UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES

v. Criminal No. 2:20-cr-114-FTM-66MRM

CASEY DAVID CROWTHER

Defendant.
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DEFENDANT'S OMNIBUS OPPOSITION TO THE GOVERNMENT'S MOTIONS *IN LIMINE*

Defendant, Casey David Crowther ("**Crowther**"), through undersigned counsel, and pursuant to Fed. R. Evid. 401 and 403, hereby files his Omnibus Opposition to the Government's pending (a) Motion *in Limine* Regarding Loan "Forgiveness" [D.E. 76]; (b) Motion *in Limine* Regarding Evidence of "Good Standing" [D.E. 77]; and (c) Motion *in Limine* Regarding Evidence or Argument That Lender and Mortgage Lender Suffered No Financial Loss [D.E. 78] (collectively, the "**Motions *in Limine***").

I. INTRODUCTION

The Government's three (3) Motions *in Limine* seek to exclude relevant testimony and evidence that happen to be harmful to the Government's case. Having no ability to rebut this relevant evidence – all of which goes directly to Crowther's intent – the Government now desires to shield relevant facts from the jury simply because they harm the Government's case. In essence, the Government finds itself in the awkward, unenviable, and tenuous position of attempting to silence its own witnesses – including the alleged victim – based upon fear that their testimony will be damaging to the Government's case.

First, the Government seeks to exclude testimony that Sanibel Captiva Community Bank (the "**Bank**") suffered no financial losses in connection with the subject Paycheck Protection Program loan (the "**PPP Loan**"). *See* D.E. 78 at pp. 2-5. It goes without saying that if the Bank had actually suffered any harm or loss, the Government would voraciously argue such evidence to the jury. Undoubtedly, the Government will repeatedly harp on the amount of the PPP Loan and the purchase price of the subject boat at trial. Because the Government cannot truthfully argue that the Bank sustained any losses, the Government deems the lack of any financial harm to the Bank as not relevant. *See* D.E. 78 at pp. 4-5. The lack of financial harm to the Bank, however, clearly is relevant and should be put before the jury because this evidence speaks directly to Crowther's intent. To be sure, the Government is free to argue relevance or non-relevance of any loss amounts (or lack thereof) during its closing argument and may seek appropriate jury instructions.

Second, the Government seeks to exclude evidence that Crowther and Target Roofing and Sheet Metal, Inc. ("**Target**"), Crowther's company, were in good standing with the Bank. *See* D.E. 77 at pp. 1, 3. Again, if the Bank actually had defaulted on the PPP Loan (which it did not), the Government would voraciously and repeatedly argue such facts to the jury. The absence of any default, however, does not advance the Government's case; therefore, the Government deems this information irrelevant. The lack of a loan default, however, is far from irrelevant. As the Government is keenly aware, its entire case rests upon the subject loan agreement. The loan agreement contains a default provision that has been neither triggered nor activated by the Bank. This fact is irrefutable, relevant, and damaging to the Government's case. The fact that there has been no loan default speaks directly to Crowther's intent. Therefore, this evidence is relevant and cannot be shielded from the jury.

In essence, the Government is afraid that the Bank does not consider itself a victim. As such, the Government now seeks to constrain and limit the scope of the Bank's testimony solely to facts that the Government deems favorable to its positions, while precluding the Bank representative's ability to testify regarding facts that hinder the Government's case. The purpose of a trial, however, is for the jury to hear ***all*** the relevant facts and for the judge and jury to weigh and evaluate those facts – both "good" facts and "bad" facts. Thus, the jury should be allowed to hear the relevant evidence, including evidence that is not favorable to the Government's case.

Third, the Government seeks to exclude evidence regarding PPP Loan forgiveness. *See* D.E. 76 at pp. 2-7. The issue of loan forgiveness, however, speaks directly to Crowther's intent. The fact that Target spent well over the PPP loan amount of $2.1 million on forgivable expenses (i.e., payroll, utilities, and mortgage interest payments, etc.) speaks directly to Crowther's intent of using the PPP Loan funds for entirely legally permissible purposes under the Paycheck Protection

Program. When Crowther signed the loan application, the then-Interim Final Rules governing the PPP specifically set forth the eligibility requirements for loan forgiveness. Evidence regarding Crowther's actual use of PPP Loan funds on payroll, utilities, mortgage interest payments, etc. during the covered period demonstrates that Crowther intended to utilize the PPP Loan exactly in the manner that the Interim Final Rules contemplated loan proceeds be utilized. Notably, whether or not the Small Business Association (the "**SBA**") chooses to grant forgiveness is the SBA's issue; nonetheless, the fact that Target spent the PPP Loan proceeds on forgivable expenses negates Crowther's criminal intent and should be presented to the jury.[1]

