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 RESPONSE IN OPPOSITION TO MOTION SEEKING TO PRECLUDE REFERENCE TO FRAUDULENT EMPLOYMENT SCHEME

The United State of America responds in opposition to Defendant's motion to preclude references to a fraudulent employment scheme. Doc. 75.

Introduction

The government intends to introduce evidence that Casey Crowther added 39 fake employees and 5 family members to Target Roofing and Sheet Metal, Inc.'s ("Target Roofing") payroll in an effort to further and conceal the fraud he committed in the procurement of a Paycheck Protection Program ("PPP") loan for his company. Crowther's efforts were part of the scheme to defraud itself—adding fake employees and family members to the payroll helped ensure the loan would be forgiven, which helped ensure that Crowther would not have to repay any money that he had improperly spent on himself. Crowther's efforts are also evidence of his fraudulent intent at the time he applied for the loan on behalf of Target Roofing.

The government also intends to introduce such evidence to undermine a "no-harm-no-foul" argument repeatedly raised by his counsel in the lead-up to trial. Namely, that Crowther committed no fraud because, even though he bought a 40' catamaran directly with PPP money, Target Roofing spent an equivalent amount of its own funds making payroll.

Facts Expected to be Developed at Trial

The United States will prove that Crowther was eyeing a luxury 40' catamaran for sale by a dealer in Naples, Florida prior to the inception of the PPP program. On April 6, 2020, Crowther applied for a $1.4 million PPP loan for his company, Target Roofing. In the application for the PPP loan, Crowther certified that his company would only use the proceeds of the loan to "retain workers and maintain payroll or [to] make mortgage payments, lease payments, and utility payments." The Lender notified Crowther that Target Roofing was approved for the loan on April 8, 2020.

Two days later, Crowther firmed up the price of the nearly $700,000 boat with the dealer. Three days after that, Crowther went back to the Lender seeking more money on the loan, this time approximately $2.1 million. Crowther made the same certification as to the use of funds in the revised application.

The Lender approved that revised request on April 14, 2020 and the PPP funds were placed into a segregated PPP account formed for Target Roofing. At the closing of the loan, Crowther signed yet another certification promising to the Lender to limit the use of PPP funds as follows:

10. Borrower will use the proceeds of this PPP Loan solely for:

a. payroll costs;
b. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

c. business related mortgage interest payments (but not mortgage prepayments or principal payments);
d. rent payments;
e. utility payments;
f. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
g. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

One week after obtaining the proceeds of the loan, Crowther wired $100,000 to a former business partner to pay down principal on a debt created in the buyout of that partner. The money was sent directly from Target Roofing's segregated PPP account which contained no funds other than PPP funds. In Crowther's wire instructions to the Lender, he indicated that the purpose of the wire was for "payroll," even though neither he nor Target Roofing owed the former business partner back pay.

Ten days after obtaining the proceeds of the loan, Crowther wired $689,417 to the dealer to close on the luxury boat. Again, the money was sent directly from Target Roofing's segregated PPP account which contained no funds other than PPP funds. In Crowther's wire instructions to the Lender, he indicated that the purpose of the wire was "equipment."

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 response, Crowther told the Lender that he was "more than prepared."

On May 15, 2020, Target Roofing hired 20 new employees. Target Roofing's human resource manager described the hiring as unusual because the paperwork for the employees came to her mostly pre-filled out by Crowther, and she never saw any of the employees, either during the hiring process or thereafter. One week later, Target Roofing hired another batch of employees, this time 19 of them. Again, unusually, their hiring documents were provided to the Human Resources manager pre-filled out by Crowther and she never saw any of new employees.

Crowther told the Human Resources manager that the 39 individuals were hired to "shred paper" for the company. Around the same time, Target Roofing added five of Crowther's family members to the payroll as well for clerical work, but the Human Resources manager, who worked in Target Roofing's small office, never saw the family members working. Each family member was paid a weekly amount, which if extrapolated out over a year, amounted to a nearly $100,000 salary.

Within weeks of their hiring, all 39 employees and the 5 new family member employees were terminated *en masse* by Target Roofing on June 5, 2020. Records obtained from Target Roofing's payroll company and its bank show that, of all the weekly paychecks issued to the 39 employees over the two and three week periods they were employed, only one was ever cashed. That check was not deposited into an account belonging to the "employee," but into an account belonging to Crowther.

