UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, v. FARADAY HOSSEINIPOUR, ET AL., DEFENDANTS.	CASE NO. 4:17-CR-00012-GNS-CHL *Electronically Filed*

MOTION IN SUPPORT OF NEW TRIAL

Defendant Faraday Hosseinipour ("Hosseinipour"), by counsel and pursuant to Federal Rule of Criminal Procedure 33(a), moves this Court to vacate the September 7, 2022 judgment and grant a new trial because she was tried for violations of multiple federal fraud crimes with practically no representation and is now facing prison as a result. Hosseinipour's counsel was ineffective by any standard. The interests of justice demand that she be given a new trial so that she can defend herself against the charges against her.

FACTS

In June 2017, Faraday Hosseinipour was indicted on federal fraud charges. (*See* DN 1) A second superseding indictment was filed on November 13, 2019, which included violations of Title 18, United States Code, Section 371 and 1349, and Title 15, United States Code, Section 78j(b). (DN 230, ¶ 24, 25, 40) The indictment stemmed from her involvement with a business, Infinity2Global ("I2G"). (*Id.* at ¶ 1–18) She and her husband, Dave Manning ("Dave"), shocked at the charges, contacted Wayne Manning ("Manning"). (Dave Manning Aff., attached as Exhibit 3, ¶ 2–3) Manning is Hosseinipour's brother-in-law, and Dave's brother, and had

recently graduated from Thomas M. Cooley Law School in August 2012. (Wayne Manning Aff., attached as Exhibit 2, ¶ 1–2)

Since graduating law school, Manning practiced only as a solo practitioner. (*Id.* ¶ 5) His experience included business litigation, personal injury, and wills and trusts. (*Id.* ¶ 6) He had very minimal experience practicing law and no experience in criminal law. (*Id.* ¶ 3–18) Additionally, he had no experience trying a case, let alone a complex federal fraud matter with multiple co-defendants. (*Id.*) Despite this, Manning, having previous involvement with multi-level marketing companies and full faith in I2G's validity as a business, assured Hosseinipour and her husband that the charges against her were unfounded and would never result in Hosseinipour going to trial, let alone jail. (*See* Hosseinipour Aff., attached as Exhibit 1, ¶ 3, 8) Hosseinipour and Dave, trying to avoid large legal fees, for what was presented to them by Manning as a simple misunderstanding that would be quickly resolved, hired Manning as Hosseinipour's lawyer. (*Id.* ¶ 4; *see also* Dave Manning Aff., ¶ 3)

Trial was delayed numerous times for complexity, substitutions of counsel, and finally COVID-19. (*See* Dave Manning Aff., ¶ 5; *see also* DN 74; *see also* DN 212; *see also* DN 342; *see also* DN 434) Throughout the delays, Manning continued to assure Hosseinipour and Dave that this would be quickly resolved and was not something for Hosseinipour to worry about. (*See* Dave Manning Aff., ¶ 5) It is no surprise Hosseinipour believed Manning's evaluation of the case, given he had not explained to her the nature of the charges against her, the elements the government would have to prove to support a guilty verdict, or even that imprisonment was a possible consequence of these charges. (Hosseinipour Aff., ¶ 3–8) Instead, Manning continued in his assertions that the charges would be dropped, and gave Hosseinipour no more information. (*Id.*)

Pre-trial Meetings with the Prosecution and Potential Plea Negotiations

In September 2021, the prosecution asked to meet with Hosseinipour. (*Id.* ¶ 9) Prosecutor Marisa Ford presented Hosseinipour with what she described as a standard Western District of Kentucky proffer agreement prior to the meeting. (*Id.* ¶ 9–10) Also known as a "queen for a day" agreement, a proffer is an agreement with the United States that a defendant signs before meeting with the prosecution. It grants a defendant immunity from criminal liability for statements made to the prosecution during that meeting. It is the prosecution's chance to not only see how helpful a defendant might be as a witness for the prosecution, but also gauge the defendant's willingness to cooperate with the prosecution in general. Any lawyer with experience in federal criminal law would know that such cooperation is one of the first steps necessary for entering into successful plea negotiations. Manning, inexperienced in criminal trials and having never heard of a proffer agreement, told both Hosseinipour and Ford that he was uncomfortable with the agreement's terms, and questioned Ford's motives behind presenting it. (*Id.* ¶ 10) Ford explained the purpose of the agreement to Manning, but Manning told Hosseinipour to cancel the meeting and refuse to sign the agreement. (*Id.*) Hosseinipour, heeding the advice of her counsel, canceled the meeting and was thus denied this opportunity to meet with the prosecution and start the potential plea negotiation process. (*Id.*) Not only would this meeting have allowed her to realize the nature and severity of the charges against her, it also would have alerted her to the fact that jail was indeed a possible consequence of these charges much earlier in the process. Further, refusing to sign the agreement and meet made Hosseinipour seem uncooperative, since Ford explained that the purpose behind the agreement was to allow cooperation between Hosseinipour and the prosecution.

In March 2022, the prosecution requested another meeting with Hosseinipour, again presenting her with a proffer agreement. (*Id.* ¶ 12) Manning advised Hosseinipour not to sign the proffer agreement before meeting with Prosecutor Madison Sewell because he "trusted" him and believed he was going to drop the charges against her in this meeting. (*Id.* ¶ 13) Manning believed this because Sewell stated he did not see any defendant going to trial other than the owners of the company, and Hosseinipour was not an owner. (*Id.* ¶ 12) Manning did not realize Sewell was indicating Hosseinipour might plead guilty. Instead, he took this to mean that Sewell was prepared to drop the charges against Hosseinipour, and relayed this to Hosseinipour and Dave. (*Id.*; *see also* Dave Manning Aff., ¶ 6) Based upon this misunderstanding, Hosseinipour agreed to meet with Sewell in March.

Hosseinipour attended the meeting in Texas—the only place Manning was willing to appear for the meeting—without signing the proffer agreement and fully expecting to have the charges against her dropped. (Hosseinipour Aff., ¶ 14) Instead, Hosseinipour was surprised to learn that the prosecution was still interested in entering into a plea deal. (*Id.*) Sewell discussed a possible offer where Hosseinipour would plead guilty to conspiracy to commit mail fraud in return for the prosecution dropping the charge of securities fraud and arguing to the Court that she not serve time in prison. (*Id.*) Manning again, without explaining any possible outcomes, implications, or consequences of accepting or rejecting a plea offer, told Hosseinipour that she would never be found guilty or imprisoned, and that she should not plead guilty if she did not believe she was guilty, because that would constitute perjury. (*Id.* ¶ 15) As was his custom, Manning spoke with Dave to discuss the offer as well.[1] (Dave Manning Aff., ¶ 8) In his

[1] Additionally, the co-defendants entered into a joint defense agreement ("JDA"). (Hosseinipour Aff., ¶ 18) Manning told counsel for the co-defendants about the details of Hosseinipour's plea offer, despite such information being beyond the scope of the JDA. (*See id.; see also* Dave Manning Aff., ¶ 9)

discussions with Dave, Manning said that Hosseinipour should not plead guilty to the charges unless she was indeed guilty. (*Id.* ¶ 8–9) Manning and Dave, believing in the I2G business and Hosseinipour's innocence, agreed that Hosseinipour should not plead guilty. (*See id.*) This was done without providing any context or legal analysis of the charges nor any explanation of the potential outcomes. (*Id.*)

Somewhat unbelievably, to this point Manning had failed to provide even a cursory legal analysis of the charges against Hosseinipour. He never once explained the elements of either of the two charges against her, nor did he explain the evidence the government would introduce in a trial or what the government would have to prove beyond a reasonable doubt. He also failed to explain any defenses Hosseinipour may have or the likelihood of success of such defenses. Manning never explained the various potential outcomes of a trial, nor did he explain the potential federal sentencing guidelines for any conviction. Manning never explained that the government's amount of loss theory would skew the potential guideline ranges significantly, nor did he explain that a conviction may also result in numerous guideline enhancements for sophisticated means, being a leader of the criminal enterprise, or subsequent financial hardship to numerous victims. He also failed to explain that she would lose any potential credit for acceptance of responsibility. In short, Hosseinipour was completely uneducated about the severity of the charges against her and the potential life-altering outcomes as a result of the charges.

