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' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION SEEKING TO EXCLUDE EVIDENCE OF JUNE 1, 2020 WIRE TRANSFER

The defendant seeks to prohibit the government from introducing evidence of a wire transfer on June 1, 2020. Doc. 74. This Court should deny the motion because the evidence the government seeks to introduce is intrinsic evidence and relevant to the defendant's charged conduct. The evidence is also admissible under Federal Rule of Evidence 404(b) to prove the defendant's intent, knowledge, and absence of mistake or accident.

Introduction

The government intends to introduce evidence that Casey Crowther made misrepresentations to the Lender concerning the purpose of a June 1, 2020 wire transfer. Crowther misrepresented to the Lender that the purpose of the wire was for "materials" when it was really for the purchase of a horse. Crowther's efforts to disguise the purpose of the wire as a "materials" purchase are almost identical to the efforts Crowther took to disguise his purchase of a 40' catamaran boat and payment made to a former business partner.

Facts Expected to be Developed at Trial

The government intends to prove that on April 14, 2020, approximately $2.1 million in PPP loan funds were deposited into a segregated bank account that Crowther opened with the Lender on April 10, 2020 ("PPP Account"). Crowther was the only person who had access to the PPP account. On the date the funds were deposited into the account, Crowther's company, Target Roofing and Sheet Metal, Inc. ("Target Roofing"), was required to use the funds for payroll, rent, utilities, and mortgage interest within an eight-week period ending on June 9, 2020.

On April 20, 2020, Crowther submitted a wire request to the Lender's branch manager requesting to have $100,000 wired to S.A via email. During the wire confirmation process on April 21, 2020, the branch manager called Crowther and asked him for the purpose of the wire transfer. Crowther indicated the purpose of the wire was a "payroll transfer to partner." Crowther also confirmed the funds would be wired from Target Roofing's PPP account. $100,000 was then wired from the PPP account to S.A.'s account. S.A., who had been Crowther's business partner, departed Target Roofing in December of 2019 and was no longer receiving compensation or payroll from the business. The real purpose of the wire transfer was Crowther's repayment towards principal on a promissory note with S.A.

On April 24, 2020, Crowther submitted another wire request to the branch manager and requested a wire transfer of $689,417 to a marina. The branch manager forwarded Crowther's request to an assistant branch manager who then called to verify the wire. As part of the verification procedure, the assistant branch manager called Crowther and asked him for the purpose of the wire transfer. Crowther indicated the purpose of the wire was an "equipment purchase." Crowther also confirmed the funds would be wired from Target Roofing's PPP account. $689,417 was then wired from the PPP account to the marina's account. The real purpose of the wire transfer was for the purchase of a 40' catamaran boat and not an "equipment purchase."

On May 7, 2020, Crowther transferred the remaining $1.2 million in PPP funds into Target Roofing's main operating account with the Lender. Days later, on May 13, 2020, the Lender sent Crowther additional guidance from the SBA regarding the PPP program. That guidance stated that PPP loans in excess of $2 million would be subject to SBA heightened oversight to ensure compliance with the program's requirements. In addition, the Lender had a phone conversation with Crowther on May 18, 2020 about his use of PPP funds.

On June 1, 2020, Crowther submitted another wire request via email to the branch manager, this time requesting $55,000 be wired from the operating account to H.M. for "materials." As part of the wire verification process, the branch manager called Crowther and asked him for the purpose of the wire transfer. Crowther indicated the purpose of the wire was for "materials." $55,000 was then wired from Target Roofing's main operating account to H.M. Following the wire verification phone call, Crowther emailed the branch manager and asked her to send him something showing the wire went through "so the guys can pick material up now." The real purpose of the wire transfer was for the purchase of a horse for Crowther's wife and not for "materials."

In other wire transfer requests submitted to the Lender around the same time period, the purpose of the wire was not misrepresented to the Lender. For instance, on May 11 and 15, 2020 wires were sent to an individual and creditor from the operating account for a "tractor purchase" and "vehicle payoff" which were not misrepresentations.

