UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,	Fort Myers, Florida
Plaintiff	Case 2:20-CR-114-FtM-66MRM
vs.	Wednesday, March 24, 2021
CASEY DAVID CROWTHER,	10:05 a.m. to 11:55 a.m.
Defendant	Courtroom 5D

TRANSCRIPT OF JURY TRIAL CROSS EXAMINATION OF KYLE DECICCO

HELD BEFORE THE HONORABLE JOHN E. STEELE,

United States District Court Judge

Official Court Reporter:
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I N D E X

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MR. DICKERSON: May I proceed, Your Honor?

THE COURT: You may.

MR. DICKERSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. DICKERSON:

Q Hello, Mr. DeCicco. How are you doing?

A Good. Good morning.

Q My name is Brian Dickerson. I'm counsel for Mr. Crowther. I'm going to ask you some questions based on the government's questions that they asked you. If you can't hear my question, just let me know, with the shields and everything. I'll restate it, or try to make it more clear, or louder. I just want you to hear what I'm saying, and for you to understand what I'm asking. Okay?

A Yes.

Q Fair?

A Fair.

Q All right. I understand that Sanibel Captiva Bank -- and you guys go by the abbreviation SanCap; is that right?

A Yes.

Q So if I say SanCap, that's what I'm talking about.

SanCap issued a loan to Target Roofing pursuant to the PPP program; correct?

A Yes.
Q And that was a one-percent loan between SanCap and Target Roofing; correct?
A Correct.
Q And that was that $2,000 figure that we'll pull up here shortly. And do you know the loan number by chance?
A $2 million figure?
Q 2,087,000.
A Yes.

MR. DICKERSON: If I may approach and grab the other exhibit?

THE COURT: You may.

MR. DICKERSON: May I approach, Your Honor?

THE COURT: You may.

(Counsel provides evidence to the witness.)

BY MR. DICKERSON:

Q I've showed you what's been previously marked as Defendant's Exhibit I. Can you take some time to read that -- I mean just review it to see what it is, count the pages, and see if you're familiar with it at all?
A This is the large -- rather large loan application package that we've discussed earlier on, signed several times by myself and Mr. Crowther.

MR. DICKERSON: Okay. One second.

Your Honor? Provide you a copy?

THE COURT: That's fine.

(Mr. Dickerson provides the Court with a copy of Defendant's Exhibit I.)

MR. DICKERSON: Thank you, Your Honor.

BY MR. DICKERSON:

Q So when you were mentioning, when the government was bringing you single documents, you kept talking about a loan package?

A Yes.

Q Is that the loan package?

A Yes. It appears to be the complete loan package of, I can't remember, 50 pages or so.

Q So is that a fair and accurate depiction of the loan package that Sanibel Captiva Community Bank had with Target Roofing, which is executed on April 14th, 2020?

A It is.

MR. DICKERSON: Your Honor, the defense would move Exhibit I into evidence.

THE COURT: Any objections?

MR. LEEMAN: Your Honor, may I briefly voir dire the witness?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. LEEMAN:

Q Mr. DeCicco, your answer was that it appears to be the complete loan package? Have you seen this exact exhibit before you've come in here today?

A I have digital copies of it saved on my desktop on my computer, so I would say yes.

Q Well, I'm asking you, there are multiple documents in here. Have you reviewed them all and compared them against whatever files you have at the bank?

A I've reviewed every document that we have at the bank.

Q And have you compared it to what you have in front of you here?

A No.

MR. LEEMAN: Your Honor, I'm not certain -- well, the government doesn't believe that that is a sufficient set of knowledge to establish that these are, in fact, the loan documents.

THE COURT: Do you care to be heard?

MR. DICKERSON: Your Honor, he just said that he has them on his computer, it looks like the loan documents, the entire package. We are providing the total loan package, not single documents. I can ask further questions of Mr. DeCicco.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. DICKERSON:

Q Mr. DeCicco, take your time if you want, review that, and let me know if there's anything in that loan package before you that does not look like part of the loan package between Sanibel Captiva Community Bank and Target Roofing.

(Witness examines evidence.)

A Promissory note is there. Fee disclosure page is there. CARES Act disclosure is there. Statement regarding lobbying. Borrower certification. The SBA Form 1050 that we discussed earlier, which is the settlement statement, which attachment that we discussed earlier. The borrower resolution that we discussed earlier. The business purpose certificate that we discussed earlier. Anti-coercion insurance acknowledgment. Further assurance for compliance agreement. Representation notice and acknowledgment. The loan agreement that we discussed earlier. A W-9 form, standard tax document. A reporting acknowledgment. Receipt of this document. Additional documents for equal employment opportunity, equal treatment of clients. Standard -- looks like standard documents included in the package.

