and signer for BOA 0525
13 account in the business name of Gralyn Financial Services, LLC.
14 Rockwell did not disclose to RW that Gralyn Financial Services,
15 LLC was an entity owned and operated by the defendant.

16 The defendant used the funds wired from Comerica 2368
17 account between October 31st, 2018, and December 7, 2018, for
18 his own use and benefit. The defendant used the money to pay
19 his personal credit card bills at American Express,
20 JPMorgan Chase, and Capital One.

21 In addition, on November 5th, 2018, Rockwell withdrew
22 a cashier's check from BOA 0525 for \$10,000 made payable to
23 Harley Davidson.

24 Further, on January 8, 2019, Rockwell wrote a check
25 from BOA 0525 to Cape Coral Title Insurance Agency for \$5,000

1 to purchase a home in Cape Coral, Florida, in the name of
2 Gralyn Financial Services, LLC that he subsequently lived in.

3 From in or about October, 2017, through in or about
4 June, 2019, in the Middle District of Florida, the defendant,
5 David Aaron Rockwell, devised and participated in a scheme and
6 artifice to defraud a federally insured financial institution,
7 namely TriState Capital Bank, and to obtain monies and funds
8 owned by and under the custody and control of a federally
9 insured financial institution by means of materially false and
10 fraudulent pretenses and representations.

11 In October, 2017, the defendant applied for and
12 obtained two lines of credit with TriState Capital Bank in the
13 names of others without their knowledge or consent.

14 On or about October 10, 2017, the defendant submitted
15 a loan application with the number ending in 3647 in the names
16 of MJW and DM requesting a line of credit in the amount of
17 \$200,000, which is Count 7.

18 On or about October 27th, 2017, the defendant
19 submitted a loan application with the number ending in 8724 in
20 the names of MJW and MJW Living Trust, requesting a line of
21 credit in the amount of \$500,000, which is Count 8.

22 The defendant made material false statements on the
23 loan applications that he submitted to TriState Capital Bank,
24 to include the names of the borrowers and pledging assets of
25 others as collateral for the loans without their knowledge or

1 consent.

2 TriState Capital Bank is a federally insured
3 financial institution.

4 Those are the facts the government would prove were
5 this case to go to trial.

6 Your Honor, I believe you're on mute.

7 THE COURT: Indeed I was. Thank you.

8 Mr. Summers, are there any objections to the facts
9 summarized by the prosecutor here today or as set forth in the
10 factual basis section of the government's notice at Docket
11 Entry Number 32?

12 MR. SUMMERS: There are, Your Honor. There are
13 objections both to the docket entry and to the facts as
14 summarized today. I do not believe any of them actually go to
15 the elements of the offense, but I will detail them now.

16 Beginning on Page 3, and it would be the beginning of
17 the last paragraph on Page 3 reads, "The defendant did not
18 notify his clients when he was terminated from FAB-1 in
19 November, 2018."

20 Mr. Rockwell would object to that sentence. He does
21 believe that he did notify his clients that he was terminated.
22 This is the only objection on Page 3.

23 On Page 6, in the first paragraph on Page 6, the last
24 sentence reads, "Further, neither MJW nor DM sought any such
25 loan or received any benefit from these loans."

1 The first part of the sentence is absolutely true.
2 Neither MJW nor DM sought any such loan, nor did they have any
3 knowledge of it. However, they did receive some benefit from
4 the loans that they were not aware of, so Mr. Rockwell would
5 object to the last part of that sentence where it reads, "Or
6 received any benefit from these loans." He would object
7 because that is not technically true.

8 On Page 8, Your Honor

9 THE COURT: I'm sorry, Mr. Summers. With regard to
10 the second part of that sentence, when you said Mr. Rockwell
11 objects to the language, "Or received any benefit from these
12 loans," and it's his position that MJW and DM received benefits
13 from those loans and were aware of the benefits but not the
14 loans?

15 MR. SUMMERS: They were not aware of the loans and
16 they were not aware that those benefits were coming from the
17 loans. For example, Your Honor, my understanding is that about
18 \$50,000 was paid out to DM. Those proceeds came from the
19 loans. So, in theory, DM did receive benefits from the loans.
20 However, he had no idea that money was coming from the loans
21 themselves. The belief was that those were coming from
22 proceeds in the account, I guess, or income from the account.

