UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES

v. Criminal No. 2:S20-cr-114-FTM-66MRM

CASEY DAVID CROWTHER

Defendant.
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DEFENDANT'S MOTION IN *LIMINE* TO EXCLUDE EVIDENCE OF JUNE 1, 2020 WIRE TRANSFER

Defendant, Casey David Crowther ("**Crowther**"), through undersigned counsel, and pursuant to Fed. R. Evid. 401 and 403, hereby files his Motion in *Limine* to Exclude Evidence of June 1, 2020 Wire Transfer.

I. INTRODUCTION

This Court should exclude evidence at trial of a June 1, 2020 wire transfer initiated by Crowther that has absolutely nothing to do with the facts or issues in this action. On February 3, 2021, the Government's counsel provided its Rule 404(b) notice advising the undersigned of the Government's intention to present at trial evidence of a June 1, 2020 wire transfer that was initiated by Sanibel Captiva Community Bank, at Crowther's request, in the amount of $55,000.00 to purchase a horse from a third party. This wire transfer bears no relation whatsoever to (a) the PPP Loan funds, (b) the April 24, 2020 boat purchase, or (c) the April 21, 2020 payment against the promissory note alleged in the Second Superseding Indictment.

The June 1, 2020 wire transfer for the horse purchase took place well over a month after the boat purchase that is the subject of the Second Superseding Indictment and was initiated from a business operating account owned by Target Roofing and Sheet Metal, Inc. ("**Target**"), Crowther's business, that contained comingled funds (i.e., both PPP Loan proceeds and non-loan funds derived from Target's normal business operations).[1] The June 1, 2020 wire transfer also occurred more than a month after the transfer related to Crowther's alleged payment against the promissory note. Importantly, the amount of non-PPP Loan proceeds in the account were more than sufficient to cover the amount of the June 1, 2020 wire transfer.

Moreover, at all times material Target was designated as an S-corporation, which means that all business revenue, after subtracting business expenses, were by operation of IRS regulations automatically imputed to Crowther as personal income.[2] Consequently, there is absolutely nothing improper, untoward, or illicit about utilizing funds held in Target's operating account for the purchase of Crowther's personal asset, so long as the transaction is properly booked as a distribution to Crowther or a loan from Target to Crowther by Target's tax accountant at the end of the year.

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[1] The PPP Loan proceeds originally were deposited into a separate corporate bank account with Sanibel Captiva Community Bank (Account ****6331). After the loan proceeds were deposited into this corporate account, Crowther transferred the loan proceeds to Target's business operating account. Account ****6631 already had been closed when the June 1, 2020 wire transfer was initiated.

[2] *See* https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations (stating that "S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes").

Under these circumstances, all evidence relating to the June 1, 2020 wire transfer, along with the horse purchase, should be completely excluded at trial. This evidence is wholly irrelevant to the facts and issues in the Second Superseding Indictment. The non-existent probative value of such evidence runs the substantial risk of unfairly prejudicing Crowther, confusing the issues, and misleading the jury. Because (a) the funds held in Target's operating account were imputed to Crowther as personal income, and (b) the operating account had sufficient non-PPP Loan related assets to cover the purchase, there was absolutely nothing unlawful about Crowther's actions.

All of this evidence should be excluded at trial. The PPP Loan proceeds were distributed into one of Target's accounts on April 14, 2014. Crowther has been charged with utilizing PPP Loan funds in connection with the purchase of a boat later in April 2020. The horse purchase – which was ***not*** made from funds contained in the PPP account – occurred well over a month after the boat purchase and has nothing to do with the boat. Accordingly, the June 1, 2020 wire transfer for the horse purchase has absolutely no bearing on Crowther's intent when the loan application was made. Moreover, despite three (3) opportunities to allege facts regarding the June 1, 2020 wire transfer and horse purchase (i.e., the original Indictment, the First Superseding Indictment, and the Second Superseding Indictment), the Government alleged zero facts regarding either the wire transfer or horse purchase in the Government's charging instrument.

Accordingly, Crowther requests that evidence of the June 1, 2020 wire transfer and the horse purchase be excluded at trial, along with all evidence of any financial transactions that are not related to PPP Loan proceeds.

II. MEMORANDUM OF LAW

A. Standard

Fed. R. Evid. 401 states: "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 403 states: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. "Under the Federal Rules of Evidence, all evidence is subject to the probative-prejudicial balancing test of Rule 403." *United States v. Rodriguez*, 259 Fed. Appx. 270, 275 (11th Cir. 2007) (citing *United States v. Hewes*, 729 F. 2d 1302, 1314 (11th Cir. 1984)).