Argument

A. Evidence of misrepresentations made to the Lender to disguise the $55,000 wire transfer is intrinsic evidence.

Evidence that is intrinsic (not extrinsic) to the crimes charged includes: (1) an uncharged offense which arose out of the same transaction or series of transactions as the charged offense; (2) evidence necessary to complete the story of the crime, or (3) evidence that is inextricably intertwined with the evidence of the charged offense. *United States v. Edouard*, 485 F.3d 1324, 1344 (11th Cir. 2007). Further, evidence of uncharged conduct is intrinsic and outside the scope of 404(b) if it is "part of the same scheme or series of transactions," "uses the same *modus operandi* as the charged offense," and is "linked in time and circumstances with the charged crime." *United States v. Horner*, 853 F.3d 1201, 1214 (11th Cir. 2017); *United States v. U.S. Infrastructure, Inc.*, 576 F.3d 1195, 1210-11 (11th Cir. 2009); *United States v. Muscatell*, 42 F.3d 627, 630-31(11th Cir. 1995). Evidence is inextricably intertwined with evidence of the charged offense if it forms "an integral and natural part of the witness's accounts of the circumstances surrounding the offense for which the defendant was indicted." *Edouard*, 485 F.3d at 1344 (quoting *United States v. Foster*, 889 F.2d 1049, 1053 (11th Cir. 1989)).

Here, the government seeks to admit evidence of the $55,000 wire as intrinsic evidence for the following reasons. First, the wire transfer is an uncharged act that was part of the same scheme or series of transactions. The $55,000 wire transfer, which occurred on June 1, 2020, was during the 8-week period in which Target Roofing was expected to spend approximately $2.1 million on payroll, mortgage interest, rent, and utilities.

Second, the $55,000 wire transfer shares the same modus operandi as the boat wire and the note payment wire. Although Crowther utilized funds from Target Roofing's operating account for the transaction, he disguised his purchase of the horse the same way he disguised his purchase of the boat and promissory note payment. Crowther provided a business-related purpose to hide the true purpose of the transaction from the Lender. Of note, the purpose of other wire requests that were made during the same period for actual business-related purposes were not misrepresented to the Lender.
Additionally, the $55,000 wire transfer happened after the Lender emailed Crowther new SBA guidance of its heightened oversight of PPP loans over $2 million on May 13, 2020. The Lender also had a conversation with Crowther concerning his use of PPP funds on May 18, 2020. This would explain why Crowther concealed the $55,000 wire transfer request as a "materials" purchase.

Third, the $55,000 wire transfer is linked in time and circumstances with the charged offenses. The purchase of the boat, note payment, and horse purchase all occurred during an 8-week period in which Target Roofing was required to spend approximately $2.1 million in PPP loan proceeds for specified purposes. Moreover, as previously discussed, the "materials" wire occurred within two to three weeks after Crowther received communications from the Lender concerning heightened SBA oversight and his use of PPP funds.

The government also believes evidence of the $55,000 wire transfer is inextricably intertwined with evidence of the bank fraud offense. Crowther is charged with committing a scheme to defraud the Lender which includes making misrepresentations concerning his use of PPP funds. As part of this scheme to defraud, Crowther hid and concealed the purpose of acts performed in furtherance of the scheme. Doc. 62 at 6. This includes concealing his use of PPP funds from the Lender by misrepresenting the purpose of wire transfers as being business related. To prove the crimes charged, the government intends on introducing evidence of financial transactions Crowther made with use of the PPP funds. The testimony of witnesses will also involve the introduction of Target Roofing and Crowther's bank statements and other financial documents. Testimony about the $55,000 wire, which is like the boat and note payment wires, forms a natural and integral part of the circumstances surrounding the bank fraud charge in this case.

B. Evidence of misrepresentations made to the Lender to disguise the $55,000 wire transfer is admissible under Rule 404(b).