Relevancy of Hiring and Firing to the Government's Theory of the Case

Under the PPP program, lenders are authorized to make loans to borrowers guaranteed by the Small Business Administration. *See generally* 15 U.S.C. § 636(a)(36). If the borrower can show that it used a certain percentage of the loan for payroll, while also meeting certain criteria that measure whether the company retained and paid employees at a sufficient rate compared to pre-pandemic times, 100% of the loan can be forgiven. 15 U.S.C. § 9005(d)(1). When these benchmarks are not met, the forgiveness amount can be reduced or eliminated entirely. *See, e.g.*, 15 U.S.C. § 9005(d)(2), (3), and (8).

To be forgiven, at least originally, a borrower needed to demonstrate that it met the payroll and employment benchmarks within 8 weeks after the loan was distributed. Pub. L. 116–136, div. A, title I, § 1106, Mar. 27, 2020, *then codified at* 15 U.S.C. § 9005. Congress, however, amended the program midstream and introduced a longer period (24 weeks) over which PPP funds could be used, thus making it easier for borrowers to qualify for forgiveness. Pub. L. 116–142, § 3(b), June 5, 2020, 134 Stat. 641, now codified at 15 U.S.C. § 9005. That amendment to the PPP program was called the "Paycheck Protection Program Flexibility Act" and became law on June 5, 2020 (the "Flexibility Act").

Crowther obtained Target Roofing's loan on April 14, 2020, and so, originally, he would have had to have demonstrated that Target Roofing met the payroll and employee benchmarks within 8 weeks (*i.e.* June 9, 2020) to obtain full forgiveness. That changed when Congress permitted a longer period to be used on June 5, 2020.

When Crowther's conduct, including the hiring of the fake employees is viewed against the backdrop of the PPP program, the relevance of his hiring of fake employees becomes clear. The evidence shows Crowther obtained a forgivable PPP loan in the name of Target Roofing so that he could personally enrich himself with government money that would not have to be paid back.

He used the money to purchase a boat and disguised the purchase from the lender by calling it "equipment."

But that was not enough, for Crowther to avoid ever having to pay for the boat with his own money, he needed a way to ensure that Target Roofing didn't have to pay the PPP loan back, otherwise he was still on the hook.[1] Crowther also needed to ensure that his business looked as compliant with the PPP program as possible, given the heightened oversight it would receive based on the size of the loan. So, Crowther hired 39 fake employees and 5 non-working family members to ensure Target Roofing met the benchmarks for loan forgiveness and minimize any red-flags for the SBA.

But, pumping up employee and payroll numbers became less important once Congress made it easier to obtain forgiveness for a PPP loan via the Flexibility Act. So, on the same day Congress relaxed the standards for loan forgiveness, Target Roofing terminated the employment of the fake employees and family members.

Crowther's actions with respect to these "employees" are part-and-parcel of his scheme to defraud. Hiring fake employees simultaneously

[1] This is not to suggest that if Crowther had paid back, or even intended to pay back the PPP loan, he is innocent. *See, e.g., United States v. Morales*, 978 F. 2d 650, 655 (11th Cir. 1992) (intent to repay fraudulently obtained money is not a defense). Obtaining a loan via fraud is just as much a crime as obtaining a forgivable loan via fraud.

worked to further his goal of enriching himself with free money, while also helping to conceal the scheme. Crowther's efforts to enrich himself and conceal those efforts are alleged in the manner and means section of the Second Superseding Indictment. *See* Doc. 62 at ¶ 11.f. and g. Because the hiring and firing of sham employees fits is part of the scheme alleged in the indictment, the hiring and firing evidence is necessarily relevant.

Even if the Court does not view the hiring-and-firing evidence as part of the crime, it is still admissible. "Evidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." *United States v. Williford*, 764 F.2d 1493, 1499 (11th Cir. 1985). Here, Crowther's actions with respect to the employees is a natural and integral part of the story of his fraud. The hiring-and-firing evidence permits the jury to understand Crowther's plan to ensure he didn't have to pay any of the PPP loan back, even though he diverted large sums of it to his personal use.

The evidence is admissible for a third reason. Crowther has repeatedly argued that he is innocent, even though he spent PPP funds directly on a $700,000 boat, because his company spent more on payroll than was ever provided to it through the PPP program. *See, e.g.*, Doc. 25 at p. 10 (arguing that because Crowther spent more in payroll than he obtained from PPP program, government's indictment should be dismissed). The government believes the argument is unavailing for multiple reasons, not the least of which are certifications Crowther made to the Lender which indicated the borrower would "*use the proceeds of the PPP Loan* solely for" certain permitted expenditures and that "*no part of the proceeds* of the loan" would be used for unauthorized purposes. Nevertheless, Crowther appears ready to press the argument at trial.