Exclusion is required where prejudice outweighs probative value. *See*, *e.g.*, *United States v. Preston*, 608 F. 2d 626, 639 n. 16 (5th Cir. 1979). Even where evidence has some probative worth, evidence should be excluded where its prejudicial impact substantially outweighs any such probative value. *See United States v. Baker*, 432 F. 3d 1189, 1212 (11th Cir. 2005).

Here, the prejudicial impact of evidence relating to the June 1, 2020 wire transfer and horse purchase would substantially outweigh the non-existent probative value of such evidence. Neither the wire transfer nor horse purchase bear on Crowther's intent when the PPP loan application was made. Similarly, they have nothing to do with the April 24, 2020 boat purchase or April 21, 2020 wire transfer in reference to the promissory note payment alleged in the Second Superseding Indictment. Accordingly, all evidence regarding the June 1, 2020 wire transfer and horse purchase should be excluded at trial.

B. The June 1, 2020 Wire Transfer is Irrelevant to Crowther's Alleged Use of PPP Loan Proceeds

Evidence relating to the June 1, 2020 wire transfer and horse purchase should be excluded at trial because it is wholly irrelevant to Crowther's alleged use of PPP Loan proceeds. The PPP Loan proceeds were disbursed into one of Target's accounts on April 14, 2020. The Second Superseding Indictment alleges that Crowther utilized PPP Loan proceeds in two (2) ways. First, it is alleged that Crowther caused a $100,000.00 wire transfer to be initiated on April 21, 2020 in connection with a payment against a promissory note. Doc. 62 at p. 9.[3] Second, it is alleged that Crowther utilized PPP Loan proceeds to purchase a boat on April 24, 2020. *Id.* Nowhere in the Second Superseding Indictment are any facts alleged regarding the June 1, 2020 wire transfer or horse purchase.

Importantly, the June 1, 2020 wire transfer and horse purchase are not close in time to either of the transactions alleged in the Second Superseding Indictment. The

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[3] References to the Second Superseding Indictment are denoted herein as "Doc. 62 at p. __."

June 1, 2020 wire transfer occurred well over a month after the promissory note payment and boat purchase from a different Target account. The promissory note payment and boat purchase were effectuated using funds that were transmitted to different third parties on different dates and had nothing to do with the June 1, 2020 wire transfer. The June 1, 2020 wire transfer has absolutely nothing to do with the utilization of PPP Loan funds alleged in the Second Superseding Indictment. Because the June 1, 2020 wire transfer and horse purchase have zero relevance to the facts alleged in the Second Superseding Indictment, the prejudicial value of this evidence clearly significantly exceeds its non-existent probative value. *See*, *e.g.*, *United States v. Baker*, 432 F. 3d 1189, 1212 (11th Cir. 2005) (holding that even where evidence has some probative worth, evidence should be excluded where its prejudicial impact substantially outweighs any such probative value).

C. There is No Correlation Between the PPP Loan Proceeds and the June 1, 2020 Wire Transfer

Separately, there is absolutely no correlation between the PPP Loan proceeds and the June 1, 2020 wire transfer and horse purchase. The June 1, 2020 wire transfer was made to a third party in the amount of $55,000.00 from Target's business operating account at Sanibel Captiva Community Bank. When the wire transfer was made, Target's business operating account contained comingled funds (i.e., PPP Loan proceeds and non-PPP related funds). The amount of non-PPP related funds in the account were more than sufficient to cover the amount of the June 1, 2020 wire transfer. There is absolutely no evidence to the contrary.

Moreover, there otherwise was nothing unlawful, untoward, or illicit with respect to the June 1, 2020 wire transfer and horse purchase. Although the June 1, 2020 wire transfer was made in connection with acquiring a personal asset, it was entirely permissible for Crowther to draw upon funds held in Target's business operating account. At all times material, Target was designated as an S-corporation with the IRS. Therefore, by operation of IRS regulations Target's income, after subtracting business expenses, was automatically imputed to Crowther as personal income. So long as the transaction is properly accounted for by Target's tax accountant at the end of the year as either a distribution or a loan from Target to Crowther personally, it is a perfectly lawful transaction. Crowther was therefore properly within his discretion to use funds from the business operating account to effectuate the horse purchase.

