UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 2:20-cr-114-FtM-66MRM

CASEY DAVID CROWTHER

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT

The defendant seeks to dismiss the pending four count indictment (Doc. 15) based upon the contention that the indictment is legally deficient and fails to state an offense pursuant to Fed. R. Crim. P. 12(b)(3)(B)(v). Doc. 25. The defendant seeks to have this Court consider the facts and evidence of the case which far exceeds the limited scope of a motion filed pursuant to Rule 12(b)(3)(B)(v). The indictment is legally sufficient as it charges the language of the applicable statutes and sufficiently informs the defendant of the charges against him. Therefore, the motion to dismiss should be denied.

SUMMARY OF THE INDICTMENT

The defendant is charged in a four count speaking indictment with Bank Fraud (18 U.S.C. § 1344) (Count One), False Statement to Lending Institution (18 U.S.C. § 1014) (Count Two), and Illegal Monetary Transactions (18 U.S.C. § 1957) (Counts Three and Four). Doc. 15. The indictment contains an introduction section that is applicable to all four charged counts. *Id.* at 1-4. Specifically, the introduction section identifies and defines the defendant, defendant's business, Small Business Association ("SBA"), Coronavirus Aid, Relief, Economic Security ("CARES") Act, the Payroll Protection Program ("PPP"), and the Lender[1]. *Id.* The Lender is specifically defined as "a financial institution federally insured by the Federal Deposit Insurance Corporation ('FDIC') headquartered and with branches in Lee County, Florida…" *Id.* at 4.

A. Count One

Count One of the indictment, charging bank fraud, consists of three additional sections labeled "The Scheme to Defraud," "Manner and Means of the Scheme," and "Execution of the Scheme" which outline the charge. *Id*. Further, the Scheme to Defraud section tracks the language of the bank fraud statute under 18 U.S.C. § 1344 and states "the defendant did knowingly and intentionally execute, and attempt to execute, a scheme and artifice to defraud a financial institution, and to obtain monies, funds, credits, assets, and other property owned by, and under the custody and control of, a financial

[1] The defendant, in his motion to dismiss, refers to the Lender named within the indictment as "the Bank." Doc. 25 at 4. The government, for the sake of remaining consistent with the charged language of the indictment, will refer to the Lender as "the Lender."

institution, by means of materially false and fraudulent pretenses, representations, and promises." *Id.* at 4.

The Manner and Means of the Scheme section further details and outlines how the defendant perpetrated the scheme and artifice to defraud. Moreover, this section describes the false, fraudulent, and misleading representations made to the Lender which caused the Lender to deposit funds into accounts under the defendant's control which the defendant used for his own personal enrichment. *Id.* at 4-6. The Execution of the Scheme section further states the defendant executed the scheme and artifice to defraud, "by submitting a false PPP loan application and revised PPP loan application on behalf of his company, Target Roofing, in order to receive a loan from the Lender, a bank insured by the FDIC, which loan was guaranteed by the SBA…" *Id.*at 6-7.

B. Count Two

Count Two of the indictment, charging false statement to lending institution, tracks the language of the applicable statute under 18 U.S.C. § 1014. *Id.* at 7. More specifically, Count Two summarizes the false statement made by the defendant in a PPP loan application and revised PPP loan application submitted to the Lender, an institution insured by the FDIC.