After the meeting with Sewell, Manning continued to believe Hosseinipour should not plead guilty if she did not believe she was guilty, and again assured her that prison was not a possible consequence even if the case went to trial. (*See* Hosseinipour Aff., ¶ 19) All Hosseinipour knew was that she was being asked to plead guilty to a felony. (*See id.* ¶ 15–20)

Because she did not think what she had done was a felony and did not want to commit perjury, she did not want to plead guilty to one. (*See id.*) Thus, Hosseinipour, still having no realistic understanding of the charges or evidence against her, the consequences she faced, or the benefits of a plea deal, proceeded to trial. (*Id.*)

While these communications with the prosecution were going on, Hosseinipour was speaking frequently with her co-defendant and previous I2G business partner, Richard Anzalone. (*Id.* ¶ 21) Manning was not only aware of these conversations, as he was cc'd on emails between Hosseinipour and Anzalone without Anzalone's counsel, but also encouraged them. (*Id.*) Anzalone used the information Hosseinipour gave him about her plea negotiations to seek his own plea deal. (*Id.*) Anzalone's plea deal required him to testify against Hosseinipour in return for a probated sentence. (*Id.*) Hosseinipour now understands that a similar outcome would have been possible for her had she had experienced, or at least competent, counsel.

Pre-Trial Issues

As the pre-trial proceedings continued, Manning continued to prejudice Hosseinipour and other defendants. For example, Manning told the prosecution of the JDA, which violated the very terms of that agreement. (*Id.* ¶ 23) Manning also shared the defendants' confidential discussions with the prosecution, including those that disclosed the defense's plan to impeach a key government witness, Chuck King, for previous dishonesty. (*Id.* ¶ 22) Manning would relay Hosseinipour's theory of the case, her understanding of the facts, and her knowledge of evidence to the prosecution. (*Id.*) Despite her explicit statements to Manning that she did not want this information shared, Manning claimed it was his "strategy" to make her seem like a useful witness. (*Id.* ¶ 24) Such strategy was completely misguided because Manning had already ruined Hosseinipour's ability to appear useful to the prosecution by having her ignore the proffer

agreements and every attempt to begin the formal cooperation process. Manning also continued to share details of Hosseinipour's case with Dave and other members of his family without her permission. (*Id.* ¶ 25)

Despite Hosseinipour providing Manning with ample discovery long before it was needed, Manning missed discovery deadlines. (*Id.* ¶ 28) He told Hosseinipour that he thought his tardiness meant that he would not be able to present evidence on her behalf. (*Id.*) Thankfully, the deadline was extended due to COVID. (*Id.* ¶ 29) Instead of sending the information Hosseinipour had already provided him or otherwise apologizing for his oversight, Manning had Hosseinipour resend everything and attempted to alter the dates on the documents to hide that he had missed the original deadline. (*Id.*)

Manning did not review all of the evidence provided by to him by Hosseinipour or the government. For example, he did not review all of the discovery related to Richard Maike, the named defendant with whom Hosseinipour was tried. (*Id.* ¶ 27) Part of the discovery he did not review would have supported Hosseinipour's defense by showing her actions in relation to the many other I2G members, which made her seem less culpable.[2] (*Id.* ¶ 49) Manning was unaware of that evidence. (*Id.* ¶ 27, 49) Hosseinipour also noticed the discovery received from the government was in a format that was inaccessible to her. (*Id.* ¶ 30) When she asked Manning to provide her with the discovery in a format that was viewable for her, he did not, suggesting he did not have it in an accessible format. (*Id.*)

When the time came for Manning to prepare for trial, Hosseinipour was still unaware of the severity of the charges against her or the sentence she faced. Manning had still not done a legal analysis of the strengths and weaknesses of the government's evidence. (*See id.* ¶ 3–36)

[2] *See* Hosseinipour Rule 29 Motion for Acquittal.

Additionally, he had still not presented her with the sentencing guidelines or discussed concepts such as amount of loss, enhancements, departure, variances, probation, or guilty pleas. (*Id.*)

Manning did not make a good faith effort to equip himself or Hosseinipour for trial in any other respect, either. For example, he filed a motion arguing that Hosseinipour, who is Caucasian, was being selectively prosecuted since the other Caucasian individuals involved in the company were not tried. (*Id.* ¶ 33) Manning did not have a subscription to any legal research platform. (*Id.* ¶ 5) He would not reach out to the witnesses Hosseinipour thought would have helpful testimony. (*Id.* ¶ 26) He did not interview any witness, nor did he prepare any exhibits. (*Id.* ¶ 26, 48, 50)

Hosseinipour saw her co-defendants' attorneys filing motions objecting to government exhibits, so she requested that Manning do the same. (*Id.* ¶ 31) He refused, and the government was able to introduce business records that were irrelevant, confusing, prejudicial, and hearsay. (*See id.*) Manning's reasons against filing such motions were that the judge did not know the facts of the case and would take objections "as they came." (*Id.*)

Dennis Dvorin and Jason Syn, two of Hosseinipour's co-defendants who also had similar positions with I2G to Hosseinipour, were severed from the first trial. (*Id.* ¶ 34) Seeing this, Hosseinipour asked Manning to file a motion to sever her case, since she would be the last non-owner tried with the I2G owners. (*Id.* ¶ 35) Manning refused and told her and Dave that it was a terrible idea to sever her case. (*Id.* ¶ 35–36; *see also* Dave Manning Aff., ¶ 13) Hosseinipour insisted he file the motion. (Hosseinipour Aff., ¶ 36) Manning told her that if she made him file the motion to sever he would withdraw and she would be sentenced to imprisonment. (Hosseinipour Aff., ¶ 36; Dave Manning Aff., ¶ 14) This was the first time Manning said anything that suggested to Hosseinipour that jail was a possible penalty of the charges. (*See*

Hosseinipour Aff., ¶ 3–36) Being so close to trial, Hosseinipour decided to go to trial with the named defendants because she knew she had no time to find a new attorney. (*Id.* ¶ 37; *see also* Dave Manning Aff., ¶ 14)

Sewell approached Manning several more times before trial to ask if Hosseinipour had interest in pleading guilty. (*See* Hosseinipour Aff., ¶ 38; Dave Manning Aff., ¶ 12) Hosseinipour told Manning that she would like to talk with the prosecution about the prior plea offer if no better offer was to come before trial, because she did not feel comfortable going to trial with Manning as her lawyer. (Hosseinipour Aff., ¶ 39–40) Manning did not relay this to the prosecution or otherwise attempt to enter into any more plea negotiations. (*Id.*) He thought further negotiations would be a "waste of time" since Hosseinipour had previously mentioned she did not want to plead guilty to a felony and the prosecution would not offer less. (*Id.*; *see also* Dave Manning Aff., ¶ 12) Hosseinipour, finally realizing she was left to her own devices, began doing her own research on plea negotiations. (*See* Hosseinipour Aff., ¶ 39) She emailed Manning with questions about whether she could request diversion and called Manning asking him to see what the prosecution was willing to offer her this close to trial. (*Id.* ¶ 39–40) She received no response, and Manning still did not attempt any further negotiations. (*Id.*)

Trial Issues

At trial, Manning's errors continued. The most notable of Manning's errors were his lack of understanding of basic trial strategy, like objections and cross-examination. (*See id.* ¶ 41–43, 45) For example, when the time came for Manning to object to the emails that he had previously refused to file a written objection against, he did not. (*Id.* ¶ 42) In fact, Manning essentially objected to nothing substantive, even though Hosseinipour—who lacked any legal experience—had reminded him of the need to preserve issues for appeal. (*Id.* ¶ 32, 41–42)

Manning would raise his hand to object, to which the Court responded that the word to signal his desire to speak was, "objection." (*Id.* ¶ 41) His attempted objections were not based on law or the rules of evidence, but instead were an attempt to undermine the evidence being presented. (*Id.*) The Court told him to bring those issues up on cross-examination, but Manning failed to do that as well, since he did not understand the purpose of, or how to, examine a witness. (*See id.* ¶ 41, 43, 46)