To be sure, the Government's attempt to exclude evidence of PPP loan forgiveness is outrageous against the backdrop of the allegations of the Government's charging document, which clearly and specifically invoke the loan forgiveness issue. The Second Superseding Indictment specifically alleges that the CARES Act enabled "forgivable loans" by and through the PPP loan program. D.E. 62 at p. 2, ¶ 5. Having specifically alleged that the PPP Loan was in the nature of a forgivable loan, the Government cannot now hide from the allegations of its own charging document by seeking to shield from the jury's ears the forgivable nature of the loan.

On the same note, the manner and means section of the Second Superseding Indictment sets forth extensive allegations regarding Crowther's alleged

[1] Notably, the defense is issuing trial subpoenas to the relevant Bank witnesses. Accordingly, it is clear that the testimony of the Bank witnesses will be relevant because the Government will be unable to limit the defense's cross examination based upon the scope of the Government's direct examination.

misrepresentations that the loan proceeds would be utilized to "retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments on behalf of Target Roofing." *Id*. at pp. 5-6, ¶ 11(d). At the same time, the Government's charging document alleges that these same expenses (i.e., payroll costs, mortgage interest, rent, and utilities) made the subject PPP loan "eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses." *Id*. at pp. 3-4, ¶ 8. Having extensively alleged in the charging document the interplay between (a) Crowther's purported misrepresentations regarding the business expenses for which the PPP Loan proceeds would be utilized; and (b) the same categories of business expenditures that specifically would qualify interest and principal on the loan for forgiveness, the Government cannot now reverse course by seeking to exclude evidence relating to loan forgiveness issues at trial. The Government specifically made this issue part of the charging document and, accordingly, the Government is married to those allegations and cannot seek to exclude evidence that speaks directly to specific issues raised by the allegations of the Second Superseding Indictment.

Moreover, the issue of loan forgiveness is highly relevant because the Government's charging document alleges that Crowther made misrepresentations in the subject loan application regarding how the PPP Loan proceeds would be utilized. *Id*. at pp. 5-6, ¶ 11(b)-(g). The loan documents – which are specifically referenced in the Second Superseding Indictment – include the Promissory Note identified as the

Government's Trial Ex. "9" and the Loan Agreement identified as the Government's Trial Ex. "14." The Promissory Note and the Loan Agreement set forth extensive and detailed language regarding how and under what circumstances the PPP Loan may be eligible for forgiveness. Separately, the Government's summary witness documents also make reference to allowable expenses, a larger category from which are derived qualifying business expenses that can make PPP Loan proceeds eligible for forgiveness.

Against this vast backdrop, it is excruciatingly clear that the Government specifically has woven and intertwined the issue of loan forgiveness and eligibility for loan forgiveness into the Government's case. Under these circumstances, the Government should be precluded from attempting to use the issue of forgivability as both a sword and a shield by employing the issue in the Government's charging document and trial exhibits when it is convenient and expedient for the Government to do so, but then seeking to preclude Crowther from introducing evidence and making reference to the exact same documents, materials, and factual and legal issues. Such a result would produce fundamental unfairness that would deprive Crowther of a fair trial.

Accordingly, Crowther requests that this Court deny the Government's Motions *in Limine* because the facts and evidence sought to be excluded are directly relevant to Crowther's intent with respect to the charges set forth in Counts I through IV of the Second Superseding Indictment.

II. ARGUMENT

A. The Government's Motion *in Limine* Regarding Financial Loss Should Be Denied

The Government now seeks to exclude evidence that the Bank suffered no financial harm or losses. *See* D.E. 78 at pp. 2-5. It goes without saying that the Government would jump at the opportunity to argue that the Bank suffered financial losses in connection with the subject PPP Loan, if it could do so. Here, the Government cannot do so; therefore, the Government now seeks to shield inconvenient, yet relevant facts from the jury's ears.