And then this looks to be part of the SBA Paycheck Protection Program forgiveness. A notice of forgiveness document. Another acknowledgment of receipt. Compliance agreement. And a loan forgiveness affidavit that we discussed earlier.

Q And if you could, at the top of the pages, is there a designation, top left, as far as DocuSign, like a heading?

A Yes, there is.

Q And what is that?
A I'm not an expert with DocuSign. Again, that was a third-party company that we utilized to facilitate signing over a thousand of these loans in a very short period of time.
Q And so looking -- reviewing that entire documentation right there, and the header at the top, does that make you believe that is the loan package when you look at, as well, at the cover page? What's the cover page say?
A That is our cover page that we utilized. That is actually the field where we inputted each one of those documents, and it auto-populated through the loan document page -- package.
Q Do you have any concern that that is not the loan package between Sanibel Captiva Community Bank and Target Roofing?
A I would say it's accurate.
MR. DICKERSON: Your Honor, we'd move it into evidence.
MR. LEEMAN: No further objection, Your Honor.
THE COURT: Defense Exhibit I will be admitted and may be published.
(Defendant's Exhibit I admitted.)
(Evidence was published via the projector.)
BY MR. DICKERSON:
Q So when we look at this loan, the loan number, the SCCB

loan number, that is . . . .
A That is the loan number as it appears on our books on our bank's system.
Q Sanibel Captiva Community Bank's loan number?
A Yes.
Q And the SBA loan number, that's the loan number assigned by the SBA for this loan.
A Correct.
Q So with regard -- I'm going to just call it 0251, the last four digits; is that right?
A Yes.
Q All right. With regard to loan 0251, term's one percent interest?
A Yes.
Q And if you need to look at it, I'll pull each page up, but two-year maturity rate?
A Two, which actually could be changed to five.
Q Why is that?
A Because the SBA provided additional further guidance later on down the road.
Q So a subsequent interim final rule changes?
A Yes. One of many.
Q When you say one of the many, how many were there?
A Roughly 50. But I'm not an expert on every one of them.
Q And did you have the time to review every one of them?

A Not in their entirety.
Q Okay. So this is the contractual documents between Sanibel Captiva Bank and Target Roofing.
A Yes.
Q These proceeds, the 2,098,700, are Sanibel Captiva Community Bank proceeds; correct?
A Yes.
Q Have there been any SBA loan proceeds with regard to this loan?
A Any SBA proceeds.
Q So Target Roofing with this loan.
A That is a Sanibel Captiva Community Bank loan guaranteed by the SBA.
Q Right. So there have been no SBA loan proceeds used for this Loan 3330251.
A Correct.
Q Thank you. With regard to this loan, we'll get to the documents, you've mentioned cover period a couple of times. Did that change?
A It did.
Q What's your understanding of how that changed?
A It's changed a few times since the program originated in April of 2020. At first it was an eight-week period that the funds must be used during. Then it changed to 24 weeks. And now it could be used between eight weeks and 24 weeks.

Q So again all these changing rules.
A Yes.
Q When is the first payment due on this loan, if you know?
A I believe we set all the maturity dates out seven months, on a specific date in April so it would just be easier for the bank to facilitate those all with our loan operations department.
Q So seven months from this April?
A Seven months from . . . . Excuse me. Seven months from April of 2020.
Q Okay.
A And then, later on, what happened was is that we got more, guidance where we can extend that a different period of time until the loan was either applied for forgiveness or wasn't applied for forgiveness, and then it became -- had to become a repay back as the loan terms of the loan in the loan agreement suggest.
Q All right. Can you speak up a little bit?
A I'm sorry.
Q Say that again?
A Can you ask the question again, please?
Q Yup. So I mean when is the loan payment due? The first loan payment on the Sanibel Captiva lone, when is the first payment due?
A We set the loan payments, I believe, to be due

seven months after the origination of the loan.
Q Okay. So, with regard to the original loan, it would have been seven months after April 14th, 2020.
A Yes.
Q And then that has changed.
A It got extended.
Q And how did it get extended?
A We internally did that at the bank.
Q Okay. Were there any IFRs, interim final rules, that said that a time period after either the cover period terminates or a loan forgiveness application is filed?
A Yes.
Q And do you recall -- you know that specifically?
A Not specifically, no.
Q Okay. Do you know when this now loan first payment is due?
A Roughly November, 2021.
Q Okay. Okay. So there's no loan payments up to this point in time.
A Correct.
Q Has there been a forgiveness application filed by Target Roofing for this loan to Sanibel Captiva Community Bank?
A No.
Q Has Sanibel Captiva Bank received any loan application with forgiveness documents, like payroll, employee information,