The evidence of the $55,000 wire is also admissible under Rule 404(b). Crowther suggests the government is offering evidence of the June 1, 2020 wire transfer to show he purchased a horse. Doc. 74. That is partly true, but says too little. The measures Crowther took to deceive the Lender into believing he was wiring funds for the purchase of "materials" when he was, in fact, purchasing a horse, is the crux of the issue. The "materials" misrepresentation is much like the "equipment purchase" and "payroll transfer" misrepresentations made in furtherance of the charged scheme to defraud.

Evidence of these close similarities, the government believes, should be admissible to prove knowledge, intent, and absence of mistake or accident. *See* Fed. R. Evid. 404(b). Further, "Rule 404(b) is a rule of inclusion" and "404(b) evidence, like other relevant evidence, should not be lightly excluded when it is central to the prosecution's case." *United States v. Jernigan*, 341 F.3d 1273, 1280 (11th Cir. 2003).

For evidence of other acts to be admissible under Rule 404(b):

> (1) it must be relevant to an issue other than the defendant's character; (2) there must be sufficient proof to enable a jury to find by a preponderance of

> the evidence that the defendant committed the act(s) in question; and (3) the probative value of the evidence cannot be substantially outweighed by undue prejudice, and the evidence must satisfy Rule 403.

Edouard, 485 F.3d at 1344. All of the requirements for admissibility of this evidence under Rule 404(b) are met here.

1. Relevance

Evidence of the $55,000 purchase is relevant to establish Crowther's intent to defraud under 404(b). By pleading not guilty to the charged offenses, Crowther has placed his knowledge and intent to defraud at issue. *United States v. Prince*, 783 F. App'x. 895, 902 (11th Cir. 2019) (citing *Edouard*, 485 F. 3d at 1345). Moreover, "this imposes a substantial burden on the government to prove intent, which may be done by qualifying Rule 404(b) evidence." *United States v. Figueroa*, 488 F. App'x 412, 415 (11th Cir. 2012) (citing *United States v. Zapata*, 139 F.3d 1355, 1358 (11th Cir. 1998). "Where the extrinsic offense is offered to prove intent, its relevance is determined by comparing the defendant's state of mind in perpetrating both the extrinsic and charged offenses." *United States v. Dorsey,* 819 F.2d 1055, 1059 (11th Cir.1987). If the state of mind required for the charged and uncharged acts is the same, "the first prong of the Rule 404(b) test is satisfied." *Edouard*, 485 F.3d at 1345.

The government intends to prove Crowther's intent to defraud with probative circumstantial evidence which includes his concealment of the boat purchase and note payment wires as an "equipment purchase" and "payroll transfer." Crowther's misrepresentation that the $55,000 wire was for "materials" is cut from the same cloth. The intent, in essence, is the same. Crowther intended to deceive the Lender by misrepresenting the purpose of the $55,000 wire was for "materials," just as he did for the boat and note payment wires.

Evidence of the purpose of the $55,000 wire is also admissible under Rule 404(b) to prove knowledge and lack of mistake or accident, specifically with the boat and note payment wires. In his original motion to dismiss, Crowther claimed the Lender was to blame for his use of PPP funds for the boat purchase. Doc. 25 at 8. This suggests Crowther may present evidence at trial of his lack of knowledge, or that his representation of the wire purpose was an accident or mistake. In anticipation of this argument at trial, evidence of Crowther's submission of the $55,000 wire request and follow up email are relevant to show the wire purpose provided for the boat and note payment wire were not by mistake or accident. Further, evidence of the means by which Crowther hid the purpose of the $55,000 wire from the Lender shows he had knowledge of the means by which he could misrepresent his use of

PPP funds. Evidence of the misrepresentations made in furtherance of the $55,000 wire would be offered to prove Crowther knew he was making misrepresentations to hide the true purpose of the boat purchase and note payment wires.