Examples of this lack of understanding include when the Court dismissed an expert witness, Manning Warren, without realizing that Manning had not had the opportunity to examine him. (*Id.* ¶ 43) Instead of speaking up immediately, Manning waited until after lunch, when the witness had long been dismissed, to tell the Court that he had not had the opportunity to examine Warren. (*Id.*) That opportunity was lost. Manning also did not find or review Hosseinipour's 302 interview with Sewell and Matt Sauber until after Sauber had testified. (*Id.* ¶ 44) It follows that Manning did not use any of that information in his examination of Sauber to build Hosseinipour's defense. (*Id.*)

Hosseinipour would ask Manning to bring up certain issues in his cross-examinations, and he would not. (*Id.* ¶ 45–46) Manning did not question Anzalone about his plea deal with the government despite the fact that he was a star witness against Hosseinipour. (*Id.*) Manning did not challenge any other evidence brought in through Anzalone, and he did not ask any of the 150 questions Hosseinipour drafted for his examination. (*Id.*) Also, the questions Manning did ask Anzalone, or any other defendants for that matter, were met with hearsay or various other objections. (*Id.* ¶ 47) Manning was unable to rephrase his questions, so he left them unasked. (*Id.*)

Like the instance with Chuck King, Manning accidentally forwarded a group email between the defense attorneys to Sewell that discussed how they planned to question and impeach one of the government's upcoming witnesses, Peter Herr. (*Id.* ¶ 53) Sewell conveniently decided the following day that he would not be calling Peter Herr back as a witness. (*Id.*) This was another lost opportunity for Hosseinipour to defend herself through impeachment of a government witness.

Manning exuded an air of insecurity during trial, which further undermined Hosseinipour's defense. He would constantly apologize to the other attorneys and the judge when his objections were overruled or those against him were sustained. (*Id.* ¶ 51) His inability to use the courtroom technology was such an impediment that the judge reprimanded him for his inability to use it. (*Id.* ¶ 52)

Unsurprisingly, Manning and Hosseinipour's relationship deteriorated as the trial progressed. Manning would repeatedly tell Hosseinipour that he was going to withdraw as counsel, but would not tell the judge. (*Id.* ¶ 57) Hosseinipour also fired him, and though he told the other defense attorneys that he was fired, Manning never told the Court. (*Id.* ¶ 54–56) Hosseinipour, assuming she was not allowed to speak to the judge, continuously asked Manning to tell the judge that he was no longer her lawyer. (*Id.* ¶ 56) Manning told her that the judge would not allow her to fire him, that her firing him would result in a mistrial for the other defendants, that she would go to prison without his representation, and that speaking to the judge was the last thing she should do. (Hosseinipour Aff., ¶ 56, 58, 60; *see also* Dave Manning Aff., ¶ 15) Hosseinipour resorted to alerting the judge's case manager, in addition to many others, that she was unhappy with her representation and wished to represent herself, but the only advice she received was to go through Manning. (Hosseinipour Aff., ¶ 59)

At the close of the prosecution's evidence, Manning filed a Rule 29 motion for judgment as a matter of law. (Hosseinipour Aff., ¶ 61) The substance of the draft was borrowed largely from defendant Doyce Barnes's motion, save a few added arguments discussing various affirmative defenses that did not go to the issue of whether the government had met its burden against Hosseinipour. (*Id.*) Hosseinipour attempted to rewrite the motion for Manning, but he did not include her arguments in what he submitted to the Court. (*Id.*) His reason for excluding her added arguments was that he could argue them in court in person. (*Id.*) In fact, the Court did not hear these arguments because they were not included in the written motion. (*Id.*)

Due to her lack of effective counsel and resulting inability to present a defense, Hosseinipour was convicted on both counts and now faces prison. Because she had practically no counsel to defend against these charges at any point in the proceedings, she seeks a new trial for the opportunity to defend herself, as is her right under the Sixth Amendment.

ARGUMENT

Hosseinipour is entitled to a new trial because Manning rendered ineffective assistance as counsel from the moment he was hired until the conclusion of trial. At every step in the process, Manning fell far below the objective standard of reasonableness required of him by failing to inform Hosseinipour of the charges, evidence, or consequences she faced; threatening her to remain his client; misleading and pressuring her into not pleading guilty; and failing to present any defense on her behalf at trial. These factors directly affected the result of the proceedings because Hosseinipour rejected a potential plea offer she would have otherwise accepted had she been adequately advised by Manning. This rejection left her to face trial with an attorney who was not equipped to defend her, and she now faces the potential of prison as a result. At the very

least, this Court must grant Hosseinipour an evidentiary hearing on this matter to ensure she is not sentenced without ever having an opportunity to be heard whatsoever in these proceedings.

I. The interests of justice and the Sixth Amendment require that Hosseinipour receive a new trial.

Federal Rule of Criminal Procedure 33(a) grants the Court discretion to vacate a judgment and grant a new trial where the interests of justice require it. *United States v. Shanklin*, No. 3:16-CR-00085-TBR, 2017 WL 4542053, at *1 (W.D. Ky. Oct. 11, 2017). The Sixth Amendment guarantees a criminal defendant the right to effective assistance of counsel. *Id.* The interests of justice require a new trial when a substantive legal error has occurred. *Id.* at *2–3. It is well-established that ineffective assistance of counsel that violates a defendant's Sixth Amendment right is a "substantive legal error" warranting new trial. *Id.* (citing *United States v. Munoz*, 605 F.3d 359, 367 (6th Cir. 2010)). The Sixth Amendment entitles defendants "to the effective assistance of competent counsel" not only at trial but also in the plea bargaining process. *See Lafler v. Cooper*, 566 U.S. 156, 162 (2012) (citations omitted).

Here, justice requires, and the Constitution demands, that this Court vacate the judgment entered against Hosseinipour and grant her a new trial. Hosseinipour relied on her counsel, as is expected, to inform her of the law and be truthful in the time leading up to trial. Manning's consistent failure to adequately or truthfully inform or advise Hosseinipour of the charges, evidence, or consequences she faced stripped her of her right to understand the proceedings against her, seek other representation, and evaluate the prosecution's plea offer. Manning's utter lack of familiarity with criminal procedure caused Hosseinipour to reject plea negotiations in which the prosecution would potentially argue for no jail time under the impression that it offered her nothing more than what was already guaranteed. When she realized this was not the case, Manning kept Hosseinipour from pursuing a plea deal, necessitating that Hosseinipour

proceed to trial with him as her attorney. At trial, Manning made no case for Hosseinipour yet refused to let her represent herself or find other representation when she realized Manning's inability to try her case. This is a blatant injustice and violation of the Sixth Amendment, as it subjected Hosseinipour to face a complex federal criminal trial, and now potential incarceration, without a defense.

II. Manning's representation of Hosseinipour was objectively ineffective at each stage of her trial and resulted in her facing a term of imprisonment that she would have avoided altogether had she had effective counsel.

Federal courts use the *Strickland* test to determine whether an attorney rendered ineffective assistance of counsel, and such test applies in the plea bargaining process as well as trial. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *see also id.* at 162–64. The *Strickland* test requires a showing "that counsel's representation fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Manning's conduct without a doubt satisfies the *Strickland* test because his consistent misinformation, gross misunderstanding of basic trial procedure, and failure to satisfy the bare minimum expectations of attorneys has resulted in Hosseinipour facing a prison sentence she would have otherwise avoided.