seeking forgiveness of this loan?
A I don't believe so.
Q And so, as it stands with Sanibel Captiva Community Bank, this is a loan where the payments start November of 2021.
A Correct.
Q And if Target bank -- I mean Target Roofing wants to apply for forgiveness, they still can.
A Yes.
Q Do you understand that, under the rules, the borrower can still apply for forgiveness up to the last payment date of the loan?
A No.
Q Okay.
A I didn't understand that.
Q All right.
A And then the loan proceeds would be reimbursed? Is that what you're saying?
Q Based upon whether or not there is a forgiveness.
A Okay.
Q And it's your understanding that this -- since this is a loan on Sanibel Captiva Bank's books and records, and on the Target Roofing's loan --
A This an asset of Sanibel Captiva Community Bank, and I'm assuming it's carried as a liability on Target Roofing's balance sheet.

Q And that's what I'm getting at. When Sanibel Captiva Bank is looking at Target Roofing, sole shareholder Casey Crowther, this loan is looked at as a liability for them; correct?
A Yes.
Q The bank hasn't defaulted Target Roofing on this loan; correct?
A No, we have not.
Q Do you see the bank as a victim of this loan?
A No.
Q There's been no injury to the bank from this loan.
A No.
Q Do you feel there was any misrepresentations by Target Roofing with regard to the SBA loan application?
A No.
Q No? I couldn't hear you, sir.
A No.
Q And I'm simply referring, if you can look to it, Exhibit 6 and Exhibit 8.
A The two applications?
Q Correct. Do you see -- was there any misrepresentation in those documents from Target Roofing?
A No. The client, the borrower, filled out the application just as every one of our customers did, or had to.
Q And I'm going to get to that through those documents

specifically, so we'll get that in a second.
Has the SBA provided any notice to Sanibel Captiva Bank that this guaranty by SBA is ineligible, or that the SBA will not guarantee this loan?
A No, they have not. Not to my knowledge.
Q And let's go to your knowledge. You said before there's one person above you at Sanibel Captiva Bank; correct?
A Correct.
Q And you're the one in charge of the loans that were disbursed based upon the CARES Act.
A (Witness nods head up and down.)
Q So if there's anybody else in the bank to know, it would be you and one other person?
A Correct.
Q So you're not aware of that at all.
A I'm not aware of it.
Q Are you aware of any demand by the SBA for repayment of the loan from Target Roofing to Sanibel Captiva Bank?
A No, I'm not.
Q Is Target Roofing in good standing with Sanibel Captiva Bank?
A Yes.
Q Is Casey Crowther in good standing with Sanibel Captiva Bank?
A Yes.

Q Now, you did mention that, through answering questions from Mr. Leeman, that you had this meeting with Casey Crowther in May of 2013.
A Yes. Phone conversation?
Q Yeah, your phone conversation. I know it wasn't a personal meeting. A phone conversation.
In that phone conversation, was there also discussion about selling of the Nalle Road property by Casey Crowther?
A Yes, there was.
Q And that Nalle Road property is his main residence; correct?
A It is.
Q And what did you understand about that?
A He also, in that time period, on that phone conversation, said that, over the past several months, his time -- times have changed, lifestyle changed a little bit, that the family was considering moving their residence out to Saint James City rather than being in North Fort Myers.
Q Okay. You know that didn't happen though; correct?
A Correct.
Q And going to your discovery of, as the government calls it, the -- well, you actually said it, the rumor at Sanibel Captiva Bank that a boat was purchased from the Target Roofing account in April of -- I mean April of 2020; correct?
A Yes.