2. Standard of proof

Business records, emails, and testimony from the Lender's branch manager and the recipient of the $55,000 wire are sufficient to enable a jury to find by a preponderance of evidence that Crowther mispresented the purpose of the $55,000 wire to the Lender. The Lender's branch manager will testify that she spoke to Crowther over the phone as part of the wire verification process and he stated the wire was for "materials," which was documented in a business record. The government will also introduce emails from Crowther to the branch manager misrepresenting the purpose of the wire. Crowther originally submitted an email requesting the wire transfer for "materials." Crowther also sent the branch manager an email following the wire request in which he requested something showing the wire went through "so the guys can pick up material now." Further, H.M, the recipient of the wire transfer, will testify the $55,000 wire was for the purchase of a horse and not for "materials."

3. Rule 403 balancing

Whether evidence of other criminal activity is admitted as intrinsic evidence outside the scope of Rule 404(b) or as "other acts" evidence under Rule 404(b), it must satisfy Rule 403, which requires the evidence to be more probative than unduly prejudicial. *Edouard*, 485 F.3d at 1344. "Rule 403 is an extraordinary remedy, which should be used only sparingly, and the balance should be struck in favor of admissibility." *Id.* at 1344 n.8.

"[I]f the extrinsic and charged offenses are similar, and the amount of time separating them is not great, the probative value of the evidence is heightened." *United States v. Jones*, 913 F.2d 1552, 1566 (11th Cir. 1990); *see also Edouard*, 485 F.3d at 1345. Here, the concealment of the wire transfer for the horse was almost identical to the defendant's concealment of the catamaran purchase and promissory note payment. The only difference being that Crowther utilized funds from Target Roofing's operating account. The horse wire (June 1, 2020) was close in time to the note payment wire (April 21, 2020) and the boat wire (April 24, 2020), and these wires occurred during the period for which Target Roofing was required to spend PPP funds for certain permissible expenses. Therefore, the $55,000 wire transfer evidence is highly probative to prove Crowther's intent to defraud. *See Jones*, 913 F.2d at 1566.

Crowther makes intent an issue where, as here, he pleads not guilty and argues that he did not intend to defraud the Lender. *See Prince*, 783 F. App'x at 902. Evidence that is probative of the defendant's intent should, therefore, outweigh the risk of prejudice Crowther may face by admitting evidence of the $55,000 wire.

Crowther argues that the prejudicial value of admitting evidence of the $55,000 wire is "clearly substantial." Doc. 74 at 7. In support of this notion, Crowther believes the government is offering evidence of the wire transfer to "paint Crowther as a person who was frivolous with his money." *Id.* The government disagrees. Evidence of the wire is being offered to establish Crowther's intent to defraud, given its close similarities to efforts taken by Crowther to disguise his use of PPP funds in furtherance of his scheme to defraud.

Additionally, this Court can limit any unfair prejudice to Crowther by instructing the jury that it may not rely on Rule 404(b) evidence as evidence that Crowther committed the charged crime, and that Crowther is on trial only for the specific crimes charged in the indictment. *See United States v. Prophete*, 522 F. App'x 583, 586 (11th Cir. 2013). The government intends to offer such a limiting instruction in its proposed jury instructions. [1]

[1] The government believes the evidence is admissible as intrinsic and a limiting

Conclusion

Evidence of Crowther's misrepresentation and concealment of a $55,000 wire for a horse as a "materials" purchase is admissible on multiple grounds. First, the evidence is admissible as intrinsic evidence because the wire transfer is part of the same scheme or series of transactions that shares the same modus operandi and is closely linked in time and circumstances with the charged crime. The evidence is also inextricably intertwined. Second, and alternatively, the evidence is admissible under Rule 404(b) to show Crowther's intent, knowledge, and lack of mistake or accident. Therefore, this Court should deny the motion *in limine* to exclude evidence of the $55,000 wire for a horse purchase that Crowther attempted to disguise as a materials purchase.

Respectfully submitted,

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jury instruction is not necessary. However, in the alternative, if the Court is not convinced the evidence is intrinsic but finds it's admissible as Rule 404(b) evidence, the Court can limit any unfair prejudice with a jury instruction.

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 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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