23 THE COURT: I understand. Please continue.

24 MR. SUMMERS: Thank you, Your Honor.

25 On Page 8 Your Honor, on Page 8, in the

1 second full Paragraph It would be the third sentence
2 reads, "In or about spring, 2018, David Aaron Rockwell asked RW
3 to open a shared bank account with him at Comerica Bank in the
4 name of RMW1, LLC."

5 That sentence is inaccurate, Your Honor. We would
6 object to it. David Aaron Rockwell never had shared a bank
7 account at Comerica with RW.

8 THE COURT: I'm sorry, Mr. Summers. Would you
9 redirect me to where you're at?

10 MR. SUMMERS: I apologize, Your Honor. It's on
11 Page 8., it is the second full paragraph, and the paragraph
12 begins with, "While the defendant was a financial adviser for
13 RW." We're fine with that sentence. We're going to the third
14 sentence in that paragraph, that reads, "In or about spring,
15 2018, David Aaron Rockwell asked RW to open a shared bank
16 account with him at Comerica Bank in the name of RMW1, LLC,
17 account ending in 2368."

18 Mr. Rockwell would object to that sentence because
19 Mr. Rockwell never had a shared bank account with RW at
20 Comerica.

21 He has no objection to the next sentence, which
22 reads, "Comerica Bank is a federally insured financial
23 institution headquartered in Dallas, Texas." However, he does
24 have an objection to the next sentence that reads, "The
25 defendant instructed RW to provide him with access to this

1 account so that Rockwell could access the funds in the account
2 as his financial adviser." Once again, that wasn't a shared
3 account, so Mr. Rockwell would object to that sentence.

4 The following sentence, Your Honor, reads, "More
5 specifically, the defendant told RW that Comerica 2368 was
6 going to be an investment account that would make it easier for
7 Rockwell to manage RW's investment and transfer funds to and
8 from RW's accounts for real estate investments."

9 Your Honor, we would object to that sentence to the
10 extent that it would infer that Mr. Rockwell had access to that
11 Comerica account as a shared account because it simply was not.

12 There's no objection to the next sentence.

13 And then, Your Honor, continuing on Paragraph -- the
14 first paragraph on Page 9, it reads, "The defendant, however,
15 accessed the money in this account and used the money for his
16 own benefit rather than the intended use for real estate
17 investments."

18 Mr. Rockwell would object to that first part to that
19 sentence. He didn't access the money in the account because he
20 did not have access to it. It wasn't a shared account. He
21 certainly duped RW into transferring the money to him, but he
22 did not personally access it. So he would object to that first
23 part to that sentence. The second part, and he certainly did
24 use the money for his own benefit.

25 Your Honor, we have no objection -- the language that

1 follows we have no objection to. That's actually accurate.
2 Reading, "For instance, on October 31st, 2018, the defendant
3 caused \$120,000 to be wired from Comerica 2368 account to
4 Gralyn Financial Services, LLC at a Bank of America account
5 ending in 0525," that actually -- that is accurate. It wasn't
6 that he transmitted it himself, it's that he caused RW to
7 transfer it.

8 And, Your Honor, the last objection would be . . .
9 would be in -- let me make sure I've got the right paragraph.
10 In the second full paragraph on Page 9, the sentence would
11 begin with, "Bank of America account records indicate the
12 defendant was the only listed depositor and signer for
13 BOA 0525." We have no objection to that sentence, but the
14 following sentence reads, "Rockwell did not disclose to RW that
15 Gralyn Financial Services, LLC was an entity owned and operated
16 by the defendant."

17 Mr. Rockwell would object to that sentence.
18 Mr. Rockwell would state that RW did know that Gralyn was an
19 entity owned and operated by the defendant.

20 Those are all of Mr. Rockwell's objections,
21 Your Honor. I do not believe any of them actually go to the
22 elements of the offense.

23 THE COURT: Ms. Viacava, does the government agree
24 that the objected to portions of the government's factual basis
25 in Docket Entry Number 32 do not affect the essential elements

1 of each of the offenses to which Mr. Rockwell is pleading
2 guilty?

3 MS. VIACAVA: Yes, Your Honor, the government so
4 agrees. Much of the information that was objected to was
5 information that it is anticipated the victims, based on their
6 statements, would be able to testify to in terms of what they
7 were told; but certainly the objections the defendant has would
8 not go towards the elements.

