

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

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA)
)
)
Plaintiff,) Case No.
vs.) 21-00101-CR-W-SRB
)
KENDRA KINGSBURY,) Kansas City, Missouri
) October 13, 2022
Defendant.)

.....
TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE STEPHEN R. BOUGH
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

APPEARANCES

For the Plaintiff: MR. PATRICK C. EDWARDS
MR. DAVID RASKIN
United States Attorney's Office
400 East 9th Street
Kansas City, Missouri 64106

For the Defendant: MR. WILLIAM ERMINE
Federal Public Defender's Office
1000 Walnut, Suite 600
Kansas City, Missouri 64106

Also Appearing: Mr. Scott Claffee

Gayle M. Wambolt, RMR, CRR
U.S. Court Reporter, Room 7552
Charles Evans Whittaker Courthouse
400 East Ninth Street
Kansas City, MO 64106 (816) 512-5641

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

THURSDAY, OCTOBER 13, 2022

THE COURT: We are here on the case of United States of America v. Ms. Kendra Kingsbury, Case No. 21-101.

May I have appearances by the parties, please?

MR. EDWARDS: Morning, Your Honor. Patrick Edwards, David Raskin, and Scott Claffee on behalf of the United States.

THE COURT: Good morning.

MR. ERMINE: Marc Ermine on behalf of Ms. Kingsbury, who appears in person. With me at counsel table is the defense investigator Gina Slack.

THE COURT: Ms. Kingsbury, ma'am, would you please rise and we're going to swear you in.

KENDRA KINGSBURY, being duly sworn by the courtroom deputy, testified:

EXAMINATION BY THE COURT:

Q Ma'am, you might just pull that microphone over a little bit.

Ma'am, do you understand that you are now under oath and if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or making a false statement?

A Yes.

Q Ma'am, what's your full name?

A Kendra D. Kingsbury.

1 Q How old are you, ma'am?

2 A 50.

3 Q And how far did you go in school?

4 A Master's.

5 Q Have you been treated recently for any mental illness or
6 addiction to narcotic drugs?

7 A No.

8 Q Are you currently under the influence of any drug or
9 medication or alcoholic beverage?

10 A No. Prescription for type 2 diabetes.

11 Q Okay. Have you received a copy of the indictment
12 pending against you?

13 A Yes.

14 Q Have you fully discussed those charges and the case in
15 general with Mr. Ermine?

16 A Yes.

17 Q Has he done everything you've asked him to do?

18 A Yes.

19 Q Do you have any question, concern, or complaint about
20 his advice?

21 A No. I've already shared those with my counsel.

22 Q Do you have -- are you fully satisfied with counsel,
23 representation, and advice given to you?

24 A Yes.

25 Q Has anyone attempted in any way to force you to plead

1 guilty?

2 A No.

3 Q Are you pleading guilty of your own free will because
4 you are in fact guilty?

5 A Yes.

6 Q Do you understand the offense to which you're pleading
7 guilty is a felony?

8 A Yes.

9 Q You understand if your plea is accepted, you'll be
10 adjudged guilty of those offenses and that such adjudication
11 may deprive you of valuable civil rights such as the right to
12 vote, the right to hold public office, the right to serve on a
13 jury, and the right to possess any kind of firearm?

14 A Yes.

15 Q Do you understand you're agreeing to plead guilty to
16 Counts 1 and 2 of the indictment charging you with a violation
17 of 18 U.S.C. 793(e), that is, willful retention of national
18 defense information?

19 A Yes.

20 Q You understand by entering a plea of guilty, you admit
21 you knowingly committed these offenses and are in fact guilty
22 of these offenses?

23 A Yes.

24 Q Do you understand that on each of Counts 1 and 2 of the
25 indictment, that the maximum penalty the court may impose is

1 not more than ten years of imprisonment, a \$250,000 fine,
2 three years of supervised release, and these are class C
3 felonies that include a \$100 mandatory special assessment?

4 A Yes.

5 Q Do you understand all the possible consequences of your
6 plea?

7 A Yes.

8 Q Do you understand that if you enter a plea of guilty,
9 the court will determine a reasonable and appropriate sentence
10 in your case at the time of your sentencing hearing?