A. Manning's representation fell below an objective standard of reasonableness before and during trial.

While attorneys are entitled to a presumption that their conduct was reasonable, it is well established that "[t]he failure of an attorney to inform his client of the relevant law clearly satisfies the first prong of the *Strickland* analysis." *Byrd v. Skipper*, 940 F.3d 248, 258 (6th Cir. 2019) (*quoting Hill v. Lockhart*, 474 U.S. 52, 62 (1985)); *see also Strickland*, 466 U.S. at 689 (discussing presumption that counsel acted within accepted range of conduct). Additionally, the

Western District of Kentucky has reiterated a criminal defendant's right to expect that her attorney will review the charges with her and explain the elements of those charges, the evidence supporting those elements, and the sentences the defendant faces should she be found guilty. *United States v. Hisle*, No. 3:14-CR-00044-GNS-DW, 2016 WL 6871270, at *2 (W.D. Ky. Nov. 21, 2016) (*quoting Smith v. United States*, 348 F.3d 545, 553 (6th Cir. 2003)). An attorney's failure to provide guidance or correct advice regarding possible sentences a defendant faces has supported a finding of objectively ineffective assistance in the Sixth Circuit. *Smith v. United States*, 348 F.3d 545, 553–54 (6th Cir. 2003) (citing *Moss v. United States*, 323 F.3d 445, 474 (6th Cir.2003); *Magana v. Hofbauer*, 263 F.3d 542, 550 (6th Cir. 2001); *United States v. Day*, 969 F.2d 39, 43 (3d Cir. 1992)).

Here, Manning's representation did not meet some or any of the standards set by the courts in determining whether counsel is effective. He was completely ineffective in his representation at all points in the process, leaving Hosseinipour to face these charges without counsel, or at least competent counsel.

1. Manning was ineffective leading up to trial, specifically in the plea bargaining process.

Manning is not entitled to the presumption that his conduct pre-trial was acceptable because it clearly violates the bare-minimum requirements the courts have set for attorneys. In *Byrd v. Skipper*, 940 F.3d at 253, a criminal defendant with no prior record was charged with aiding and abetting first-degree premeditated murder, first-degree felony murder, assault with intent to rob while armed, and possession of a firearm while committing a felony. *Id.* at 252. His co-defendant, the primary defendant, entered into a plea deal with the prosecution. *Id.* Byrd, however, never entered into plea negotiations because his attorney did not initiate them. *Id.* Byrd's attorney, instead, was adamant that Byrd would be going to trial on the charges. *Id.*

Byrd's counsel insisted, through the very limited and brief communications he had with Byrd before trial, that Byrd was going to be acquitted because he was not guilty as a matter of law. *Id.* at 253. Byrd's attorney also incorrectly believed, due to his ignorance of the law, that an abandonment defense applied to Byrd's case and would require he be found not guilty as a matter of law. *Id.* Byrd's attorney never went over the sentencing guidelines with Byrd, never explained the applicable law to Byrd, and dismissed Byrd's questions about whether he could plead guilty. *Id.*

Like the attorney in *Byrd*, Manning never informed Hosseinipour of the elements of the offenses with which she was charged, nor did he tell Hosseinipour what evidence the government had against her, nor did he analyze the sufficiency of such evidence. Also, like *Byrd*, Manning never reviewed the sentencing guidelines with her or discussed concepts like amount of loss, enhancements, departure, variances, or guilty pleas. Specifically, Manning never explained that the government's amount of loss theory would skew the potential guideline ranges. Nor did Manning explain that a conviction may also result in other guideline enhancements. He also failed to explain that she would lose any potential credit for acceptance of responsibility.

Hosseinipour was entitled to receive this information from her attorney at the outset of their relationship. Instead, and again, much like the attorney in *Byrd*, Manning let Hosseinipour spend years under the false impression that the charges against her would be dropped. He never suggested that trial, a guilty verdict, or jail were possible until trial was imminent, Hosseinipour was without a developed defense, and Manning was scared she would fire him. Then, at that point, yet again mirroring the deficient representation found in *Byrd*, Manning ignored Hosseinipour's interest in pleading guilty.

Manning's failure to adequately inform Hosseinipour is overshadowed only by his failure to inform himself. For example, Manning's ignorance of proffer agreements and his resulting advice that Hosseinipour cancel her meeting with the prosecution increased hostility between Hosseinipour and the prosecution, lessening her chances of getting a favorable plea offer. It also deprived Hosseinipour of an opportunity to learn of the seriousness of the charges against her much earlier on. Manning's misinterpretation of Sewell's comments regarding Hosseinipour going to trial further disabled Hosseinipour from evaluating her own case or the prosecution's plea offer. Manning told Hosseinipour practically nothing about the implications of a plea deal other than that she would be pleading guilty to a felony that she thought she was not going to be convicted of and did not believe she had committed. It is clear here that, like in *Byrd*, Manning allowed Hosseinipour to be so ill-informed because he was, as well. In addition to not educating himself, Manning hindered Hosseinipour's ability to gain any understanding of the case by telling her not to sign the proffer agreement before meeting with Sewell, because it prohibited her from speaking during the meeting without fear of future liability.

After convincing her to reject a plea deal and further misinforming Hosseinipour and Dave that she would not be taken to trial, found guilty, or incarcerated, Manning further failed in his role as counsel when preparing for trial. He consistently gave the prosecution confidential and prejudicial information that harmed Hosseinipour's case, while preparing no defense for Hosseinipour. He did not interview witnesses; he reviewed very little evidence; he prepared no exhibits; he dismissed Hosseinipour's suggestions as to possible evidence or testimony; he refused to file beneficial motions that would sever her case from more culpable defendants; and, he refused to try to exclude the government's evidence against her. In sum, Manning was ineffective by any standard and failed in his representation of Hosseinipour leading up to trial.

2. Manning rendered ineffective assistance at trial, leaving Hosseinipour with essentially no defense.

Hosseinipour's trial further confirms that Manning's actions were not strategy gone wrong, but the result of inexperience and unpreparedness. In addition to the requirements that an attorney inform a defendant of the basis and potential penalties of the charges against her, failing to "subject the prosecution's case to meaningful adversarial testing" also constitutes ineffective assistance of counsel. *United States v. Cronic*, 466 U.S. 648, 659 (1984). Otherwise, when counsel's conduct does not clearly violate a standard set by the courts, the court still "must consider the totality of evidence before the judge or jury" and "assess counsel's overall performance throughout the case in order to determine whether the 'identified acts or omissions' overcome the presumption that counsel rendered reasonable professional assistance." *Kimmelman v. Morrison*, 477 U.S. 365, 381, 386 (1986) (citations omitted). For example, the following can support a finding of ineffective assistance of counsel:

- The failure to impeach key witnesses.[3]
- The failure to investigate into mitigating evidence or otherwise present it at trial.[4]
- The failure to interview helpful witnesses and/or call them at trial.[5]
- The failure to prepare for trial or conduct reasonable investigations.[6]
- The failure to object to improper remarks.[7]
- The failure to file a motion to suppress.[8]
- Acting unprofessionally in front of the jury.[9]

[3] *Higgins v. Renico*, 470 F.3d 624, 633 (6th Cir. 2006).
[4] *Wiggins v. Smith*, 539 U.S. 510, 533–35 (2003).
[5] *Workman v. Tate*, 957 F.2d 1339, 1346 (6th Cir. 1992).
[6] *Kimmelman v. Morrison*, 477 U.S. 365, 386 (1986).
[7] *Washington v. Hofbauer*, 228 F.3d 689, 703, 704 (6th Cir. 2000).
[8] *Kimmelman*, 477 U.S. at 387.
[9] *See Ward v. United States*, 995 F.2d 1317, 1319 (6th Cir. 1993).

- Inexperience.[10]
- Basic misunderstandings of law and evidence principles.[11]

An attorney's "strategic choices" are reasonable only if supported by "reasonable, professional judgments." *Strickland v. Washington*, 466 U.S. 668, 690–91 (1984). Conduct resulting from a lack of knowledge or education cannot be considered tactical. *See Washington*, 228 F.3d at 702; *see also Kimmelman*, 477 U.S. at 383–84. Even when strategy of the attorney and client conflict, defense counsel is required to abide by a client's decisions. SCR 3.130(1.2)(a).

Here, Manning's trial behavior was fatal to Hosseinipour's case. He failed to present certain arguments on Hosseinipour's behalf, and Hosseinipour's ability to appeal her verdict based on those arguments has thus been hindered. In fact, it was Hosseinipour, an individual completely without legal education, who had to remind Manning of the need to preserve issues for appeal.