The Government's concealment of relevant facts cannot be permitted. The purpose of a trial is for the jury to weigh and properly evaluate all relevant evidence, not simply the evidence that the Government unilaterally believes is favorable to its case. "The fundamental purpose of a criminal trial is to arrive at a true determination of the defendant's guilt or innocence." *United States v. Noe*, 821 F. 2d 604, 611 (11th Cir. 1987) (citing *Rose v. Clark*, 478 U.S. 570, 106 S. Ct. 3101, 3105-06 (1986) and *Henderson v United States*, 237 F. 2d 169, 172 (5th Cir. 1956)). <u>"[F]elony trials are by their nature not dainty proceedings and ought not be expected to be."</u> *Noe*, 821 F. 2d at 611 (emphasis added). The Government has charged Crowther in a multi-count Second Superseding Indictment. Having placed Crowther's liberty in jeopardy, the Government must now fashion its case not solely around evidence that the Government considers to be favorable, but it must also deal with facts mitigating against criminal liability.

To be sure, the fact that the Bank suffered no financial harm or loss is one of those inconvenient facts that is highly relevant, yet tends to mitigate against Crowther's liability. The lack of any financial harm to the Bank, however, clearly is relevant and should be put before the jury. This evidence speaks directly to Crowther's intent and is part of the entire story surrounding Target's application for and utilization of PPP Loan proceeds. Attempting to restrict the Bank from testifying regarding such facts is hypocritical and an unusual attempt by the Government to curtail testimony from its own witness (i.e., the supposed victim). Yet, there is no absolutely no legitimate reason to restrict or otherwise exclude this evidence from hitting the jury's ears.

Notably, the amount of any financial harm to the Bank (or lack thereof) constitutes direct evidence (or lack thereof) regarding Count I of the Second Superseding Indictment against Crowther for Bank Fraud pursuant to 18 U.S.C. §§ 1344 and 2. With respect to the charge of Bank Fraud, the Eleventh Circuit's Pattern Jury Instructions for Criminal Cases comments and annotations state, in relevant part:

> To act with "intent to defraud" means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss or injury. Proving intent to deceive alone, ***without the intent to cause loss or injury***, is not sufficient to prove intent to defraud.

(emphasis added).

Whether or not a loss occurred to the Bank is clearly direct evidence (or lack thereof) of Bank Fraud. In *United States v. Takhalov*, 827 F. 3d 1307 (11th Cir. 2016), the Eleventh Circuit stated:

> For this reason, the law in the Eleventh Circuit makes clear that a defendant "schemes to defraud" only if he schemes to "depriv[e] [someone] of something of value by trick, deceit, chicane, or overreaching." ***But if a defendant does not intend to harm the victim—"to obtain, by deceptive means, something to which [the defendant] is not entitled"—then he has not intended to defraud the victim.***
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> From that conclusion, a corollary follows: a schemer who tricks someone to enter into a transaction has not "schemed to defraud" so long as he does not intend to harm the person he intends to trick. And this is so even if the transaction would not have occurred but for the trick. ***For if there is no intent to harm, there can only be a scheme to deceive, but not one to defraud.***
>
> Consider the following two scenarios. In the first, a man wants to exchange a dollar into four quarters without going to the bank. He calls his neighbor on his cell phone and says that his child is very ill. His neighbor runs over, and when she arrives he asks her to make change for him. She agrees; the quarters pass to the man; the dollar passes to the woman; and they part ways. She later learns that the child was just fine all along. The second scenario is identical to the first, except that instead of giving the woman a true dollar, he gives her a counterfeit one.
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> The first scenario is not wire fraud; the second one is. Although the transaction would not have occurred but-for the lie in the first scenario—the woman would have remained home except for the phony sickness—the man nevertheless did not intend to "depriv[e] [the woman] of something of value by trick, deceit, [and so on]." But in the second scenario he did intend to do so.

Takhalov, 827 F. 3d at 1312-1313 (citing *United States v. Bradley*, 644 F. 3d 1213, 1240 (11th Cir. 2011) (emphasis added).

Here, whether or not Crowther deprived the Bank of anything of value speaks directly to Crowther's intent. Proving intent to deceive alone, without intent to cause loss or injury, is simply not enough to prove intent to defraud. The absence of any harm or damage to the Bank is relevant, admissible evidence because it tends to demonstrate Crowther's innocence and lack of intent with respect to the charged offenses.