11 A Yes.

12 Q Do you understand that in determining an appropriate
13 sentence, the court will take into consideration all statutory
14 factors required which include but are not limited to the
15 recommendation of the United States Sentencing Guidelines?

16 A Yes.

17 Q Do you understand that the guidelines are discretionary
18 and not mandatory?

19 A Yes.

20 Q Do you understand you could be sentenced to a term as
21 recommended by the guidelines, less than the guidelines, or
22 even greater than the guidelines?

23 A Yes.

24 Q Have you and your attorney talked about how the
25 guidelines might apply?

1 A Yes.

2 Q You understand that it's my responsibility to determine
3 how the guidelines apply?

4 A Yes.

5 Q You understand I'll not be able to determine the
6 guidelines until after the presentence report has been
7 completed and both you and the government have had an
8 opportunity to challenge the reported facts and the
9 conclusions on the guidelines?

10 A Yes.

11 Q Do you understand that if it's necessary for the court
12 to determine issues of fact in deciding how the guidelines
13 apply, those factual issues will be decided by the court on
14 the basis of the greater weight of the evidence presented?

15 A Yes.

16 Q Do you understand that in deciding any factual issues,
17 the court will consider all information deemed by the court to
18 be reliable which could include hearsay?

19 A Yes.

20 Q And do you understand if the court determines that the
21 application of the guidelines is different than what you or
22 your attorney thought they would be, that will not provide you
23 with grounds to withdraw a plea of guilty?

24 A Yes.

25 Q You understand that parole has been abolished in the

1 federal system and if you are sentenced to prison, you will
2 not be released on parole?

3 A Yes.

4 Q Do you understand that if you enter a plea of guilty,
5 you will not later be allowed to withdraw your plea based upon
6 the nature or the length of the sentence you receive?

7 A Yes.

8 Q Do you understand that you have the right to plead not
9 guilty to any offense charged against you, to persist in that
10 plea, and that you would then have the right to trial by jury?

11 A I do.

12 Q You understand at trial you would be presumed to be
13 innocent and the government would have to prove your guilt
14 beyond a reasonable doubt?

15 A Yes.

16 Q You understand you would have the right to assistance of
17 counsel in your defense, the right to see and hear all
18 witnesses, have them cross-examined in your defense and the
19 right on your own part to decline to testify unless you
20 voluntarily elected to do so?

21 A Yes.

22 Q You understand you would have the right to issue
23 subpoenas to compel the attendance of witnesses and you
24 understand should you decide not to testify or put on any
25 evidence, these facts cannot be used against you?

1 A Yes.

2 Q Do you understand that by entering a plea of guilty, if
3 that plea is accepted, there will be no trial and you will
4 have waived or given up your right to trial as well as all
5 those other rights associated with trial as I've just
6 described them to you?

7 A I do.

8 Q You understand you're about to enter a plea of guilty to
9 Counts 1 and 2 of the indictment charging you with willful
10 retention of national defense information?

11 A I do.

12 Q You understand by entering a plea of guilty, you admit
13 that you knowingly committed this offense and are in fact
14 guilty of these offenses?

15 A I am.

16 THE COURT: Mr. Edwards or Mr. Raskin, would one of
17 you please summarize the evidence that you believe the
18 government could produce at trial.

19 MR. EDWARDS: Yes, Your Honor.

20 I'm going to move to the podium if that's okay.

21 THE COURT: Please.

22 MR. EDWARDS: Your Honor, if this case were to go to
23 trial, the United States would present evidence at that trial
24 such that would prove the defendant guilty beyond a reasonable
25 doubt including that Ms. Kingsbury was employed by the Federal

1 Bureau of Investigation from 2004 to on or about December 15th
2 of 2017, in the position of intelligence analyst. In her
3 position as intelligence analyst, Kingsbury was assigned to a
4 sequence of different FBI squads, each of which had a
5 particular focus such as illegal drug trafficking, violent
6 crime, violent gangs, and counterintelligence.

7 In connection with her FBI employment and in
8 furtherance of her duties as an intelligence analyst,
9 Kingsbury held a top secret SCI security clearance and had
10 access to national defense and classified information. The
11 national defense and classified information to which Kingsbury
12 had access was owned by, produced by, produced for, and under
13 the control of the United States government.

