UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 2:20-cr-114-JES-MRM

CASEY DAVID CROWTHER

UNITED STATES OF AMERICA'S MOTION IN LIMINE REGARDING EVIDENCE OF "GOOD STANDING"

The United States of America seeks an order prohibiting Defendant Casey Crowther from eliciting testimony, introducing evidence, or making argument that he, Target Roofing and Sheet Metal, Inc. (Target Roofing), or their respective accounts and loans with the Lender and the Mortgage Lender remain in good standing with those financial institutions. The United States also requests an order prohibiting Crowther from eliciting testimony, introducing evidence, or making argument regarding the absence of either of those financial institutions planning to default or defaulting those loans or accounts, or otherwise planning to initiate or initiating legal proceedings, on any account or loan.

Introduction

The defendant is charged in a seven-count second superseding indictment with bank fraud (18 U.S.C. § 1344) (Counts One and Five), false statements to a lending institution (18 U.S.C. § 1014) (Counts Two and Six), and illegal monetary transactions (18 U.S.C. § 1957) (Counts Three, Four, and Seven). Doc. 62. The seven charges can be grouped into two categories: those related to Crowther's procurement of a Paycheck Protection Program (PPP) loan from the Lender and those related to Crowther's procurement of a mortgage loan from the Mortgage Lender.

With respect to the PPP loan, the government intends to prove that Crowther applied for an approximately $2.1 million loan from the Lender on behalf of his company Target Roofing. When he applied for the loan, Crowther represented to the bank that Target Roofing would only use the proceeds of the loan for things like payroll and rent, even though he intended to impermissibly use the proceeds to benefit himself. Upon receipt of the PPP money, Crowther quickly and directly diverted much of it to purchase a nearly $700,000 boat and pay $100,000 in debt to an old business partner.[1] Crowther took steps to conceal the payments by describing the wire for the boat as "equipment" and the wire to the ex-business partner as "payroll."[2]

With respect to the mortgage loan, the government intends to prove that Crowther doctored bank account statements to artificially inflate the balance in an account he controlled. Crowther then used the inflated balance

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[1] Crowther had been negotiating the purchase of the boat prior to obtaining the PPP loan.
[2] The ex-business partner was not owed any back pay.

and doctored statements to make representations to the Mortgage Lender about his financial condition. The Mortgage Lender relied on those representations and statements when it later made the loan.

Neither the Lender nor the Mortgage Lender have defaulted Target Roofing or Crowther under their respective loans at the time of this motion.[3] Crowther, in past communications with the government and filings with the Court, has suggested that the lack of such action by the financial institutions is evidence that Crowther committed no crimes. His argument goes like this: if the banks haven't defaulted Crowther on the loans, they must not think he did anything wrong, and if the banks don't think Crowther did anything wrong, how can they have been defrauded? The Court should not permit this type of evidence or argument.[4]

The argument is unavailing at for least three reasons.[5] First, it is irrelevant that Crowther and Target Roofing are in good standing at the banks

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[3] In fact, the mortgage loan has already been repaid as the government permitted Crowther to sell the house after it was seized by law enforcement agents in connection with this case. *See* Doc. 43.

[4] There is little doubt that defendant would object if the shoe were on the other foot—the government trying to introduce evidence of Crowther's default on a loan to prove bank fraud, or the government pointing to the existence of a lawsuit to prove criminality.

[5] In a September 21, 2020 letter, counsel for Crowther provided the government with a letter of good standing issued by the Lender to Target Roofing on September 9, 2020. Counsel argued, "[the Lender] clearly does not consider itself a victim of bank fraud. If Mr. Crowther's accounts are in good standing, including his PPP loan, it is difficult to understand how the bank, the SBA, the government or anyone believes he misrepresented the facts." Counsel also stated in a motion to dismiss the indictment

and have not been sued. The banks may have practical, business, or legal reasons for not having pursued civil remedies yet.

Second, such evidence is also inadmissible because it is improper lay opinion masquerading as fact. Offering evidence of good standing at the bank to prove that the defendant did not lie to the bank is the equivalent of offering the bank's *opinion* that the defendant did not lie to the bank. As a matter of evidence, such opinion is inadmissible.

