UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

CASE NO. 2:20-cr-114-FtM-66MRM

-vs-

CASEY DAVID CROWTHER

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It is my duty to instruct you on the rules of law that you must use in deciding this case. After I have completed these instructions, you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a Defendant is not evidence of guilt. The law presumes every Defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. A defendant does not have to testify, and if the Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

The Government's burden of proof is heavy, but it does not have to prove a defendant's guilt beyond all <u>possible</u> doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you have carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and is not binding on you.

You should not assume from anything I have said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all the evidence, I do not mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point does not necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or did not say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake does not mean a witness was not telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

You have been permitted to take notes during the trial. Most of you - perhaps all of you - have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Introduction to Offense Instructions

The Second Superseding Indictment charges four separate crimes, called "counts," against the Defendant. Each count has a number. You will be given a copy of the Second Superseding Indictment to refer to during your deliberations. I will refer to the Second Superseding Indictment as simply the indictment.

I will now explain the law governing these offenses.

Count One: Bank Fraud
18 U.S.C. § 1344

Count One alleges that Casey David Crowther committed the federal offense of Bank Fraud between April 2020 and February 10, 2021. Specifically, Count One alleges that Mr. Crowther entered into a scheme to defraud the Sanibel Captiva Community Bank and to obtain money from that bank by submitting a false loan application and revised loan application on behalf of his company Target Roofing and Sheet Metal, Inc. which knowingly contained false information in order to obtain a loan from the Sanibel Captiva Community Bank which was guaranteed by the United States Small Business Administration (SBA) pursuant to its Paycheck Protection Program (PPP).

It is a Federal crime to carry out or attempt to carry out a scheme to defraud a financial institution or to obtain any moneys owned by or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations or promises. There are two alternative methods for establishing this offense: Proving a defendant carried out or attempted to carry out a scheme (1) to defraud a financial institution; or (2) to obtain money owned by or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations, or promises.

Where a statute specifies multiple alternative ways in which an offense may be committed, the indictment may allege the multiple ways in the conjunctive, that is, by using the word "and." If only one of the alternatives is proved beyond a reasonable doubt, that is sufficient for conviction, so long as you agree unanimously as to that alternative. The Verdict Form given to you therefore will address both alternative methods of establishing Bank Fraud.

As to the first alternative method, the Defendant can be found guilty only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution;

(2) the Defendant intended to defraud the financial institution; and

(3) the financial institution was federally insured.

As to the second alternative method, the Defendant can be found guilty only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly carried out or attempted to carry out a scheme to get money, assets, or other property from 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 financial institution was federally insured.

A "scheme to defraud" includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises relating to a material fact.

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.

The Government does not have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also does not have to prove that the alleged scheme actually succeeded in defrauding anyone. What must be proved beyond a reasonable doubt is that the Defendant knowingly attempted or carried out a scheme substantially similar to the one alleged in the Second Superseding Indictment.

As you know, the parties have stipulated that Sanibel Captiva Community Bank was an insured "financial institution" at all material times.

A statement or representation is "false" or "fraudulent" if it is about a material fact that the speaker knows is untrue or makes with reckless indifference as to the truth and makes with intent to defraud. A statement or representation may be "false" or "fraudulent" when it is a half truth or effectively conceals a material fact and is made with the intent to defraud.

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 does not matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

Count Two: False Statement to a Federally Insured Institution
18 U.S.C. § 1014

It is a Federal crime to knowingly make a false statement or report to a federally insured financial institution.

Count Two alleges that Casey David Crowther committed the federal offense of Making a False Statement to the Sanibel Captiva Community Bank on or about April 13, 2020. Specifically, Count Two alleges that Mr. Crowther knowingly made false statements in the PPP revised loan application regarding the intended use of the loan proceeds in order to influence the actions of the Sanibel Captiva Community Bank.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant made a false statement or report;

(2) the Defendant did so knowingly and with intent to influence an action of the institution described in the indictment regarding an application or loan; and

(3) the deposits of the institution were insured by the Federal Deposit Insurance Corporation.

A statement or report is "false" if it is untrue when made and the person making it knows it is untrue.

The heart of the crime is the attempt to influence the action of the institution by knowingly making a false statement or report. The Government does not have to prove that the institution was actually influenced or misled.

As you know, the parties have stipulated that Sanibel Captiva Community Bank was an insured "financial institution" at all material times.

**Counts Three and Four: Illegal Monetary Transaction
18 U.S.C. § 1957**

It is a Federal crime for anyone to engage in certain kinds of financial transactions commonly known as money laundering.

Counts Three and Four allege that Casey David Crowther committed the federal offense of engaging in an Illegal Monetary Transaction, also known as money laundering. Specifically, on or about April 21, 2020 for Count Three and on or about April 24, 2020 for Count Four, it is alleged that Mr. Crowther engaged or attempted to engage in a specified monetary transaction in criminally derived property of a value greater than $10,000, the property having been derived from the Bank Fraud which is alleged in Count One. In Count Three, the monetary transaction is described as a $100,000 wire transfer from Sanibel Captiva Community Bank in connection with the payment of a promissory note. In Count Four, the monetary transaction is described as a $689,417.00 wire transfer from Sanibel Captiva Community Bank in connection with the purchase of a boat.

The Defendant can be found guilty of this offense only if all the following are proved beyond a reasonable doubt:

(1) the Defendant knowingly engaged or attempted to engage in a monetary transaction;

(2) the Defendant knew the transaction involved property or funds that were the proceeds of some criminal activity;

(3) the property had a value of more than $10,000;

(4) the property was in fact proceeds of bank fraud as alleged in the indictment; and

(5) the transaction took place in the United States.

The term "monetary transaction" means the transfer or exchange of funds by, through, or to a financial institution in a way that affects interstate commerce.

As you know, the parties have stipulated that Sanibel Captiva Community Bank was a "financial institution" at all material times. The parties have also stipulated that the transfers described in Counts Three and Four affected interstate commerce.

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of the activity.

It does not matter whether the Defendant knew the precise nature of the crime or that the property came from committing bank fraud. But the Government must prove that the Defendant knew that the property involved in the monetary transaction was obtained or derived from committing some crime.

Also it does not matter whether all the property involved was derived from a crime. The Government only has to prove that $10,000 worth of the property was obtained or derived from committing a crime.

It is possible to prove the Defendant guilty of a crime even without evidence that the Defendant personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person, or "agent." Or it may be done by acting with or under the direction of others.

"Good faith" is a complete defense to a charge that requires intent to defraud. A defendant is not required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt.

An honestly held opinion or an honestly formed belief cannot be fraudulent intent – even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management, or carelessness cannot establish fraudulent intent.

But an honest belief that a business venture would ultimately succeed does not constitute good faith if the Defendant intended to deceive others by making representations the Defendant knew to be false or fraudulent.

During the trial you have heard the parties and witnesses talk about Interim Final Rules, which are regulations issued by the Small Business Administration to implement the Paycheck Protection Program as included in the CARES Act.

An “Interim Final Rule” is a rule adopted by a federal agency that becomes effective without prior notice and public comment and that invites public comment *after* its effective date.

You will see that the indictment charges that a crime was committed "on or about" a certain date. The Government does not have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

Each count of the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the Defendant guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that the Defendant is on trial <u>only</u> for the specific crimes charged in the indictment. You are here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the Defendant is guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you will never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you are judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you have all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the Court Security Officer. The Court Security Officer will bring it to me and I will respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.