Manning's inability to make appropriate objections also gave the government all but free reign in presenting its evidence against Hosseinipour. Additionally, because Manning could not, and did not, effectively examine any witnesses, the jury heard no narrative other than the government's. He left a key witness, Anzalone, unimpeached, despite being the government's star witness against Hosseinipour and the low-hanging fruit that was Anzalone's self-interest in testifying. Manning twice ruined his own opportunity to impeach other witnesses against Hosseinipour by disclosing his impeachment strategy to the prosecution beforehand. Because Manning also refused to fully review the discovery provided to him by the government or

[10] *See Rachel v. Bordenkircher*, 590 F.2d 200, 204 (6th Cir. 1978) (finding Sixth Amendment was violated when attorneys' inexperience led to a failure to object to prosecutorial misconduct).
[11] *See Washington*, 228 F.3d at 704–05 (citing *Gravley v. Mills*, 87 F.3d 779, 786 (6th Cir. 1996)).

Hosseinipour, nothing was presented in Hosseinipour's defense. This requires a presumption of ineffective assistance of counsel because the prosecution's case was not subjected to adversarial testing. *See United States v. Cronic*, 466 U.S. 648, 659 (1984).

Even if the court is unwilling to apply such a presumption to this case, the totality of the circumstances still show that Manning's performance was not reasonable nor professional. Manning failed to effectively advocate whatsoever for Hosseinipour during trial, whether that be through examinations, objections, or any other trial advocacy. He used her fear of incarceration to continue in his role as her counsel when she tried to fire him for his incompetence. He threatened her with withdrawal and imprisonment when she disagreed with his "strategy." Manning did not know how to try this case, and kept the wool over Hosseinipour's eyes as to that fact until it was too late for her to find effective counsel. Manning's actions at trial are thus not strategy that the Court should allow, but conduct the Court should condemn.

B. Manning's actions before and during trial resulted in Hosseinipour facing incarceration that she would have otherwise avoided.

After a defendant establishes her counsel failed to meet the objective standard of reasonableness, she must also "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *Id.* "[T]he essential question is whether better lawyering would have produced a better result." *Ward v. United States*, 995 F.2d 1317, 1321 (6th Cir. 1993). Here, it is crystal clear that Hosseinipour would have had a different result with experienced, competent, professional counsel.

In the context of plea bargaining, the second prong of the *Strickland* test requires a defendant show a "reasonable probability that the plea offer would have been presented to the

court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." *Lafler v. Cooper*, 566 U.S. 156, 162–64 (2012). An attorney's failure to provide information about possible sentence exposure supports a finding that a defendant was not able to make an intelligent decision about whether to enter into a plea deal, and thus that the results of the proceeding would have been different but for the ineffective assistance of counsel. *Id.*

Importantly, a defendant's knowledge of a plea offer, assertions of innocence, and predisposition to reject a plea are not enough to establish that a defendant would not have accepted a plea. *Smith v. United States*, 348 F.3d 545, 551–53 (6th Cir. 2003). Even more, the Sixth Circuit has held that a defendant's professions of her innocence and desire to be acquitted especially do not support a finding that the defendant would not have pled guilty when the defendant was misinformed by counsel's "faulty advice," since the defendant has no reliable metric to assess the possible outcomes of pleading guilty or going to trial. *Byrd v. Skipper*, 940 F.3d 248, 258–59 (6th Cir. 2019).

1. Hosseinipour rejected a plea deal she would have otherwise accepted had Manning acted as effective representation.

It is practically certain that the outcome of this proceeding would have been different had Manning acted as effective counsel. For example, because Manning kept Hosseinipour from meeting with the prosecution in September 2021, Hosseinipour was deprived of an opportunity to hear the evidence against her or the consequences she faced. This was essential, as she was not receiving this information from Manning. This meeting would have alerted Hosseinipour to the fact that Manning's advice was incorrect much earlier on in the proceedings, which would

have allowed her to appropriately evaluate her defense in relation to the government's case before deciding whether or not to plead guilty.

After six more months of Manning's continued assurances that she would not be going to trial, Hosseinipour flew to Texas under the impression—instilled in her by Manning—that the prosecution was prepared to drop the charges against her. Instead, the prosecution offered her the opportunity to plead guilty in return for its argument that she serve no time in prison. Manning again told Hosseinipour nothing more than that she should plead guilty only if she believed she was guilty, because she was not going to be found guilty at trial and would not be incarcerated for these charges. Hosseinipour could not knowingly and intelligently assess this plea offer because she still did not realize, due to Manning's misinformation, that she was facing significant time in prison.

In *Lafler v. Cooper*, a defendant was charged with four crimes, ranging from possession of marijuana to assault with intent to murder. 566 U.S. 156, 161 (2012). The prosecution twice offered to drop two of the four charges and recommend a 51 to 85 month sentence in return for his pleading guilty. *Id.* The defendant had communicated to the court his guilt and willingness to accept the offer, but ended up rejecting these two plea offers and one last one made during trial because his attorney told him the prosecution would not be able to establish intent since the victim had been shot below the waist. *Id.* The parties conceded that defendant's counsel was ineffective. *Id.* at 174. The Court found that but for counsel's performance, the results of the proceeding could have been different, because "as a result of not accepting the plea and being convicted at trial, respondent received a minimum sentence" more than three times "greater than he would have received under the plea." *Id.*

Manning's behavior mirrors that by the lawyer in *Lafler*. His untruthful advice left Hosseinipour unable to see the benefit of this plea offer. Manning also kept Hosseinipour from asking the prosecution any clarifying questions at this meeting, since he told her not to sign the proffer agreement. Hosseinipour, like the defendant in *Lafler*, rejected the plea deal, but did so based off of her attorney's completely incorrect assessment of what the government had to prove and whether it could prove it. Had Hosseinipour understood she was facing time in prison and would be tried unless she accepted a guilty plea, she would have accepted the prosecution's offer in March 2022. This is evidenced by Hosseinipour's requests to speak with the prosecution once she realized trial was imminent and jail was a possibility.

Sewell's continued inquiries about whether Hosseinipour was willing to enter into a plea deal leading up to trial also show there is no reason that the prosecution would have withdrawn the offer after Hosseinipour accepted it. Thus, the court would have been presented with the plea deal, and likely would have accepted it, given its reasonableness and that the Court accepted a similar deal the prosecution entered into with Anzalone

Lastly, Hosseinipour's change in outcome is far worse than *Lafler*, where the defendant was sentenced to three-and-a-half times what he was offered by the prosecution. Hosseinipour now faces prison, when the prosecution, pursuant to the potential plea offer, was willing to argue that she not serve a single day. These facts establish to a certainty that the outcome of this proceeding would have been different but for Manning's ineffective assistance as counsel, satisfying the second prong of the *Strickland* test.

Also, Hosseinipour's belief that she was innocent and desired that the charges be dropped entirely or lessened to a misdemeanor do not support a finding that she would not have accepted the plea offer because they were based on Manning's continued misinformation. Hosseinipour

had no reliable metric by which to assess the prior plea offer or her chances of success at trial, because she did not know the elements that the government was required to prove, had never seen the sentencing guidelines, and was told by Manning for years that the government would drop the charges.

2. Manning's ineffective assistance at trial further altered the outcome of this proceeding and resulted in Hosseinipour facing imprisonment.

Manning's ineffectiveness as counsel is further proved by his performance at trial. As previously discussed, Manning's failure to conduct discovery, object to the admission of evidence, interview witnesses, review necessary documents, file motions with actual merit, produce exhibits, impeach biased witnesses, properly examine witnesses, focus on the trial, return Hosseinipour's calls and emails, observe the attorney-client privilege, and present or even look into exculpatory evidence entitles Hosseinipour under federal law to a presumption that Manning's performance resulted in a different outcome.

