UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

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

CASEY DAVID CROWTHER

ORDER

This matter comes before the Court on five motions in limine, three by the government and two by defendant. The motions are: (1) Defendant's Motion in Limine to Exclude Evidence of June 1, 2020 Wire Transfer (Doc. #74), to which the government filed a Response Doc. #86); (2) Defendant's Motion in Limine to Preclude References to Alleged Fraudulent Employment Scheme (Doc. #75), to which the government filed a Response (Doc. #88); (3) the government's Motion in Limine Regarding Loan "Forgiveness" (Doc. #76); (4) the government's Motion In limine Regarding Evidence of "Good Standing" (Doc. #77); and (5) the government's Motion in Limine Regarding Evidence or Argument That Lender and Mortgage Lender Suffered No Financial Loss (Doc. #78). Defendant filed an Omnibus Opposition (Doc. #87) to the last three motions.

A motion in limine is a "motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." Luce v. United States, 469 U.S. 38, 40 n.2 (1984). These motions "are generally disfavored."

Acevedo v. NCL (Bah.) Ltd., 317 F. Supp. 3d 1188, 1192 (S.D. Fla. 2017). "Evidence is excluded upon a motion in limine only if the evidence is clearly inadmissible for any purpose." Id. Additionally, as the Supreme Court has cautioned:

> The ruling is subject to change when the case unfolds, particularly if the actual testimony differs from what was contained in the defendant's proffer. Indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous in limine ruling.

Luce, 469 U.S. at 41-42. A denial of a motion in limine is not a ruling which affirmatively admits any particular evidence. Thus, while a subject matter is not excluded, the Court makes no determination of the admissibility of any anticipated specific testimony from the witness.

(1) Defendant's Motion in Limine to Exclude Evidence of June 1, 2020 Wire Transfer (Doc. #74): The government's proffer (Doc. #86, pp. 2-4) indicates that the June 1, 2020 wire transfer was one of a series of wire transfer requests by which defendant obtained access to PPP loan proceeds which had been deposited in a segregated bank account. Some of the wire transfer requests were, in the government's view, legitimate, while others were not. The government asserts that the true purpose of these proceeds was to buy a horse, as opposed to defendant's stated reason that the money was for "materials." The Court concludes that the testimony provides intrinsic evidence which is relevant to the charges in the Second Superseding Indictment and which is not unduly prejudicial. An indictment is not required to set forth each item of evidence. This motion is denied.

(2) Defendant's Motion in Limine to Preclude References to Alleged Fraudulent Employment Scheme (Doc. #75): The government's proffer (Doc. #88, pp. 2-5) indicates that defendant's company hired 39 new employees in a manner outside its normal hiring procedures, only to terminate their employment *en masse* shortly thereafter. This evidence is relevant, the government argues, because it tends to show defendant was attempting to ensure that the loan would be eligible for forgiveness under the Paycheck Protection Program (PPP) rules. (Doc. #88, pp. 5-8.) The Court concludes that the testimony provides intrinsic evidence which is relevant to the charges in the Second Superseding Indictment and which is not unduly prejudicial. While defendant argues that the government cannot connect him to the conduct, that issue is not before the Court. The subject matter is admissible, but the government must still lay a proper foundation for admission at trial. This motion is denied.

(3) Government's Motion in Limine Regarding Loan "Forgiveness" (Doc. #76): The government seeks to preclude defendant from eliciting or introducing evidence or making argument that the loan he procured for his company is forgivable under the terms of the Paycheck Protection Program (PPP). But the potential forgiveness of the loan is a significant loan characteristic. The Second Superseding Indictment discusses loan forgiveness, and evidence the government intends to introduce relates to the forgiveness characteristic of the loan e.g., the addition of a number of employees to the company payroll. The Court concludes that the testimony provides intrinsic evidence which is relevant to the charges in the Second Superseding Indictment and which is not unduly prejudicial. The motion is denied.

(4) Government's Motion In limine Regarding Evidence of "Good Standing" (Doc. #77): The government seeks to preclude evidence and argument that: (a) defendant, his company, or their respective accounts and loans remain in good standing with the financial institutions which have been identified as the victims, and (b) there are no plans by the victim financial institutions to default the loans or accounts or to initiate legal proceedings on account of the loan. Contrary to the government's argument, the Court finds the subject matters to be both relevant to the charged offenses and not unduly prejudicial. Whether specific testimony by a specific witness will be admissible will have to wait for trial. The Court concludes that the subject matter of the testimony provides intrinsic evidence which is relevant to the charges in the Second Superseding Indictment and which is not unduly prejudicial. The motion is denied.

(5) Government's Motion in Limine Regarding Evidence or Argument That Lender and Mortgage Lender Suffered No Financial Loss (Doc. #78): The government seeks to preclude testimony or argument that the victims suffered no financial loss as a result of the defendant's actions. The Court finds that the lack of a financial loss, if that is indeed the testimony, is relevant to the charged offenses. While financial loss is not an element of the offenses, and defendant may not argue otherwise, the financial circumstances are relevant and not unduly prejudicial. The subject matter is relevant, although the government may of course object to specific questions, evidence, or arguments. The motion is denied.

Accordingly, it is hereby

ORDERED:

(1) Defendant's Motion in Limine to Exclude Evidence of June 1, 2020 Wire Transfer (Doc. #74) is **DENIED.**

(2) Defendant's Motion in Limine to Preclude References to Alleged Fraudulent Employment Scheme (Doc. #75) is **DENIED.**

(3) The government's Motion in Limine Regarding Loan "Forgiveness" (Doc. #76) is **DENIED.**

(4) The government's Motion In limine Regarding Evidence of "Good Standing" (Doc. #77) is **DENIED.**

(5) The government's Motion in Limine Regarding Evidence or Argument That Lender and Mortgage Lender Suffered No Financial Loss (Doc. #78) is **DENIED.**

DONE and ORDERED at Fort Myers, Florida, this 16th day of March, 2021.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record