The government should be entitled to head-off any such argument by showing Target Roofing's payroll numbers are not to be trusted and offering evidence showing Crowther padded the payroll of his company with family members and people who don't exist.

<u>Response to Crowther's Specific Arguments for Exclusion</u>

Crowther raises multiple arguments against the admissibility of the hiring evidence. First, he claims that the evidence should be excluded because "it has absolutely no bearing whatsoever on the element of intent." Crowther believes that because the employee hiring occurred *after* his fraudulent misrepresentations, hiring evidence is incapable of providing insight into Crowther's intent at the time he made the misrepresentations. That argument is without merit for two reasons: (1) the after-the-fact nature of the employee hiring is not disqualifying and the conduct does bear on intent, and (2) the conduct bears on another issue the government must prove, namely, the fraudulent scheme.

Evidence of intent frequently stems from events which occur after a crime has been committed. In fact, the Eleventh Circuit has stated that a "subsequent act, as well as a prior act, can be used to show intent…." *United States v. Hurley*, 755 F.2d 788, 790 (11th Cir. 1985). Flight is perhaps the most frequently seen example. *See United States v. Ramon-Perez*, 703 F.2d 1231, 1233 (11th Cir. 1983) (affirming admission of flight evidence in counterfeiting with intent to defraud case). But, even a later fraud may be relevant to prove intent during earlier fraud. *See United States v. Terebecki*, 692 F.2d 1345, 1348 (11th Cir. 1982) (upholding the introduction of an uncharged fraudulent business dealing which occurred 15 months after a charged fraudulent business dealing to prove intent). Thus, contrary to what Crowther argues, there is no rule barring the use of subsequent acts to prove a defendant's intent at an earlier time.

Further, evidence of Crowther hiring fake employees and family members does shed light on his intent at the time he made misrepresentations to the bank. If Crowther intended to use the PPP funds for appropriate uses like payroll, why would he later spend PPP funds on fake employees? The lack of a satisfactory answer to that question strongly suggests the premise of the question is faulty, which is to say, Crowther did not intend to use the PPP funds appropriately.[2]

The only rational explanation that fits the evidence is that Crowther intentionally deceived the lender to obtain the PPP funds, knowingly misused them, and attempted to further and conceal the scheme by hiring fake employees and family members to ensure that none of the money he used on himself would need to be paid back. Thus, the hiring-and-firing evidence is proof of his fraudulent intent.

Crowther's argument to exclude the evidence because it does not bear on to intent also fails to recognize that hiring and firing evidence serves another role—namely, it is part of the scheme. As the pattern jury instructions make clear, a "scheme to defraud" includes "*any plan or course of action* intended to deceive or cheat someone out of money…." 11th Cir. Pattern J. Instr. at O52 (emphasis added). Of course, the government cannot prove a fraud by simply proving that someone intended to defraud a bank in their mind. It must also prove the existence of a plan or course of action. As discussed above, the Government's theory of the case is that Crowther's hiring

[2] Of course, the defense argues that the employees were not fake, but that is a different issue and for the jury to determine.

and firing of the fake employees was a part of his plan and course of action to obtain money to which he was not entitled. Thus, even if hiring evidence is inadmissible to prove intent, it remains admissible to prove scheme.

Crowther also argues that hiring evidence "impermissibly seeks to hold Crowther criminally responsible for wrongdoing that—if it occurred at all—was committed solely by third parties. Crowther goes on to make argument regarding an employer's low burden in ensuring the accuracy of employment documents.

The argument is a straw man that Crowther sets up so that he can knock it down. The government is not introducing hiring evidence to demonstrate that Crowther (or anyone at Target Roofing) failed to adequately check employment documents to ensure that they were genuine, nor does it plan to make argument in that regard. It is offering evidence to demonstrate that 39 people who were added to the payroll did not exist, and that family members who were added to the payroll did not work there.

Crowther's second argument dovetails with his third. He claims that the allowing the government to introduce the hiring evidence would severely prejudice him because "illegal immigration is a widely and highly polarized political matter." Crowther appears to believe illegal immigration will become an issue in Court because the employees were allegedly green card holders.

This is another straw man argument which does not inherently arise from the hiring and firing evidence, nor does the government intend to bring up issues related to immigration at trial. The government isn't going to prove that Crowther hired aliens, it is going prove that he hired ghosts. Therefore, his argument is without merit and the motion should be denied.

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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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