At trial, Hosseinipour all but begged Manning to present a defense on her behalf and expended great efforts to provide him the materials to do so, and he still did not. He refused to withdraw as counsel despite Hosseinipour's repeated requests to represent herself, and he kept her from informing the judge of her desire to represent herself. Because of this, Hosseinipour faces imprisonment. It can hardly be more certain that the outcome of the proceedings would have been different here had Manning rendered effective assistance. For these reasons, Manning's conduct before and during trial constituted ineffective assistance of counsel as it is defined by Kentucky courts, and clearly resulted in Hosseinipour facing a prison sentence that she otherwise would have avoided. Thus, under *Strickland*, she is entitled to a new trial.

C. Alternatively, Hosseinipour is entitled to an evidentiary hearing on her claim of ineffective assistance of counsel because she has produced sufficient evidence to support her claim.

Hosseinipour believes she has established conclusively that she is entitled to a new trial because of the ineffective assistance of her counsel. At the very least, this Court should conduct an evidentiary hearing to further develop the record of trial counsel's ineffective assistance. This Court has discretion to grant a defendant's request for an evidentiary hearing before deciding a motion for new trial, and should do so where the defendant has produced sufficient evidence to support her request. *See United States v. Shanklin*, No. 3:16-CR-00085-TBR, 2017 WL 4542053, at *10 (W.D. Ky. Oct. 11, 2017) (*quoting United States v. Bass*, 460 F.3d 830, 838 (6th Cir. 2006)) (other citations omitted). A defendant is required to produce only a "modicum of evidence in support of her request for an evidentiary hearing on a motion for a new trial based on ineffective assistance of counsel." *Id.* (*quoting United States v. Allen*, 254 Fed. Appx. 475, 478 (6th Cir. 2007)) (other citations omitted). Examples of proper evidence to support a request for an evidentiary hearing include affidavits, transcripts, or declarations. *Id.*

The attached affidavits from Hosseinipour, Dave, and Manning provide more than enough evidence to support Hosseinipour's request for an evidentiary hearing on her motion for new trial. Hosseinipour has provided a detailed account of Manning's continuous and complete disregard for Hosseinipour's right to be informed of the charges against her, the evidence to be presented against her and in her defense, and the possible penalties she faced if convicted. Hosseinipour also plans to call Sewell as a witness to Manning's ineffective assistance before and throughout trial.

Manning's failure to inform Hosseinipour of these facts, coupled with his manipulation of Hosseinipour's meetings with the prosecution and refusal to allow her to seek new counsel or represent herself, completely deprived her of her right to make any reasoned and informed

decisions throughout these proceedings, but especially during the plea bargaining process. Instead, Hosseinipour was left at the mercy of Manning, who continuously and egregiously failed in his duty to serve as effective counsel. As a result, Hosseinipour was stripped of her right to counsel and is now facing incarceration because of that. Justice therefore requires that this Court at the least grant Hosseinipour an evidentiary hearing on her motion for new trial based on ineffective assistance of counsel.

CONCLUSION

Hosseinipour is entitled to a new trial because she received ineffective assistance of counsel. Hosseinipour has presented significant evidence that Manning's representation fell far below the objective standard of reasonableness expected of practicing attorneys at all times, since he misled her into rejecting a plea offer and proceeding to trial under the assumption she was not facing a prison sentence. This resulted in a substantially different outcome for Hosseinipour, as she would have accepted the plea offer had she been advised of the reality of her case. At the very least, this Court has been presented with sufficient evidence to grant Hosseinipour's request for an evidentiary hearing on these matters, and it is respectfully requested that this Court do so.

/s/ Michael M. Denbow
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Counsel for Defendant, Faraday Hosseinipour

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all parties of record.

/s/ Michael M. Denbow
Counsel for Defendant, Faraday Hosseinipour

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY- OWENSBORO DIVISION
CASE NO. 4:17CR-00012-GNS

UNITED STATES OF AMERICA PLAINTIFF

v. **DEFENDANT FARADAY HOSSEINIPOUR'S AFFIDAVIT**

RICHARD MAIKE, et al. DEFENDANTS

Affiant, Faraday Hosseinipour, being duly sworn, states:

1. In 2017, I was indicted on federal charges. The second superseding indictment against me listed my charges as violations of 18 U.S.C. § 371, 18 U.S.C. § 1349, and 15 U.S.C. § 78j(b). These charges were based on my role in a multi-level marketing company, I2G.

2. My brother-in-law, Wayne Manning ("Manning"), had recently graduated from Thomas M. Cooley Law School and was barred in Texas.

3. My husband, Dave, contacted Manning, his brother, about the charges against me. We thought his knowledge as a lawyer and also as a past patron of other multi-level marketing companies would be helpful in deciding what to do. Manning told my husband that the charges were ridiculous and I would never go to trial.

4. We knew that Manning had little experience practicing law, but hired him to save money under the assumption that this indictment was a misunderstanding that would quickly be resolved.

5. Manning was unfamiliar with the law and trial procedure from the outset. For example, he had no subscription to any legal research service. When my name was incorrect on the indictment, he did not know how to fix it. But, because Manning repeatedly told Dave and I that this would not go to trial, I continued with him as my lawyer.

6. Manning never told me what the elements of the charges against me were.

7. Manning did not review the sentencing guidelines for the charges with me.

8. The only information I received from Manning about my case was that I would never see trial, I would not be found guilty, and I would not go to jail. Because of this, I not only thought that the charges would be dropped, but also did not realize jail was a possible penalty if they were not.

9. The prosecution first asked to meet with me in September of 2021 and sent me a proffer agreement. Manning told me to cancel this meeting because he was not comfortable with and

did not understand the proffer agreement. I researched what a proffer agreement was and sent him the information that I found.

10. Manning emailed Prosecutor Marisa Ford explaining that he was not comfortable with the agreement and did not understand why the charges could not be dropped without me signing the agreement. Ford responded that the proffer agreement was a standard agreement and would allow me to speak with the prosecution without fear of my statements being used against me in the future. Ford also told Manning that the prosecution was not willing to drop any charges against me without speaking with me first.

11. Manning told me we made the right decision in rejecting the proffer agreement and canceling the meeting.

12. When I was offered a second meeting with the prosecution in March 2022, Manning told me and Dave that he thought the prosecution planned to drop the charges against me at the meeting. This belief was based on Prosecutor Madison Sewell's statement that he did not see the distributors, which included me, going to trial.

13. Manning again instructed me not to sign the proffer agreement offered by Sewell because Manning trusted him.

14. Manning was unwilling to have the meeting anywhere but Texas, his home state at the time. He insisted I fly there for the meeting, so I did. To my surprise, the prosecution did not drop the charges but instead wanted to discuss another plea offer. The potential offer was that they would argue for no jail time in return for my pleading guilty to conspiracy to commit mail fraud.

15. In shock and still under the assumption that the prosecution did not have a strong case against me, I explained to Manning that I did not want to plead guilty to a felony I did not believe I had committed. He told me it would be perjury to plead guilty without believing I was. He offered me no further advice and repeated that I would not go to trial, I would not be found guilty, and jail was not a possibility.

16. I did not speak much with the prosecution about the potential offer, since I did not sign the proffer agreement.

17. Manning and Dave discussed the potential offer and Sewell's statements and decided that I should not plead guilty because I was innocent.

18. Manning then exceeded the scope of the joint defense agreement and violated my attorney-client privilege by discussing the details of my plea negotiations with my co-defendants' counsel.

19. Manning told me about his discussions with Dave and the other defense attorneys, and said that he believed everyone agreed I should reject the plea offer unless I thought that I was guilty.

20. I rejected the plea offer based on this advice, but felt pressured to by Manning.

21. Manning also knew that I was discussing my plea negotiations with Anzalone, my co-defendant and former business partner, because he was cc'd on our emails. He encouraged me to talk to Anzalone about my plea negotiations. This was to my detriment, because it encouraged Anzalone to seek and enter into a plea deal under which he agreed to testify against me in return for a probated sentence.

22. Manning further prejudiced me by sharing our confidential discussions with the prosecution on multiple occasions before trial. For example, he disclosed that I told him Chuck King, a key witness for the prosecution, had a history of conning people. This undermined my ability to impeach a witness against me because the government was prepared to address that issue. Manning also told the prosecution about my theory of the case, what I believed had happened, and the evidence I was aware of that might be presented at trial.