The Government is free to argue relevance or non-relevance of any loss amounts (or lack thereof) during its opening and closing argument. Of course, the Government may seek appropriate limiting jury instructions regarding the lack of financial losses to the Bank. *See*, *e.g.*, *United States v. Barreto*, 478 Fed. Appx. 632, 634-35 (11th Cir. 2012) (noting that prejudicial remarks may be rendered harmless by curative instructions to the jury) (citing *United States v. Smith*, 918 F. 2d 1551, 1562 (11th Cir. 1990)). The Government, however, may not seek to exclude relevant evidence simply because it may be unfavorable to the Government's case. In *United States v. Hurn*, 368 F. 3d 1359 (11th Cir. 2004), the Eleventh Circuit stated:

> In some cases, the government's selective presentation of entirely truthful evidence can cast a defendant in an inaccurate, unfavorable light, or make entirely legitimate, normal, or accepted acts appear unusual or suspicious. ***In these situations, the defendant has the right to introduce additional evidence to dispel this unjustified taint, even if that evidence does not directly or indirectly bear on a particular element of an offense.***

Id. at 1366-67 (emphasis added).

Accordingly, the Government's Motion in Limine Regarding Evidence or Argument That Lender and Mortgage Lender Suffered No Financial Loss should be denied.

B. The Government's Motion *in Limine* Seeking to Exclude Evidence of Good Standing Should Be Denied

Similarly, the Government's Motion *in Limine* seeking to exclude evidence of Crowther's good standing with the Bank, along with the absence of any default with respect to the subject PPP Loan, should be denied. It is an irrefutable fact that the subject loan agreement contains default language that has been neither triggered nor otherwise activated by the Bank. This fact will come to light via testimony from the Government's own witnesses, including the Bank's representative.

The absence of a loan default, along with Crowther's good standing with the Bank, may not be favorable to the Government's case; however, the Government cannot shield from the jury facts that are directly related to the charges set forth in the Second Superseding Indictment. *See*, *e.g.*, *United States v. Dooley*, No. 2:09-CR-00016-WCO, 2011 U.S. Dist. LEXIS 59324 at *20-21 (N.D. Ga. June 2, 2011) (holding that facts relating to offenses charged in the criminal indictment are not extrinsic evidence and their probative value is not substantially outweighed by danger of unfair prejudice). The fact that the Bank considers Crowther and Target to be customers of the Bank in good standing is, of course, highly relevant and may have a substantial impact on the jury.

The absence of a loan default is particularly relevant because under the circumstances of the PPP Loan, a default would only benefit the Bank. The PPP Loan is one-hundred percent (100%) guaranteed by the SBA. Consequently, in the event of any default, the loan is still repaid in full by virtue of the SBA. As a result, the existence (or, as here, the absence) of a default is an important piece of circumstantial evidence. While the Government suggests that the Bank may not have put the loan in default for some unknown, ulterior purpose, in fact it would be in the Bank's financial interest to default the loan (if there actually was a default).

Apparently, the Government fears that the victim (i.e., the Bank) does not actually consider itself to be a victim; accordingly, the Government seeks to hinder and curtail the testimony of its own witness. Among other things, Count II of the Second Superseding Indictment charges Crowther with making a False Statement to a Lending Institution, in violation of 18 U.S.C. §§ 1014 and 2. D.E. 62 at pp. 7-8. If the testimony of the Bank's representative is that the Bank does not believe that the alleged statements were false and, as such, there was no default on the subject loan, the jury should be permitted to hear such evidence. Similarly, the jury should be permitted to hear testimony from the Bank that the intent of the PPP Loan was achieved; for example, that Target's employees were paid and the Company is eligible to apply for forgiveness or that Target has the option of repaying the loan. All such testimony clearly strikes directly to the element of Crowther's intent. *See*, *e.g.*, *United States v. Westcott*, 83 F. 3d 1354, 1358 (11th Cir. 1996) (recognizing that testimony negating the *mens rea* element of the charged crime constitutes admissible evidence).

Moreover, materiality is also an issue with respect to Count I for Bank Fraud pursuant to 18 U.S.C. §§ 1344 and 2. With respect to violations of § 1344, the Eleventh Circuit's Pattern Jury Instructions for Criminal Cases states, in relevant part:

> A "material fact" is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is "material" if it has the capacity or natural tendency to influence a person's decision. It doesn't matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

Therefore, the issues of default, along with forgiveness, go to the materiality of the alleged representations of Crowther at the time of the filing of the application.

Notably, the Government is free to pose questions to its own witnesses at trial regarding any practical, business, or legal reasons why civil remedies have not been pursued against Target or Crowther with respect to repayment of the PPP Loan. The Government, however, cannot curtail relevant testimony that strikes directly to the elements of the charged offenses.

Accordingly, the Government's Motion *in Limine* Regarding Evidence of "Good Standing" should be denied.