9 THE COURT: Mr. Rockwell, sir, did you hear
10 everything the prosecutor previously said?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you also hear all of the objections
13 that your attorney explained to the Court?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Sir, do you admit the truth of the
16 factual basis and all of the elements of the factual basis are
17 true and correct as they pertain to you, subject to the
18 objections your attorney has noted on the record?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Sir, do you admit to doing all the things
21 the prosecutor said you did, and that are stated in the factual
22 basis section of the government's notice, also subject to the
23 objections your attorney has noted on the record?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: As I mentioned earlier, sir, in order for

1 the Court to accept your guilty plea, I have to ask you
2 questions about the crimes to which you're pleading guilty to
3 satisfy myself that there's a factual basis for your plea, and
4 I do have some more specific questions for you now.

5 Sir, do you admit that, as it relates to
6 Counts 1, 2, 3, 4, 5, and 6, on the dates or timeframes alleged
7 in the indictment, and as stated in the government's factual
8 basis, you knowingly devised or participated in a scheme to
9 defraud or to obtain money or property by using false
10 pretenses, representations, or promises? And again that's
11 subject to the objections that your attorney has noted on the
12 record. Do you admit those things, sir?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Sir, do you also admit that those false
15 pretenses, representations, or promises were about a material
16 fact? And again, that is subject to the objections your
17 attorney has stated.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Sir, do you admit that you acted with the
20 intent to defraud?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And, sir, do you also admit that you
23 transmitted or caused to be transmitted by wire the
24 communications described in the government's factual basis,
25 subject to your attorney's objections, in interstate commerce

1 to help carry out the scheme to defraud?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Sir, do you admit to each of those
4 counts, Counts 1 through 6, that you did these things in
5 Lee County, Florida?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: As to Counts 7 and 8 of the indictment,
8 Mr. Rockwell, do you admit that, on the dates alleged in the
9 indictment, and as described in the government's factual basis,
10 and subject to any objections by your attorney stated here
11 today, you knowingly carried out or attempted to carry out a
12 scheme to defraud a financial institution, or to get money,
13 assets, or other property from a financial institution by using
14 false or fraudulent pretenses, representations, or promises
15 about a material fact?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Sir, do you admit that the false or
18 fraudulent pretenses, representations, or promises were
19 material?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And, sir, do you admit that you intended
22 to defraud the financial institution or someone as alleged in
23 Counts 7 and 8 and in the government's factual basis?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And, sir, do you admit that the financial

1 institution identified with regard to Counts 7 and 8 was
2 federally insured or chartered?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Sir, do you admit that you did these
5 things in Lee County, Florida?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Ms. Viacava, is the government satisfied
8 with the sufficiency of the factual basis on the record in
9 these issues at this point?

10 MS. VIACAVA: Yes, Your Honor.

11 THE COURT: Mr. Summers, same question.

12 MR. SUMMERS: Yes, Your Honor.

13 THE COURT: Based on the un-objected to facts set
14 forth in the government's notice, the factual basis section of
15 the government's notice filed at Docket Entry Number 32, as
16 well as the corresponding un-objected to proffer by the
17 prosecutor here today as to the factual basis, and based on
18 Mr. Rockwell's responses to the Court's direct questions on the
19 record under oath today, I find that there is an independent
20 factual basis for a finding of guilt to enter the plea as to
21 Counts 1 through 8 of the indictment. So that's
22 Counts 1, 2, 3, 4, 5, 6, 7, and 8.

23 Mr. Rockwell, sir, are you pleading guilt freely and
24 voluntarily, and because you believe it is in your best
25 interests to do so?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you pleading guilty because you are
3 guilty, sir?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Has anyone threatened you, forced you,
6 coerced you, or intimidated you in any way regarding your
7 decision to plead guilty?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Has anyone made any promises or
10 assurances to you, of any kind, to induce you to plead guilty?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Are you relying on any agreement,
13 discussion, promise, or understanding with anyone about what
14 sentence will be imposed if you plead guilty?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: At this time, sir, do you believe you
17 know what sentence you will receive?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Has anyone promised you that you will
20 receive a light sentence or otherwise be rewarded for pleading
21 guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Counsel, do you each assure the Court
24 that, as far as you know, no assurances, promises, or
25 understandings have been given to Mr. Rockwell as to the

1 disposition of his case?