C. Counts Three and Four

Counts Three and Four of the indictment, charging illegal monetary transactions, track the language of the applicable statute under 18 U.S.C. § 157. *Id.* at 8-9. Further, these counts allege the defendant knowingly engaged in monetary transactions in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity. *Id.* Counts Three and Four describe the unlawful activity as bank fraud and further describes each monetary transaction in criminally derived property of a value greater than $10,000. *Id.* These monetary transactions include a $100,000 wire made to S.A. in connection with a $722,474.00 promissory note, and a $689,417.00 wire to Sara Bay Marina for the purchase of a 40' Invincible Catamaran boat. *Id.*

ARGUMENT

In determining the legal sufficiency of an indictment, "a district court is limited to reviewing the face of the indictment and, more specifically, the language used to charge the crime." *United States v. Sharpe*, 438 F.3d 1257, 1263 (11th Cir. 2006) (citing *United States v. Critzer*, 951 F.2d 306, 307 (11th Cir. 1992). Further, the Court is to read the indictment in the light most favorable to the United States and assume the factual allegations to be true. *Sharpe*, 438 F.3d at 1258-59. To be valid, an indictment "must contain the elements of the offense intended to be charged, and sufficiently apprise the defendant of what he must be prepared to meet." *Id.* at 1263 (quoting *United States v. Bobo*, 344 F.3d 1076, 1083 (11th Cir. 2003). Moreover, an indictment "is sufficient if it charges in the language of the statute." *Critzer*, 951 F.2d at 307.

With criminal cases, there is no summary judgment mechanism that would enable the Court to engage in the pre-trial determination of the sufficiency of the government's evidence. *United States v. Salman*, 378 F.3d 1266, 1268 (11th Cir. 2004). Here, the defendant has submitted a motion to dismiss that is akin to a civil motion for summary judgment. The defendant's motion, in essence, asks this Court to make a pre-trial determination of the facts and evidence of the case based on what the defendant believes the facts and evidence to be. Furthermore, the government is not required to submit a proffer of what it will prove at trial in its response to the defendant's motion to dismiss. *See Critzer*, 951 F.3d at 307-8. The government's response will therefore be limited to the legal sufficiency of the four corners of the indictment.

A. The Defendant's use of PPP loan proceeds invokes a pre-trial determination of the facts and evidence of the case.

The defendant has asked this court to dismiss Counts One through Four of the indictment based upon the premise that the defendant lawfully used

PPP loan proceeds. Doc. 25 at 7-12. In doing so, the defendant asks the Court to make a factual and evidentiary determination as to whether the defendant lawfully used PPP funds. The government would certainly disagree with the defendant's characterization of his use of PPP loan proceeds.

The Manner and Means section of Count One of the Indictment clearly describes the false, fraudulent, and misleading representations that were made to the Lender and SBA which caused the issuance of $2,098,700.00 in PPP funds and are the basis for the charge. Doc. 15 at 5. Specifically, the indictment alleges that the defendant (1) falsely represented the PPP loans proceeds would only be used for business related purpose as specified in the loan application, and (2) falsely certified the PPP funds would be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments. *Id.*

Upon receiving the fraudulently obtained PPP funds, the indictment further alleges the defendant used the funds for unauthorized purposes which included the purchase of a brand new 40' boat. *Id.* at 6. The Court, in determining the legal sufficiency of the Indictment, is to assume these factual allegations are true. *Sharpe*, 438 F.3d at 1258-59. Therefore, the Indictment sufficiently charges the defendant's unauthorized use of PPP funds.

While the defendant, in his motion, devotes several pages outlining in defense his "lawful" use of PPP funds, these arguments should be made in a motion for acquittal after the government presents its evidence at trial. *See* Fed. R. Crim. P. 29; *Salman*, 378 F.3d at 1268. A motion to dismiss is not the appropriate vehicle to present facts and evidence in one's defense. If anything, the portions of the defendant's motion justifying his use of PPP funds proves the indictment sufficiently apprises the defendant of the charges against him.