Again, when the wire was initiated, the account held a more than sufficient amount of non-PPP Loan proceeds to adequately cover Crowther's horse purchase. There is no evidence that the wire transfer or horse purchase utilized any PPP Loan proceeds or had anything to do with the specific subject matter alleged in the Government's Second Superseding Indictment. As such, evidence of both the June 1, 2020 wire transfer and horse purchase have no probative value whatsoever. By contrast, the prejudicial value of introducing such evidence at trial is clearly substantial, inasmuch as it may tend to paint Crowther in a bad light before the jury, given that the Government wishes to paint Crowther as a person who was frivolous with his money.

Accordingly, evidence of the June 1, 2020 wire transfer and horse purchase should be excluded at trial. *See*, *e.g.*, *United States v. Preston*, 608 F. 2d 626, 639 n. 16 (5th Cir. 1979) (recognizing that exclusion is required where prejudice outweighs probative value).

D. The Government's Three Indictments Omit Any Reference to the June 1, 2020 Wire Transfer as Either a Manner and Means or Inextricably Intertwined to the Charges

The Government had three (3) opportunities to allege facts regarding the June 2, 2020 wire transfer and horse purchase – i.e., the original Indictment, First Superseding Indictment, and Second Superseding Indictment. In fact, the Government had full knowledge of the June 1, 2020 wire transfer and horse purchase before Crowther's arrest in September 2020. Yet, the Government never alleged any facts whatsoever regarding these matters. Notably, the Government's Rule 404(b) notice was provided to the undersigned on February 3, 2021. The Second Superseding Indictment was filed seven (7) days later but importantly alleged zero facts regarding either the June 1, 2020 wire transfer or horse purchase. The Government knowingly opted to omit references to these facts in the Second Superseding Indictment.

Consequently, the Second Superseding Indictment (along with all of the Government's prior Indictments) contains no allegations whatsoever referencing either the June 1, 2020 wire transfer or horse purchase as a manner and means of the crimes charged. Similarly, the Second Superseding Indictment also contains zero allegations that the June 1, 2020 wire transfer and horse purchase utilized PPP Loan proceeds that were inextricably intertwined with the offenses charged in the Second Superseding Indictment.

Clearly, the Government's failure to allege any such facts anywhere in the Second Superseding Indictment – which was filed a full week after the Government provided the undersigned with its Rule 404(b) notice – should preclude the Government's ability to now introduce such irrelevant facts at trial that are not probative as to any relevant issue. *See*, *e.g.*, *United States v. Preston*, 608 F. 2d 626, 639 n. 16 (5th Cir. 1979) (recognizing that exclusion is required where prejudice outweighs probative value).

E. The June 1, 2020 Wire Transfer and Horse Purchase Are Irrelevant to Crowther's Intent

Additionally, evidence of the June 1, 2020 wire transfer and horse purchase should be excluded at trial because they are wholly irrelevant to Crowther's intent when the PPP Loan application was made. As alleged in the Second Superseding Indictment, Crowther's original PPP Loan application was submitted on or about April 7, 2020, which was followed by a revised loan application that was submitted on or about April 13, 2020. SSI at p. 5. The PPP loan proceeds were distributed shortly thereafter, in the month of April. *Id*. at p. 9. Consequently, the June 1, 2020 wire transfer and horse purchase – which occurred more than a month later – were substantially removed in time from the PPP Loan application. As a result, the wire transfer and horse purchase have absolutely no bearing whatsoever on Crowther's alleged intent with respect to the offenses charged in the Second Superseding

Indictment. The probative value of this evidence therefore is substantially outweighed by the risk of unfair prejudice, confusing the issues, and misleading the jury. *See*, *e.g.*, *United States v. Preston*, 608 F. 2d 626, 639 n. 16 (5th Cir. 1979) (holding that exclusion is required where prejudice outweighs probative value); *United States v. Baker*, 432 F. 3d 1189, 1212 (11th Cir. 2005) (holding that even where evidence has some probative worth, evidence should be excluded where its prejudicial impact substantially outweighs any such probative value).

Accordingly, evidence relating to the June 1, 2020 wire transfer and the horse purchase should be excluded at trial, along with all evidence of any financial transactions that are not related to PPP Loan proceeds.

III. CONCLUSION

Based on the foregoing, Crowther respectfully requests that this Court (a) grant the instant Motion in all respects; (b) completely exclude at trial all evidence of the June 1, 2020 wire transfer and horse purchase pursuant to Fed. R. Evid. 401 and 403, along with all evidence of any financial transactions that are not related to PPP Loan proceeds; and (c) enter such other and further relief this Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Nicole H. Waid, attorney for Casey David Crowther, do hereby certify that I have, this day, filed the foregoing with the Clerk of Court via the CM/ECF system, which has caused a true and correct copy to be served on all counsel of record.

/s/ Nicole H. Waid
Nicole H. Waid, Esq.