23. Manning told the prosecution of the joint defense agreement, which violated the very terms of that agreement.

24. When I learned of these disclosures and confronted Manning about them, he told me it was part of his "strategy" to make me seem useful to the prosecution.

25. Manning also often shared details of my case and our conversations with Dave and multiple other members of his family without my permission.

26. During discovery, Manning did not interview or even contact witnesses that I suggested might have helpful information.

27. Manning did not review all of the discovery he received about Maike.

28. Manning missed discovery deadlines despite that I provided him the necessary documents far in advance. When Manning told me that he had missed the deadline, he did not try to fix the situation but instead said he did not think he would be able to present evidence on my behalf anymore.

29. When the deadline was extended due to COVID-19, Manning had me resend all of the evidence I had already sent him multiple times, and then told me he intended to erase the dates on those items because he thought he was supposed to have already turned that information over to the government.

30. When I told Manning that I could not view parts of the discovery he received from the government or the emails sent to Maike, he made no efforts to make the discovery accessible to me. This suggested to me that he never viewed the discovery himself, since he likely received it in the same format.

31. I saw my co-defendants file motions objecting to government exhibits, so I asked Manning to file a motion objecting to the government's exhibits of business transfer requests based on their irrelevance, prejudice, hearsay, and potential to confuse the jury. Manning refused to do so, stating that the judge did not know the facts of the case and would take objections as they came.

32. When I realized Manning was filing practically no motions on my behalf, I had to explain to him that he needed to object to things like this to preserve the issue for appeal.

33. An example of a motion Manning did file on my behalf was a motion to dismiss for selective prosecution. He claimed that the government should have charged other Caucasian I2G members with these crimes instead of me, but I am Caucasian.

34. When Devorin and Syn were severed from the main trial, I asked Manning to file a motion to sever my case from Maike, since I would be left as the only non-owner tried with the owners of the company.

35. I told Manning that I felt being tried with the owners would greatly prejudice me, as there would be evidence presented against them that was not related to me but would be attributed to me, and being tried with Devorin and Syn would allow my actions and statements to be viewed in relation to people who held similar roles in I2G as I did.

36. Manning refused to file the motion to sever, claiming it was a terrible idea. When I insisted he file the motion to sever, Manning claimed it was his strategy to have me tried with Maike and Barnes, and that if I made him file the motion he would quit and I would go to jail.

37. Because I did not have time to find a new lawyer before trial, I gave up on filing the motion and continued to trial with Manning as my lawyer.

38. Manning eventually told me and Dave that Sewell had continued asking him since our March meeting whether I was willing to accept a plea offer in which the prosecution argued for no jail time.

39. I was beginning to realize Manning may have been wrong about whether I was facing imprisonment. I did not feel confident going to trial with him as my attorney because I felt he had not done anything correctly leading up to trial. I thought it would be a good idea to talk with the prosecution about a plea deal, so I emailed Manning instructing him to reach out to Sewell. I also suggested that he propose different options I had read about online, like diversion. Manning would not respond.

40. Eventually, after repeatedly asking him to contact Sewell, Manning told me it was a "waste of time" since Sewell would not offer me anything less than a felony, and I had previously expressed that I did not want to plead guilty to a felony.

41. Trial began, and Manning displayed a complete lack of understanding of trial procedure. His objections were not based on law or rules, but instead were his attempt to impeach witnesses or undermine the sufficiency of evidence. The Court not only had to tell him to wait until his chance to examine the witness, but also had to tell Manning that the proper word to object was "objection."

42. Manning never objected to anything warranting an objection, like the emails that I had previously I asked him to object to through a written motion.

43. Manning would raise his hand to cross-examine witnesses. In one instance, the judge did not see him raise his hand and dismissed an expert witness, Manning Warren, without giving Manning the opportunity to cross-examine him. Manning did not bring up his inability to cross-examine the expert until after lunch, when the witness had left trial and could not be called back.

44. Manning did not find or review my 302 interview with Sewell and Matt Sauber in the government's produced documents until after Matt Sauber testified, so nothing from that was used in Manning's examination of Sauber.

45. Manning would not bring up issues in his cross-examinations that were important, like that Anzalone, through whom the government presented almost all of its evidence against me, had accepted a plea deal that required him to testify against me.

46. Manning also made no attempt to challenge or even clarify the evidence introduced through Anzalone. I wrote 150 questions for Manning to use in his examination of Anzalone, and he did not use them.

47. The questions Manning did ask did not go to the issues being tried and were frequently objected to, often on hearsay grounds, and even by my co-defendants' counsel. When Manning's questions were objected to, he could not rephrase them, so he did not ask them.

48. Manning did not reference or introduce exculpatory evidence at trial or prepare any exhibits, even though I provided him with dozens of videos showcasing my focus on customers, product training, and product testimonials that would have supported my good faith and the fact that I2G was a legitimate business.

49. Part of the discovery received from Maike that Manning refused to review included emails sent to Maike from other independent business owners that held the same position as I did in I2G. These emails could have provided the jury with helpful insight into network marketing and its operation and further demonstrated that I did not play the role in I2G's alleged fraud that the government claimed I did, but they were not introduced because Manning was not aware of them.

50. It was not until Manning saw my co-defendant's counsel introducing exhibits that he attempted to put exhibits together at the last minute to present on my behalf.

51. Manning constantly apologized to the prosecution and the judge when his objections were overruled or the objections made against him were sustained.

52. He was not aware of how to use technology in the courtroom, and was so deficient with the technology that the judge admonished him for his inability to use it.

53. Manning also accidentally forwarded a group email between defense counsel discussing their preparation and plan for one of the government's upcoming witnesses, Peter Herr. Sewell deleted the email, but announced to the Court the next day that they would not be calling Peter Herr as a witness. This was one less opportunity to exculpate myself through impeaching a government witness.

54. Eventually, I fired Manning and asked him to let the judge know, because I assumed I was not allowed to speak to the judge.

55. Manning told my co-defendants' counsel that he was fired, but continued representing me and never alerted the judge.

56. When I told Manning that I wanted to represent myself, he told me that the judge would not allow me to fire him, my firing him would cause the other defendants to seek a mistrial, and that I would go to prison without his representation.

57. Manning also told me that he was withdrawing at least three times during the trial and would be returning to Texas. When I asked him to let the judge know, he would not.

58. When Manning learned that I was considering writing to the Court to ask to represent myself, he replied that that was the last thing I should do.

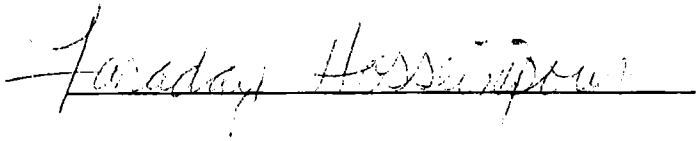
59. I tried to alert anyone I could think of that I wanted new representation. I could not find someone who was able to offer me advice on what to do other than going through Manning. For example, when I called the judge's case manager and asked her how I could address Manning's incompetency with the judge, she said I needed to go through Manning, too.

60. I continued to ask Manning to alert the judge that I wanted to represent myself, but Manning told me it was the worst thing I could do and refused to address it with the judge.

61. Manning filed a Rule 29 motion for judgment as a matter of law at the end of trial. When I read it, I realized he had borrowed largely from defendant Doyce Barnes's motion and only added arguments discussing various affirmative defenses that were irrelevant to whether the government had met its burden. I re-wrote the motion for him. Manning said he would not include my arguments because he could argue them in court. The Court would not hear these further arguments because they were not included in the motion. This further proves Manning's lack of understanding of the need to preserve issues for appeal and for argument.

62. I did not testify at trial due to Manning's advice that it would not be in my best interest. Because I realize his advice was faulty in many other respects, I am regretful that I relied on him in waiving my constitutional right to testify on my behalf.

FURTHER THE AFFIANT SAYETH NOT.