2 Ms. Viacava?

3 MS. VIACAVA: Yes, Your Honor.

4 THE COURT: Mr. Summers?

5 MR. SUMMERS: Yes, Your Honor.

6 THE COURT: Mr. Rockwell, you are represented by
7 Mr. Rockwell of the Office of the Federal Public Defender.
8 Have you discussed your case fully with him, and explained
9 everything you know about your case to him?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Have you had enough time to talk with
12 your attorney?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is there anyone else you want to talk to
15 about your case before you enter a guilty plea today?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Has your attorney done everything you've
18 asked him to do with regard to your case before your decision
19 to enter a guilty plea today?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are you satisfied with your attorney and
22 the way he has represented you?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have any complaints about the way
25 your attorney has represented you?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Do you have any complaints about the way
3 you have been treated by the Court or anyone else?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Has anyone coached you, or suggested that
6 you answer untruthfully to any of the questions I've asked you
7 today?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Have you told the truth today?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Sir, do you fully understand all of the
12 rights and procedures that you waive and give up by pleading
13 guilty today?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Having heard everything I've said, sir,
16 is it your final desire to plead guilty to
17 Counts 1, 2, 3, 4, 5, 6, 7, and 8 of the indictment without the
18 benefit of a plea agreement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Now is your last chance to speak up, or
21 to ask any questions you may have, sir, before I make my
22 recommendation. Is there anything you'd like to say or
23 anything you'd like to ask?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Have you seen and heard everything that

1 occurred during the hearing today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Ms. Viacava, again, is the United States
4 satisfied with the Court's colloquy with Mr. Rockwell?

5 MS. VIACAVA: Yes, Your Honor.

6 THE COURT: Mr. Summers, same question.

7 MR. SUMMERS: Yes, Your Honor.

8 THE COURT: And, Mr. Summers, are you satisfied that
9 Mr. Rockwell knows what he's charged with, that you have had
10 sufficient time to counsel with him, and that he is pleading
11 guilty freely and voluntarily, with full knowledge of the
12 consequences of his plea?

13 MR. SUMMERS: Yes, Your Honor.

14 THE COURT: Sir, are you also satisfied with the
15 results of conducting this hearing by video conferencing?

16 MR. SUMMERS: Yes, Your Honor.

17 THE COURT: Ms. Viacava, is the United States also
18 satisfied with the results of conducting this hearing by video
19 conferencing?

20 MS. VIACAVA: Yes, Your Honor.

21 THE COURT: Mr. Rockwell, sir, please listen very
22 carefully to my findings, because when I'm done speaking, I'll
23 ask you if you agree with everything that I've said.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: I find that you, David Aaron Rockwell,

1 are now alert and intelligent, that you understand the nature
2 of the charges against you and the possible penalties, and that
3 you appreciate the consequence of pleading guilty.

4 I also find that the facts that the United States is
5 prepared to prove, and which, by your guilty plea, you admit,
6 based on the un-objected to facts set forth in the government's
7 factual basis at Docket Entry Number 32, as well as the
8 un-objected to facts summarized by the prosecutor here today,
9 and based on your responses to the Court's direct questions on
10 the record under oath today, all state the essential elements
11 of the offenses to which you have pled guilty.

12 I further find that your decision to plead guilty is
13 freely, voluntarily, knowingly, and intelligently made, and
14 that you have had the advice and counsel of a competent
15 attorney with whom you say you are satisfied.

16 Mr. Rockwell, sir, do you agree with all those
17 findings?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: I will make a written report to the
20 District Judge recommending that he accept your guilty plea.

21 Ordinarily, sir, you would have 14 days to object to
22 that recommendation, or you can waive that period. Your
23 counsel and counsel for the government have both filed waivers
24 of that 14-day period.

25 As I indicated earlier, Mr. Rockwell, the United

1 States Probation Office will prepare a presentence
2 investigation report to help the District Judge determine a
3 reasonable sentence in your case. Sir, you will be required to
4 provide information for that report. Your attorney may be
5 present during your presentence investigation report interview
6 by the probation office. Your attorney will also represent you
7 in the preparation of that report at sentencing.