B. Count One alleges the financial institution is the Lender, not the SBA.

The defendant argues Count One of the indictment, charging bank fraud, should be dismissed because the SBA is not a financial institution. Doc. 25 at 12-13. Nowhere in Count One of the indictment does the government allege the SBA is the defrauded financial institution. Further, Count One of the indictment sufficiently alleges the defendant defrauded the Lender, described in the Introduction section as "a financial institution federally insured by the Federal Deposit Insurance Corporation ('FDIC')…" Doc. 15 at 4-7. Count One further alleges the defendant knowingly and intentionally executed a scheme and artifice to defraud the Lender by making false, fraudulent, and misleading representations in PPP loan applications. *Id.* Moreover, the defendant executed the scheme to defraud "in order to receive a loan from the Lender, a bank insured by the FDIC, which loan was guaranteed by the SBA and which proceeds were deposited into accounts at the Lender under the defendant's custody and control." *Id*. at 7. Therefore, the defendant's argument in support of dismissing Count One of the indictment because the SBA is not a financial institution lacks merit.

C. Count One and Count Two state an offense and allege the requisite intent.

The defendant contends Count One and Count Two of the indictment should be dismissed because the government failed to allege the requisite intent and state a valid offense. Doc 25 at 13-19. Count One and Count Two of the indictment sufficiently allege the requisite intent. Count One alleges the defendant *knowingly* executed a scheme and artifice to defraud a financial institution, closely mirroring the language of the bank fraud statute under 18 U.S.C. § 1344. Doc. 15 at 4-7. Count Two alleges the defendant *knowingly* made a false statement, which tracks the language of the false statement to lending institution statute under 18 U.S.C. § 1014. Doc. 15 at 7.

Again, rooted in the defendant's reasoning for dismissal is an examination of what the defendant believes the facts and evidence to be. This includes asking the Court to consider representations of what the defendant used PPP funds for and the financial condition of his business in making a factual determination of what the defendant's intent was. Doc. 25 at 13-16. The appropriate time and place for such a request would be at trial in a motion for acquittal after the government has presented its evidence. Even the *McCarrick* case, cited and analyzed by the defendant, involved the appellate review of the sufficiency of the government's evidence presented *at trial* and not the legal sufficiency of the governments indictment. *See United States v. McCarrick*, 294 F.3d 1286 (11th Cir. 2002). As the government previously noted, such a pre-trial examination of the evidence is prohibited when ruling on a Rule 12(b)(3)(B)(v) motion to dismiss. *See Salman*, 378 F.3d at 1268.

D. Counts Three and Four (Illegal Monetary Transactions) sufficiently allege and specify the unlawful activity.

The defendant requests a dismissal of Counts Three and Four of the indictment because the counts do not specify an unlawful activity. The defendant's reasoning is that since the defendant did not commit bank fraud, he cannot be charged with violating 18 U.S.C. § 1957. The indictment itself tracks the language of the statute, specifies the unlawful activity as bank fraud, and summarizes two separate monetary transactions, in and affecting interstate and foreign commerce. Additionally, as previously stated, Count One of the indictment sufficiently alleges and charges bank fraud.

The defendant further argues its belief of what the facts and evidence are concerning the appropriate nature of the alleged financial transactions. Such a characterization, of which the government would disagree with, is based upon the defendant's representation of the facts and evidence of the case. Again, these are arguments the defendant should be making once the government presents its evidence at trial, not in the form of a Rule 12 motion to dismiss.

CONCLUSION

The defendant's motion to dismiss goes far beyond the scope of what this Court may consider in determining the legal sufficiency of the government's indictment under Rule 12. The indictment tracks the language of the applicable statutes and sufficiently apprises the defendant of the charges against him. Wherefore, the United States of America respectfully requests the defendant's motion to dismiss (Doc. 25) be denied.

Respectfully submitted,

By: *_/s/ Trent Reichling_*

Trenton J. Reichling
Assistant United States Attorney
Florida Bar No. 0084601
2110 First Street, Suite 3-137
Ft. Myers, Florida 33901
Telephone: (239) 461-2200
Facsimile: (239) 461-2219
E-mail: Trenton.Reichling@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Nicole H. Waid
nicole.waid@fisherbroyles.com

/s/ Trent Reichling
Trenton J. Reichling
Assistant United States Attorney