STATE OF FL)
)
COUNTY OF Duval)

The foregoing instrument was acknowledged before me this 19 day of October, 2022, by Faraday Hosseinipour.

My commission expires: 07/22/23

NOTARY PUBLIC

[SEAL]

Monica Smolder
State of Florida
My Commission Expires 07/22/2023
Commission No. GG 345289

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY- OWENSBORO DIVISION
CASE NO. 4:17-CR-00012-GN

UNITED STATES OF AMERICA — PLAINTIFF

v. **WAYNE MANNING'S AFFIDAVIT**

RICHARD MAIKE, et al. — DEFENDANTS

Affiant, Wayne Manning, being duly sworn, states:

1. I am Defendant Faraday Hosseinipour's brother-in-law.
2. I graduated from Thomas M. Cooley Law School in August 2012.
3. I was licensed to practice law in the state of Texas as of May 3, 2013.
4. I am not licensed to practice law in any other state.
5. Since graduating law school, I have practiced as a solo practitioner.
6. My practice areas include business litigation, personal injury, and wills and trusts.
7. I have represented only a few clients in a criminal matter other than Hosseinipour.
8. I had limited experience trying a criminal case at the time I agreed to represent Hosseinipour.
9. I had very limited jury trial experience at the time I agreed to represent Hosseinipour.
10. I had no experience with federal criminal law at the time I agreed to represent Hosseinipour.
11. I had no experience with the federal sentencing guidelines at the time I agreed to represent Hosseinipour.
12. I had no experience in dealing with Assistant United States Attorneys at the time I agreed to represent Hosseinipour.
13. I had no experience with federal, criminal proffer agreements at the time I agreed to represent Hosseinipour.
14. I had limited experience with plea negotiations at the time I agreed to represent Hosseinipour.

15. I had no experience engaging in complex e-discovery at the time I agreed to represent Hosseinipour.

16. I had no experience with government investigation devices, such as 302 interviews, at the time I agreed to represent Hosseinipour.

17. I had no paid subscription to a legal research service at the time I represented Hosseinipour.

18. Prosecutor Madison Sewell discussed the concepts of a potential plea offer to Hosseinipour in their March 2022 meeting. In discussing this potential offer, Sewell mentioned allowing Hosseinipour to plead guilty to conspiring to commit mail fraud in return for the prosecution dismissing the securities fraud charges and arguing to the court that Hosseinipour not serve jail time for the mail fraud conspiracy charge.

FURTHER THE AFFIANT SAYETH NOT.

Wayne Manning

STATE OF NEVADA)
)
County OF NYE)

The foregoing instrument was acknowledged before me this 18 day of October, 2022, by Wayne Manning.

My commission expires: 08.02.2023

NOTARY PUBLIC

[SEAL]

EMILY DUNIPHIN
NOTARY PUBLIC
STATE OF NEVADA
APPT. NO: 20-2785-14
MY APPT. EXPIRES: 08/02/2023

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY- OWENSBORO DIVISION
CASE NO. 4:17CR-00012-GNS

UNITED STATES OF AMERICA PLAINTIFF

v. **DAVID ROBERT MANNING JR. AFFIDAVIT**

RICHARD MAIKE, et al. DEFENDANTS

Affiant, David "Dave" Manning, being duly sworn, states:

1. I am married to Faraday Hosseinipour, and Wayne Manning ("Manning") is my brother.

2. I did not take my wife's charges seriously because I thought the charges had no factual basis and would be dropped once the government further investigated.

3. I asked Manning to represent my wife when we found out she was indicted in 2017 because he had recently graduated law school and I did not want to spend a lot of money on an attorney for charges I thought would be dropped.

4. When I hired Manning to represent Hosseinipour, he told me that the charges were ridiculous, the case would never go to trial, and that Hosseinipour would never be convicted or incarcerated.

5. Even when the trial kept being continued, Manning continued to tell us that the case would not go to trial and that Hosseinipour would not be found guilty or sentenced to prison.

6. In March of 2022, Manning told me he spoke with Madison Sewell. He said he thought Sewell was going to drop the charges, so he wanted my wife to fly to Dallas to meet with them.

7. After the March meeting between my wife, Manning, and Sewell, Manning called me to tell me that Sewell thought my wife was innocent. Manning told me he thought this because he found out the prosecution only expected Richard Maike and Doyce Barnes to go to trial, not the distributors, which included Hosseinipour.

8. Manning told me that Hosseinipour was offered a potential plea deal where the prosecution would argue to the court for her not to serve jail time if she pled guilty to a felony. He and I agreed that she was not a criminal and should not accept a guilty plea when she was innocent.

9. Manning told me that he spoke with the other defense attorneys about the plea offer as well, and had the impression they also thought that my wife should not take a plea deal if she was innocent.

10. Hosseinipour would call and talk to Richard Anzalone and the other defendants constantly to update them on the case and her dealings with the prosecution. She talked with Anzalone every day.

11. Eventually, Hosseinipour became interested in a plea deal that allowed her to plead guilty to a misdemeanor. When discussing that idea, Manning told me that Sewell was not going to offer a misdemeanor and that my wife should not accept a felony because she was not guilty. At this point, I still thought the charges would be dropped.

12. At the pre-trial meeting, Manning told me Sewell was still reaching out about a plea deal, but he said it would still be a waste of time to talk with him because he did not think Sewell was going to offer Hosseinipour anything less than a felony.

13. Manning also told me that severing Hosseinipour from the main case was a bad idea. I believed him because I thought he would know better than Hosseinipour.

14. One night Manning and Hosseinipour were fighting about the motion to sever. Manning told her that if she made him file the motion to sever he would quit and she would be convicted without him. There was no time to find a new lawyer, so I told Hosseinipour that Manning knew what he was doing.

15. Hosseinipour and I started to wonder whether she could represent herself. Manning told us that was a bad idea and that the judge would never allow that. Manning also told me that the other attorneys would ask for a mistrial if Hosseinipour asked to represent herself, so I told her it was a bad idea, too.

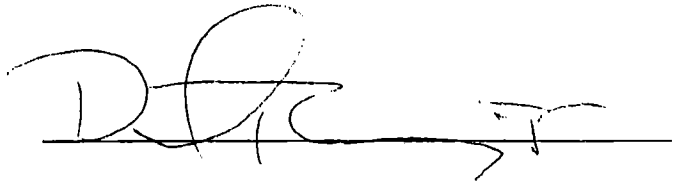
16. Hosseinipour and Manning fought every night. He would call her choice words and would storm off.

17. Manning told Hosseinipour at least three times that he was quitting and going back to Texas. Manning refused to tell the judge, though.

18. When Hosseinipour fired Manning, Manning emailed the other attorneys that Hosseinipour no longer wanted him to represent her, but he never notified the court.

19. I told Manning that Hosseinipour wanted to write to the court asking to represent herself. He said that is the last thing Hosseinipour should do, so I then fought with Hosseinipour as well because I believed Manning's statement that it was a terrible thing to do.

FURTHER THE AFFIANT SAYETH NOT.



STATE OF FL)
)
COUNTY OF Duval)

The foregoing instrument was acknowledged before me this 19 day of October, 2022, by David Robert Manning, Jr.

My commission expires: 07 22 2023

NOTARY PUBLIC

[SEAL]

Monica Smolder
State of Florida
My Commission Expires 07/22/2023
Commission No. GG 345289

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, v. FARADAY HOSSEINIPOUR, ET AL., DEFENDANTS.	CASE NO. 4:17-CR-00012-GNS-CHL *Electronically Filed*

ORDER

On this day, the Court considered the Motion for New Trial and supporting affidavits submitted by Defendant Faraday Hosseinipour. After considering the Motion and any opposition thereto, the Court finds that Faraday Hosseinipour is entitled to a new trial.

IT IS THEREFORE ORDERED that the relief sought in the Motion for New Trial is Granted.

IT IS FURTHER ORDERED that the Final Judgment entered by this Court on September 7, 2022 is vacated in its entirety and it has no force or effect.

IT IS FURTHER ORDERED that a Docket Control Order scheduling this case for trial will issue.

Dated: _____