C. The Government's Motion *in Limine* Regarding Loan Forgiveness Should Be Denied

The Government's attempt to exclude evidence of loan forgivability should be rejected by the Court because the Government has squarely placed the issue of forgiveness at issue in both the Government's charging document and trial exhibits. The Second Superseding Indictment specifically alleges that the SBA enabled loans

(D.E. 62 at p. 2, ¶ 4) through the CARES Act, which provided for "forgivable loans" by and through the PPP loan program. *Id.* at p. 2, ¶ 5. The allegations of the Second Superseding Indictment regarding the manner and means of the alleged scheme are based upon Crowther's alleged submission of fraudulent loan applications. Specifically, the Second Superseding Indictment alleges: "It was part of the scheme and artifice to defraud that the defendant would and did submit and cause the submission of a false and fraudulent PPP loan application to the Lender on behalf of Target Roofing seeking a PPP loan through the SBA." *Id.* at p. 5, ¶ 11(a). The remaining allegations of the manner and means section of the Second Superseding Indictment state that Crowther (a) "made material false, fraudulent, and misleading representations to the Lender and SBA related to the use of the PPP funds in the PPP loan application[s]" (*id.* at p. 5, ¶ 11(b)); (b) "would and did represent that all SBA PPP Loan proceedings would be used by the defendant only for business related purposes as specified in the loan application (*id.* at p. 5, ¶ 11(c)); (c) "would and did certify that the PPP funds acquired from the requested loan would be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments (*id.* at p. 5-6, ¶ 11(d)); and (d) " would and did cause the PPP funds to be used for unauthorized purposes and for his own personal enrichment . . . (*id.* at p. 6, ¶ 11(f)).[2]

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[2] Notably, the allegation in paragraph 11(c) of the manner and means section of the Second Superseding Indictment to the effect that the PPP Loan proceeds could be used only for business purposes is not consistent with regulations governing use of PPP Loan proceeds.

By making the aforementioned allegations in the charging document, the Government has raised the issue of materiality of the manner in which Crowther utilized the PPP Loan proceeds by alleging that the misrepresentation of how Crowther would use the proceeds to retain workers, cover payroll, make mortgage and utility payments and the like for business proceeds was at odds with how Crowther actually utilized the loan proceeds. Having specifically alleged that the PPP Loan was in the nature of a loan that was eligible for forgiveness if utilized for qualifying business expenditures, the Government cannot now hide from the allegations of its own charging document by seeking to shield from the jury's ears the forgivable nature of the loan.[3]

It is also important that the jury be allowed to hear evidence and testimony regarding loan forgivability because the Second Superseding Indictment makes specific reference to the subject loan documents. *Id.* at p. 5, ¶ 11(b). The loan documents also have been identified as the Government's trial exhibits. The

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[3] Remarkably, the Second Superseding Indictment is inconsistent and confusing with respect to its allegations regarding forgivability. In one place, the charging document is clear that the loan may be eligible for forgiveness ***if*** the business spends the loan proceeds on qualified business expenditures during the designated time period. *See* D.E. 62 at pp. 3-4, ¶ 8. In another place, the charging document alleges that Crowther – who, notably, was not the applicant – represented that ***all*** loan proceeds would be spent on qualified business expenses. *Id.* at p. 5, ¶ 11(c). The latter allegation also incorrectly states that the subject loan proceeds were "SBA PPP Loan proceeds" (*id.*) when, in fact, the loan funds did not originate from the SBA and, to the contrary, originated from the Bank.

Government's trial exhibit no. 9 is the subject Promissory Note, which itself makes specific reference to loan forgivability. The Promissory Note states, in relevant part:

> LOAN FORGIVENESS:
>
> Borrower may apply to Lender for forgiveness of the amount due on this loan in an amount equal to the sum of the following costs incurred by Borrower during the 8-week period beginning on the date of first disbursement of this loan:
>
> a. Payroll costs
>
> b. Any payment of interest on a covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation)
>
> c. Any payment on a covered rent obligation
>
> d. Any covered utility payment

Additionally, the Government's trial exhibit no. 14 is the subject Loan Agreement, which in Section 2(a) states in relevant part:

> CARES Act Forgiveness. This Loan has been originated under the SBA's Paycheck Protection Program pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the "Act"), sections 1102 and 1006, in which all or a portion of the Loan proceeds will be forgiven, provided the Borrower has complied with all of the terms of the Act, including, but to limited to, certain representations made to the Lender and the Borrower's use of the Loan proceeds, as more particularly described in the Act. The Borrower understands that the final decision regarding forgiveness of the Loan rests with the SBA, who shall have the right to review the Borrower's financial statements and accounting records in connection with any such determination. Failure by the Borrower to comply with the Act or any requests of the Lender or the SBA may result in the Borrower having to repay the Loan.