Third, the value of such evidence is substantially outweighed by the danger of misleading and confusing the jury, and unfairly prejudicing the government's case. The actions and thoughts of the victims, the Lender and the Mortgage Lender, are likely to hold considerable sway with the jury. Permitting Crowther to argue that the actions (or inactions) of the banks suggest they believe he is innocent is precisely the type of misleading, confusing, and prejudicial evidence that should be excluded.

Argument

The crime of bank fraud occurs when one knowingly "engaged in a scheme or artifice to defraud, or made materially false statements or representations to obtain moneys, funds, or credit" from a financial institution. *United States v. De La Mata*, 266 F.3d 1275, 1298 (11th Cir. 2001).

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filed in this case that "Target remains a valued customer of the Bank and its accounts remain in good standing" to bolster an argument for dismissal. Doc. 25.

The crime of false statement to a financial institution occurs when "a defendant made a false statement or report or willfully overvalued any land property or security … for the purpose of influencing in any way the action" of a financial institution. *United States v. Greene*, 862 F.2d 1512, 1514 (11th Cir. 1989).

From previous communications and Court filings, the government believes Crowther is likely to claim that his good standing with the banks is admissible evidence that he did not lie to them. The government strongly disagrees.

Evidence is only admissible if it is relevant. Fed. R. Evid. 402. And evidence is only relevant if it has "any tendency to make a fact more or less probable than it would be without the evidence" and the fact is of consequence in the case. Fed. R. Evid. 401. That Crowther is in good-standing with the Lender or the Mortgage Lender does not, in and of itself, say anything about whether he made misrepresentations to them. Crowther is certainly not the first defendant to face criminal charges well before civil processes were initiated.

The only way to get within eyesight of relevancy is to assume that good standing and the lack of defaults suggest that the banks hold the *opinion* that Crowther did not lie to them. But, such opinion evidence is inadmissible.

Lay opinion evidence is only admissible if it is rationally based on the witness's perception and helpful to determining a fact in issue. Fed. R. Evid. 701.[6]

The rationally-based-in-perception prong is "the familiar requirement of first hand-knowledge or observation." *United States v. Jayyousi*, 657 F.3d 1085, 1102 (11th Cir. 2011). In that regard: "[T]he opinion of a lay witness on a matter is admissible only if it is based on first-hand knowledge or observation—for example, a witness' opinion that a person with whom he had spoken was drunk, or that a car he observed was traveling in excess of a certain speed." *United States v. Marshall*, 173 F.3d 1312, 1315 (11th Cir. 1999).

The helpful-to-the-jury requirement exists to provide "assurances against the admission of opinions which would merely tell the jury which result to reach." Fed. R. Evid. 704 Advisory Cmtte. Note 1972 (discussing Fed. R. Evid. 701). "Seldom will be the case when a lay opinion on an ultimate issue will meet the test of being helpful to the trier of fact since the jury's opinion is as good as the witness'." *Slayton v. Ohio Dept. Youth Services, 206 F. 3d 669, 676* (6th Cir. 2000).

[6] The rule also permits lay opinion in circumstances where the opinion would be helpful to understanding the witness's testimony, which is far afield of the discussion here.

In this case, the Lender and the Mortgage Lender representatives have no first-hand knowledge of Crowther's activities other than their interactions with him, which make up a small portion of the total evidence in this case. No Lender representative, for instance, was present when Crowther settled on the base price of the boat a day after he was approved for a PPP loan. No Mortgage Lender representative has personal knowledge that Crowther sent them doctored bank statements. The representatives lack adequate personal knowledge to opine as to whether Crowther lied to them or not.

Even if the lenders had firsthand knowledge of everything presented to the jury, their opinion as to whether Crowther made misrepresentations isn't "helpful" to the jury. The jury is just as capable as the lenders to make that determination, indeed, it is their job to do so. This type of testimony and argument is nothing more than telling the jury what result to reach.

Good standing and lack of default evidence is also excludable as misleading, confusing, and unfairly prejudicial to the government under Federal Rule of Evidence 403. As discussed above, the government believes such evidence has no probative value. Yet, the risks inherent in the introduction of such evidence is extremely high. Admitting the evidence would allow Crowther to provide the jury with information and argument which confusingly and misleadingly suggest *that the victims in this case believe he* *is innocent*. The power of victim testimony to a jury is obvious and, here, that power carries a significant risk that the jury will place undue weight on evidence of vanishingly small probative value.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2021, 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:

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