14 Kingsbury's access to such information was
15 restricted by classification of the information. Some
16 information was further restricted through compartmentation
17 and sensitive compartmented information categories or SCI.

18 The classified information to which Kingsbury had
19 access, including SCI, was marked according to its
20 classification and applicable SCI compartments following
21 standard formats for different types of media, including but
22 not limited to headers and footers stating the highest
23 classification level and SCI compartments of information a
24 document contained and individual classification markings for
25 each paragraph.

1 The classified information to which Kingsbury had
2 access, including SCI, could only be lawfully accessed by
3 persons determined by an appropriate United States government
4 official to be eligible for access to classified information
5 who had signed and approved nondisclosure agreement who
6 received a security clearance and who had a need to know the
7 classified information.

8 Such information could only be stored in an approved
9 facility and container. Kingsbury's access to national
10 defense and classified information was based in part upon her
11 agreement to follow the laws, regulations, and government
12 policies regarding the handling, marking, transportation, and
13 storage of classified materials.

14 Over her 12 and a half years, holding a security
15 clearance, Kingsbury signed numerous agreements with the
16 United States government agreeing to abide by these
17 conditions. Kingsbury regularly received training regarding
18 classified information, including the definitions of
19 classified information, the levels of classification, and SCI
20 as well as the proper handling, marking, transportation, and
21 storage of classified materials.

22 Kingsbury received training on her duty to protect
23 classified materials from unauthorized disclosure, which
24 included complying with handling, transportation, and storage
25 requirements. Kingsbury knew that unauthorized removal of

1 classified materials and transportation and storage of those
2 materials in unauthorized locations risked disclosure of those
3 materials and, therefore, could endanger the national security
4 of the United States and the safety of its citizens.

5 In particular, Kingsbury was advised repeatedly
6 prior to December 11th, 2017, that unauthorized disclosure of
7 secret information reasonably could be expected to cause
8 serious damage to the national security that the original
9 classification authority was able to identify and describe.

10 In executing a nondisclosure agreement in 2004, when
11 she started working at the FBI, Kingsbury acknowledged, quote,
12 I have been advised that the unauthorized retention of SCI by
13 me could cause irreparable injury to the United States or be
14 used to advantage by a foreign nation, end quote.

15 Training presentations and materials specifically
16 warned Kingsbury that she was prohibited from retaining
17 classified information at her personal residence. Classified
18 information relating to the national defense is closely held
19 and maintained under specific security conditions. Because
20 Kingsbury held a security clearance, had received training
21 regarding the protection of classified information, and was
22 employed by the FBI as an intelligence analyst, the United
23 States government entrusted her with access to sensitive
24 government materials, including information relating to the
25 national defense that was closely held by the United States

1 government and other classified documents and materials.

2 Kingsbury had access to these sensitive government
3 materials at a secure area of the FBI's Kansas City division
4 and, otherwise, through secure government computer systems and
5 programs.

6 Repeatedly over the course of her FBI employment,
7 Kingsbury removed from the FBI and retained in her personal
8 residence an abundance of sensitive government materials,
9 including national defense information and classified
10 documents. In total, Kingsbury improperly removed and
11 unlawfully and willfully retained approximately 386 classified
12 documents in her personal residence.

13 The documents retained by Kingsbury in her personal
14 residence included documents in electronic format on hard
15 drives, compact disks, and other storage media. Through the
16 course of the investigation, it was discovered that Kingsbury
17 had initiated searches in classified FBI databases utilizing
18 information obtained from the sensitive government materials
19 discovered in her home that were improperly removed and
20 unlawfully and willfully retained by Kingsbury.

21 The national defense information that Kingsbury
22 unlawfully retained and included -- unlawfully retained
23 included numerous documents classified at the secret level
24 from the FBI that described intelligence sources and methods
25 related to United States government efforts to defend against

1 counterterrorism, counterintelligence, and cyber threats.

2 These documents included details on the FBI's
3 nationwide objectives and priorities, including specific
4 investigations across multiple field offices that were open at
5 the time Kingsbury unlawfully retained the documents.