Separately, the Government's summary witness documents that the Government intends to use at trial discuss allowable expenses, which is the broader category from which are derived qualifying business-related expenses (i.e., certain payroll expenses, mortgage payments) that are eligible for loan forgiveness.

Accordingly, the Government's case is littered with references to PPP loan forgiveness – i.e., throughout the charging document, trial exhibits, and summaries. Shockingly, the Government believes that Crowther should not be able to present evidence or testimony regarding the precise same issue. Clearly, granting the Government's Motions *in Limine* would unquestionably produce a fundamentally unfair result, thereby depriving Crowther of a fair trial.

The Government seeks to exclude evidence and testimony regarding loan forgiveness. *See* D.E. 76 at pp. 2-7. This evidence, however, cannot be excluded because it goes directly to Crowther's intent.[4] When Crowther signed the loan application in April 2020 (*see* D.E. 62 at pp. 4, 7-9), the then-Interim Final Rules regarding PPP loans specifically set forth exactly what expenditures qualified for loan forgiveness. The testimony of the Government's own witnesses will establish that Target's payroll, utilities, and mortgage interest expenditures, etc. during the covered time period exceed the amount of the loan obtained and qualify the Company to apply for loan forgiveness under the PPP. This evidence unequivocally will establish that Crowther and Target intended to utilize the PPP Loan proceeds for lawful purposes

[4] Under the applicable Interim Final Rules, PPP loan expenditures are either forgivable or not forgivable. For this reason, the Government should be precluded from utilizing inflammatory terminology at trial in the nature of "proper/improper", "allowable/unallowable", "excusable/inexcusable", and similar language.

that, in fact, were specifically contemplated under the applicable regulations as forgivable expenditures.

Moreover, the testimony will establish that, in fact, Crowther and Target utilized the PPP Loan proceeds for expenditures that were forgivable (including payroll, utilities, and mortgage loan payments, etc.), even though Crowther and Target did not actually seek forgiveness of the PPP Loan or any portion thereof. Witness testimony regarding what PPP regulations actually were in force and effect when Crowther and Target made such expenditures should be permitted because such testimony goes directly to Crowther's intent when the loan application was made. Whether or not the SBA chooses to grant forgiveness is the SBA's issue; nonetheless, the fact that Target spent the PPP Loan proceeds on forgivable expenses negates Crowther's criminal intent and should be presented to the jury.[5] *See*, *e.g.*, *Westcott*, 83 F. 3d at 1358 (recognizing that testimony negating the *mens rea* element of the charged crime constitutes admissible evidence).

Accordingly, the Government's Motion in Limine regarding Loan "Forgiveness" should be denied.

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[5] On March 5, 2021, the Government provided defense counsel with thirteen (13) summary exhibits, which included an exhibit titled "Account Balances for Boat Purchase". Within this exhibit, there was a section titled "Allowable Expenses to be reimbursed by PPP Funds." The undersigned pointed out this opinion testimony to the Government, and on March 12, 2021, the Government changed the exhibit to a factual trace analysis however it still refers to forgivable expenditures. Nevertheless it is clear that both the Government and defense counsel believe that forgivable expenses are directly related to the financial component of this case.

III. CONCLUSION

Based on the foregoing, it is clear that the Government's Motions in Limine improperly seek exclusion of relevant, admissible evidence; further, any prejudicial impact of such evidence is outweighed by its probative value. Accordingly, Crowther respectfully requests that this Court (a) deny the Government's Motion in Limine Regarding Loan "Forgiveness" [D.E. 76]; (b) deny the Government's Motion in Limine Regarding Evidence of "Good Standing" [D.E. 77]; (c) deny the Government's Motion in Limine Regarding Evidence or Argument That Lender and Mortgage Lender Suffered No Financial Loss [D.E. 78]; and (d) enter such other and further relief this Court deems just and proper.

Respectfully Submitted,

/s/ Nicole H. Waid
Nicole H. Waid, Esq.
Florida Bar No. 0121720
nicole.waid@fisherbroyles.com

/s/ Brian E. Dickerson
Brian E. Dickerson, Esq.
Fla. Bar No. 106615
brian.dickerson@fisherbroyles.com

FISHERBROYLES, LLP
2390 Tamiami Trail North, Suite 100
Naples, Florida 34103
Phone: (202) 906-9572
Fax: (239) 236-1360

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.