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' MOTION IN LIMINE REGARDING EVIDENCE OR ARGUMENT THAT LENDER AND MORTGAGE LENDER SUFFERED NO FINANCIAL LOSS

The United States of America seeks an order prohibiting Defendant Casey Crowther ("Crowther") from eliciting testimony, introducing evidence, or making argument that the Lender and Mortgage Lender alleged in the Second Superseding Indictment suffered no financial loss as a result of the defendant's actions.

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 statement 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 Payroll Protection Program ("PPP") loan from the Lender and those related to Crowther's procurement of a mortgage loan from the Mortgage Lender to purchase a residence in St. James City.

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. As of the filing of this motion, the repayment period on the loan has not commenced. A PPP borrower is not required to make any repayments on the principal or interest on the loan until 10 months after the end of the borrower's loan forgiveness period or 10 months from the date the SBA determines the loan is not eligible for forgiveness. 86 FR 8283, 8288. Here, Crowther's loan forgiveness period ended on or about September 29, 2020, 24 weeks after the loan's disbursement date of April 14, 2020. Per the conditions of the loan program, Crowther would not have to make payments toward the loan until on or about July 29, 2021.[1]

With respect to the mortgage, the government intends to prove that Crowther defrauded the Mortgage Lender by making false representations

[1] Crowther did not apply for loan forgiveness during the 24 week loan forgiveness period.

concerning the source of the mortgage's down payment and his liquid assets. In an effort to corroborate these false representations, Crowther submitted altered bank statements that falsely represented the account's available balance. The Mortgage Lender, relying on the defendant's false representations, approved Crowther's application for the mortgage and, on July 31, 2020, disbursed approximately $640,381.21 towards the purchase of a $1,300,000 residence in St. James City. After being indicted for bank fraud related to the PPP loan on September 23, 2020, Crowther listed the St. James City residence for sale. Before the residence was sold[2], on October 28, 2020, Crowther was indicted for mortgage fraud in a superseding indictment and the government filed a notice of lis pendens on October 29, 2020 (Doc. 33). The government and defense counsel agreed to allow the pending sale of the residence to proceed, and the Mortgage Lender recouped the $640,381.21 it loaned to Crowther.

Argument

Crowther has previously argued the government cannot prove a scheme to defraud because there was no actual loss. Doc. 41 at 6. As explained below, the federal offense of bank fraud (18 U.S.C. § 1344) does not require

[2] On the date the defendant was charged with mortgage fraud in the Superseding Indictment, the residence was pending sale but had not been sold.

the government to prove the victim financial institution suffered a loss. *See Shaw v. United States*, 137 S.Ct. 462 (2016). Furthermore, since financial loss is not an element of the offense, any testimony, evidence, or argument concerning the absence of a financial loss is irrelevant and has no probative value.

To prove the crime of bank fraud, the government is required to prove the following elements beyond a reasonable doubt:

(1) The defendant knowingly carried out a scheme to defraud a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;

(2) The false or fraudulent pretenses, representations, or promises were material;

(3) The defendant intended to defraud the financial institution; and

(4) The financial institution was federally insured or a mortgage lending business.

See 11th Cir. Pattern Jury Instructions (2016).

The bank fraud statute does not require the government to prove the financial institution suffered a financial loss or that that defendant intended to cause such a loss. *Shaw*, 137 S.Ct. at 464. Additionally, "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. 401. While the issue of actual or intended loss may become relevant at a sentencing hearing, *see generally* U.S.S.G. §2B1.1, such a consideration is only appropriate in the event that Crowther is found guilty of any of the respective fraud charges contained within the Second Superseding Indictment. At this point such argument or suggestion regarding loss would be irrelevant and should not be permitted at trial.

Wherefore, the United States respectfully requests an order prohibiting Crowther from eliciting testimony, introducing evidence, and making arguments that the Lender and Mortgage Lender as alleged in the Second Superseding Indictment suffered no financial loss.

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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/s/ Trent Reichling
Trenton J. Reichling
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