6 In addition, there were documents relating to
7 sensitive human source operations and national security
8 investigations, intelligence gaps regarding hostile foreign
9 intelligence services and terrorist organizations, and the
10 technical capabilities of the FBI against counterintelligence
11 and counterterrorism targets.

12 These documents included the following classified
13 documents referred to in Count 1 of the indictment in this
14 case, and I would refer the court to the list of ten documents
15 included in Count 1.

16 The national defense information that Kingsbury
17 unlawfully retained included numerous documents classified at
18 the secret level from another government agency that described
19 intelligence sources and methods related to U.S. government
20 efforts to collect intelligence on terrorist groups. The
21 documents included information about Al-Qaeda members on the
22 African continent including a suspected associate of Osama bin
23 Laden.

24 In addition, there were documents regarding the
25 activities of emerging terrorists and their efforts to

1 establish themselves in support of Al-Qaeda in Africa. These
2 documents included the following classified documents and are
3 referred to in Count 2 of the indictment in this case, and I
4 would again refer the court to the indictment; specifically,
5 the ten documents listed in Count 2.

6 Kingsbury knew that these 20 documents were
7 classified, contained national defense information, and that
8 she did not have a need to know the information contained in
9 the documents. Kingsbury knew that the information in these
10 documents could be used to the injury of the United States or
11 to the advantage of any foreign nation. Kingsbury was not
12 authorized to possess these documents in her personal
13 residence, and her personal residence was not a location
14 authorized to store classified information.

15 Kingsbury knew that her personal residence was not
16 an authorized location for such storage and having
17 unauthorized possession of these 20 documents relating to the
18 national defense. She willfully retained the documents and
19 failed to deliver them to an officer or employee of the United
20 States entitled to receive them.

21 That, Your Honor, is a summary of the evidence that
22 the government would present at trial to prove the defendant
23 guilty beyond a reasonable doubt of both Counts 1 and 2.

24 THE COURT: Ms. Kingsbury, do you understand the
25 government would be required to prove all that at trial?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you do the things the government
3 said you did?

4 THE DEFENDANT: Yes.

5 THE COURT: How do you now plead, guilty or not
6 guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: It's the finding of the court in the
9 case of the United States v. Ms. Kendra Kingsbury that the
10 defendant is fully competent and capable of entering an
11 informed plea; that the defendant is aware of the nature of
12 the charges and the consequences of the plea; and the plea of
13 guilty is a knowing and voluntary plea supported by an
14 independent basis in fact containing each of the essential
15 elements of the offense. The plea is accepted, and the
16 defendant is now adjudged guilty of those offenses.

17 Ma'am, a written presentence report will be prepared
18 by the probation office to assist in sentencing. You will be
19 asked to give information for that report, and your attorney
20 may be present if you wish.

21 The court will permit you and your counsel to read
22 the presentence report and file any objections to the report
23 before the sentencing hearing. Both you and your counsel will
24 be given an opportunity to speak at the sentencing hearing,
25 which we're going to set for March 16, 2023, at 1:30 p.m.

1 Would the government like to be heard on the issue
2 of bond?

3 MR. EDWARDS: Not at this time, Your Honor.

4 THE COURT: Ma'am, you'll remain on the same
5 conditions of bond that have previously been set forth. Have
6 you already surrendered your passport?

7 THE DEFENDANT: Yes. The court should have it.

8 THE COURT: Very good.

9 Anything else?

10 MR. EDWARDS: Judge, I have two additional topics
11 I'd like to cover for the record at this time. The first is
12 the discovery obligations that the government had in this case
13 and has fulfilled in this case. For the record, this is a
14 case that involved both classified and unclassified discovery.
15 The unclassified discovery included close to or approximately
16 8,650 pages of unclassified material. That also included
17 photos and videos.

18 That unclassified discovery was provided to defense
19 shortly after the indictment. There was also classified
20 discovery in this case. That classified discovery, once
21 Mr. Ermine and the rest of the defense team had received
22 proper clearance from the United States government, Mr. Ermine
23 was able to review the 20 indictment documents that are named
24 in the indictment at the FBI in a secured facility where they
25 can be properly viewed by an individual.

16

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

REPORTER'S CERTIFICATE

I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

Date

/s/Gayle M. Wambolt
GAYLE M. WAMBOLT, CRR, RMR
United States Court Reporter