8 Mr. Rockwell, you and your attorney will be given an
9 opportunity to speak on your behalf at the sentencing hearing.
10 You and your attorney will also be permitted to read the
11 presentence investigation report before the sentencing hearing,
12 and to make objections to it if you have any objections. Sir,
13 your sentencing will be set in approximately 75 to 90 days, and
14 will be set by separate notice from the District Judge.

15 Mr. Summers, the presiding District Judge has asked
16 me to inquire whether Mr. Rockwell will consent to proceed with
17 the sentencing hearing by video conference. Have you discussed
18 those matters with Mr. Rockwell?

19 MR. SUMMERS: We have, Your Honor; and if, at the
20 point in time we get to sentencing, it appears that that's
21 necessary, we will file the appropriate paperwork. At this
22 point, our preference would be to have one in person if that's
23 viable when we get there.

24 THE COURT: Very well. My report and recommendation
25 to the District Judge will indicate that Mr. Rockwell does not

1 consent to proceed by video conference, and should
2 circumstances change, you can always file an appropriate motion
3 or notice advising Judge Badalamenti that Mr. Rockwell is
4 requesting to proceed by video conference.

5 Unless there's anything further in this matter,
6 Mr. Rockwell remains on his bond and conditions of release
7 pending the sentencing hearing and we'll be in recess.

8 Anything further from the government?

9 MS. VIACAVA: No, Your Honor.

10 THE COURT: Thank you.

11 Anything further from the defense?

12 MR. SUMMERS: No, Your Honor. Thank you.

13 THE COURT: Thank you. We're in recess.

14 -----

15 (Thereupon, at 11:35 a.m., the above-entitled matter
16 was concluded.)

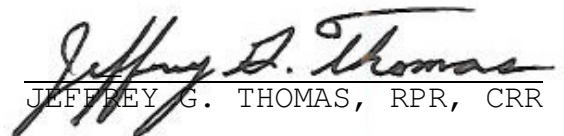
17 -----

18 CERTIFICATE

19 I CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND
20 ACCURATE TRANSCRIPT FROM THE ORIGINAL STENOGRAPHIC RECORD IN
21 THE ABOVE-ENTITLED MATTER.

22
23 Dated this 27th day of April, 2021.

24
25


JEFFREY G. THOMAS, RPR, CRR



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO: 2:20-cr-107-FtM-66MRM

DAVID AARON ROCKWELL

ORDER

Before the Court is the United States Magistrate Judge's Report and Recommendation. (Doc. 34). The Magistrate Judge recommends the Court accept Defendant's guilty plea and adjudicate Defendant guilty. The parties have waived the fourteen-day objection period. (Docs. 27, 31). After examining the file independently, and upon considering the Magistrate Judge's findings and recommendations, the Court accepts and adopts the Report and Recommendation.

Accordingly, it is **ORDERED**:

- (1) The Report and Recommendation (Doc. 34) is **ACCEPTED and ADOPTED**, and the findings incorporated herein.
- (2) Defendant's plea of guilty is **ACCEPTED** and Defendant is **ADJUDICATED GUILTY** as to Counts One, Two, Three, Four, Five, Six, Seven and Eight of the Indictment.
- (3) The sentencing hearing is set for Thursday, April 15, 2021 at 10:00 AM.

DONE AND ORDERED in Fort Myers, Florida on this 21st day of January 2021.

A handwritten signature in cursive script that reads "John L. Badalamenti". The signature is written in black ink and is positioned above a horizontal line.

JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

UNITED STATES OF AMERICA

Case Number: 2:20-cr-107-JLB-MRM

v.

USM Number: 73833-018

DAVID AARON ROCKWELL

**George Ellis Summers, Jr., AFPD
2075 West First Street
Suite 300
Fort Myers, FL 33901**

Date of Original Judgment: 6/2/2021

**AMENDED¹
JUDGMENT IN A CRIMINAL CASE**

Defendant pleaded guilty to Counts One through Eight of the Indictment. Defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. §§ 1343 and 2	Wire Fraud	June 2019	1 through 6
18 U.S.C. §§ 1344 and 2	Bank Fraud	June 2019	7 through 8

Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that Defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Judgment:

June 1, 2021

JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE

September 9, 2021

»

¹Amended only to reflect restitution as outlined in the Stipulation Regarding Restitution (Doc. 60) filed 8/25/2021.