Q What did you do to confirm that rumor?
A I looked at the accounts, I looked at the wire information, I looked at where the wire was going. I actually know the business of where that wire was going because, actually, that's another customer of mine that owns that specific dealership.
Q And so you saw a wire going to Sara Bay Marina, and you thought it was a purchase of what?
A I assumed it was a purchase of a boat.
Q It wasn't anything that was deceiving, it was money going to a marina; correct?
A That's correct.
Q And you looked at the wire, and saw the marina, saw it on the account, so you knew he purchased a boat.
A I assumed so; yes.
Q You made that assumption.
A I made that assumption.
Q I guess you could purchase something else from a marina for that amount of money, but not much; correct?
A I don't know what else they sell other than boats.
Q Okay. And you also mentioned that you had known that Casey Crowther had a history of buying and selling boats.
A That's correct.
Q And what is that knowledge?
A Just, since he's been a customer of mine since 2017, I

could point back to three boats that he's bought and sold, and he's articulated to me that he's made money on all of --

MR. LEEMAN: Objection, hearsay.

MR. DICKERSON: Your Honor, it's the defendant's statement. We've already had -- the government asked this same witness for the defendant's statement.

THE COURT: Overruled.

BY MR. DICKERSON:

Q You can answer, sir.

A Since he's been a customer -- repeat what I just said?

Q Yes. And come up more to the mike.

A Since 2017, since he's been a customer of Sanibel Captiva Community Bank, I can point back to three boats that I know that he has told me . . . other than what he has told me, that he has bought and sold and made money on.

Q All right. And then you are aware of the sale of the boat in March of 2020.

A Yes.

Q And tell --

A That was one of the three that I just --

Q That's what I was assuming. Tell me what you know about that boat sale.

A He told me he sold his boat.

Q Did he tell you for how much?

A Approximately?

Q Yeah.
A Three -- under $400,000.
Q But around 400,000?
A High three hundreds.
Q And did Mr. Crowther actually ask to use the bank's counting machine to count the cash that he received for that?
A Yes, he did.
Q And did he come in and use the bank's counting machine?
A Yes, he did.
Q And did you see the cash?
A He did.

MR. DICKERSON: May I take one second, Your Honor?

(Defense counsel confers privately.)

(Mr. Dickerson confers with government counsel.)

MR. DICKERSON: Your Honor, may I approach the witness?

THE COURT: You may.

(Counsel provides evidence to the witness.)

BY MR. DICKERSON:

Q Mr. DeCicco, I'm showing you what's been marked as Defendant's Exhibit Number 17. Do you recognize that photo?
A I recognize . . . the room. I recognize the office furniture. I recognize a box of money.
Q Is that the bank's counting machine?
A It appears to be.

Q And do you recall seeing this cash in this box?

A I saw it more spread out over the desk.

Q All right. If you look at the date on the top of the picture -- don't have to say what it is -- does that date coincide with when Casey Crowther took this money to Sanibel Captiva Bank, where you were located, and had the cash counted?

A Yes.

MR. DICKERSON: Your Honor, defense would move in Defense Exhibit E17 into evidence.

THE COURT: E17. Any objections?

MR. LEEMAN: No, Your Honor.

THE COURT: E17 will be admitted.

(Defendant's Exhibit E17 admitted.)

(Evidence was published via the projector.)

BY MR. DICKERSON:

Q So, as you just discussed, that's the bank's cash counting machine.

A Yes.

Q And that's the . . . the ladies and gentlemen of the jury, couldn't see the picture while we were talking, I just wanted to confirm. And that's the office and furniture at Sanibel Captiva Bank?

A That's the private office that I walked Mr. Crowther in, and shut the door, and allowed him to use the cash counting machine.

Q And, when he came in, he had a box full of cash.
A A closed box in the lobby.
Q Do you know if those bands are from Sanibel Captiva Bank? Can you tell?
A I can't tell from that picture.
Q That's all right. But you're confident this is in Sanibel Captiva Bank, and that's the cash that was brought in by Mr. Crowther to count on March 24th.
A I am confident that that is the Sanibel Captiva office room that I walked Mr. Crowther in and allowed him to use the cash counting machine.
Q And he had a box.
A And he had a box.
Q Of cash.
A And then later, when he needed help, because it got jammed, and he asked me to come in, there was cash laid out that he was counting.
Q Okay. So that's what he was using the machine for, to count.
A Yes.
Q All right. And that is the cash from the sale of the boat in -- the Yellow Fin boat in March of 2020.
A That's what he told me the cash was for. From.
Q Thank you.
THE COURT: Mr. Dickerson, why don't you find a

convenient place for a morning recess.

MR. DICKERSON: This would be perfect, Your Honor.

THE COURT: This works?

MR. DICKERSON: Yes.

THE COURT: Let's take about 15 minutes for a recess. Again, please do not discuss the case among yourselves, or allow anyone to discuss it with you or in your presence. About 15 minutes.

(At 10:32 a.m., the jury was escorted from the courtroom.)