David Aaron Rockwell
2:20-cr-107-JLB-MRM

IMPRISONMENT

Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 63 months for Counts 1 through 8, all such terms to run concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be housed at the federal correction complex in Coleman, Florida, to promote his rehabilitation with visits from his family.
2. That upon the defendant's intake at the Bureau of Prisons facility, he be evaluated immediately for mental health issues so that there is not a gap in his medication treatment.
3. That the defendant be allowed to participate in mental health treatment programs that are available to treat his existing diagnoses of bipolar disorder, depression, and anxiety.
4. That the defendant be placed in a drug abuse treatment program, including the residential drug abuse program.
5. That the defendant be allowed to participate in a vocational skills program for HVAC, welding, or electrical.

Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons **before 2:00 P.M. on June 21, 2021** as notified by the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

David Aaron Rockwell
2:20-cr-107-JLB-MRM

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years as to Counts 1 through 6, and 5 years as to counts 7 through 8. All such terms shall run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on supervision and at least two periodic drug tests thereafter as directed by the probation officer. You must submit to random drug testing not to exceed 104 test per year.
4. Defendant must make restitution in accordance with [18 U.S.C. §§ 3663](#) and [3663A](#) or any other statute authorizing a sentence of restitution.
5. Defendant shall cooperate in the collection of DNA, as directed by the probation officer.

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

David Aaron Rockwell
2:20-cr-107-JLB-MRM

STANDARD CONDITIONS OF SUPERVISION

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

1. Defendant must report to the probation office in the federal judicial district where Defendant is authorized to reside within 72 hours of Defendant's release from imprisonment, unless the probation officer instructs Defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, Defendant will receive instructions from the court or the probation officer about how and when Defendant must report to the probation officer, and Defendant must report to the probation officer as instructed.
3. Defendant must not knowingly leave the federal judicial district where Defendant is authorized to reside without first getting permission from the court or the probation officer.
4. Defendant must answer truthfully the questions asked by Defendant's probation officer
5. Defendant must live at a place approved by the probation officer. If Defendant plans to change where Defendant lives or anything about Defendant's living arrangements (such as the people Defendant lives with), Defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. Defendant must allow the probation officer to visit Defendant at any time at Defendant's home or elsewhere, and Defendant must permit the probation officer to take any items prohibited by the conditions of Defendant's supervision that the probation officer observes in plain view.
7. Defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses Defendant from doing so. If Defendant does not have full-time employment Defendant must try to find full-time employment, unless the probation officer excuses Defendant from doing so. If Defendant plans to change where Defendant works or anything about Defendant's work (such as Defendant's position or Defendant's job responsibilities), Defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. Defendant must not communicate or interact with anyone Defendant knows is engaged in criminal activity. If Defendant knows someone has been convicted of a felony, Defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If Defendant is arrested or questioned by a law enforcement officer, Defendant must notify the probation officer within 72 hours.
10. Defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. Defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that Defendant poses a risk to another person (including an organization), the probation officer may require Defendant to notify the person about the risk and Defendant must comply with that instruction. The probation officer may contact the person and confirm that Defendant has notified the person about the risk.
13. Defendant must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature: _____

Date: _____

David Aaron Rockwell
2:20-cr-107-JLB-MRM

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. You shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, you shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon the completion of this program, you are directed to submit to random drug testing.
2. You shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, you shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
3. You shall submit to a search of your person, residence, place of business, any storage units under your control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. You shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.
4. You shall be prohibited from incurring new credit charges, opening additional lines of credit, or obligating yourself for any major purchases without approval of the probation officer.
5. You shall provide the probation officer access to any requested financial information.

David Aaron Rockwell
2:20-cr-107-JLB-MRM

CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	<u>Assessment</u>	<u>AVAA Assessment</u> ¹	<u>JVTA Assessment</u> ²	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$800.00	\$0.00	\$0.00	WAIVED	\$343,000.00

Defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Restitution Ordered</u>
Richard Waldecker	\$300,000.00
Mary Jane West	\$43,000.00

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

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

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. **All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.**

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

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

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Order of Forfeiture, that are subject to forfeiture, specifically, \$1,018,000. The amount of \$1,018,000 in proceeds was dissipated by the defendant, the United States may seek, as a substitute asset, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c) and/or 18 U.S.C. § 982(b)(1), forfeiture of any of the defendant's property up to the value of \$1,018,000.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ Findings for the total amount of losses are required under Chapters 109A, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.