THE COURT: Be seated, please.

The two ladies sitting next to the man in the blue shirt. You both raise your hands. During various testimony, you started nodding your head in agreement with the testimony of the witness. You may not do that. If you do it again, I will have you removed from the courtroom. Okay?

All right. Fifteen minutes.

MR. DICKERSON: Thank you, Your Honor.

(At 10:33 a.m., court was recessed.)

AFTER RECESS

(At 10:52 a.m., court was reconvened.)

THE COURT: Both sides ready for the jury?

MR. LEEMAN: Yes, Your Honor.

MS. WAID: Yes, Your Honor.

THE COURT: Have the jury step in, please.

(At 10:54 a.m., the jury was escorted into the courtroom.)

THE COURT: You may proceed.

MR. DICKERSON: Thank you, Your Honor.

BY MR. DICKERSON:

Q So my next line of questioning, Mr. DeCicco, so we can have it flow, is I'm gonna talk about the individual loan documents that the government showed you; and when I talk about those documents, I just want you to confirm that document is within Exhibit I, the defense exhibit, the loan packet. Okay?

A Yes.

Q Thank you. If you would look at Exhibit 6, confirm that it's in the loan packet, and then I'll be talking to you about questions about Exhibit 6.

And if I could publish Exhibit 6, please.

A Exhibit 6 is the first loan application that was recalled.

Q Correct.

A Can you point out to me where it would be in my package?

Q It's not.

A Okay.

Q But I just wanted to confirm the applications are not part of the loan packet for Sanibel Captiva Bank; correct?

A Correct.

Q It wasn't a trick question, I just wanted you to answer.

A Still early.
Q If you would, though, look at Exhibit 6.
Now, is it your understanding that, if Target Roofing filed for forgiveness, and was granted forgiveness, then the SBA proceeds would be paid to Sanibel Captiva Bank for the loan forgiveness amount?
A Correct.
Q If Target Roofing just doesn't pay the loan that we're talking about, 0225, if they don't repay that loan, then SBA would then pay Sanibel Captiva SBA loan proceeds for the loan amount.
A We would exercise the guaranty option with the SBA.
Q And that guaranty option then does what?
A Ensure that the SBA would repay us for the funds that we lent to Target Roofing.
Q Okay. And then that would be SBA loan proceeds that is paid to Sanibel Captiva Bank. Correct?
A Yes.
Q All right. Exhibit 6, this is a SBA document; correct?
A Correct.
Q Form document.
A Yes.
Q Go Page 2. The government had you look at representations and authorizations, and they had you read, under, "I represent that," the third bullet point.

A Yes.

Q Are there any SBA loan proceeds involved, at all, with regard to being paid to Target Roofing for this loan?

A The proceeds of the loan is a loan with Sanibel Captiva Community Bank loan funds.

Q And that's what I'm getting at. They had you read the third bullet point. Third bullet point, if you can read that, sir?

A "All SBA loan proceeds will be used only for business purposes as specified in the loan application."

Q There are no SBA loan proceeds in this loan; correct?

A That's an SBA guaranteed loan. They are not loan proceeds.

Q All right. So that's correct?

A That is correct.

Q Thank you. And if you'd look now to Exhibit 8. That is the second application; correct?

A Correct.

Q And on these applications -- actually, I'm sorry. Go back to six. I apologize. Do you know -- I heard -- you were asked whether that is Casey Crowther's print name. Do you know whether that's his signature?

A I don't. I'm not an expert in signatures.

Q And, in fact, I think you were exchanging e-mails with Mr. Crowther that Mr. Crowther was having other people on his

team work on the application kind of like you were.
A There were several people copied on that e-mail.
Q Right. So you weren't working on this loan by yourself; correct?
A No.
Q You had several people; correct?
A Yes.
Q How many people did you have working on it?
A Mid thirties. About a third of our bank.
Q Very hectic time period; right?
A Yes.
Q You guys also had the home refinance surge that was going on at that same time?
A Yes.
Q Now going to eight. And again, this Exhibit 8 would not be in the Sanibel Captiva loan package; correct?
A Correct.
Q On eight, going to that second page and that third bullet point again, same language; right?
A Yes.
Q Same thing applies; correct?
A Yes.
Q Going to this signature, do you recognize that signature?
A Casey Crowther.

Q Do you know it's Casey Crowther's?
A Again, I'm not an expert in reading signatures.
Q I know. I'm just asking. I understand. But again, do you recall receiving an e-mail from someone at Casey Crowther's office -- I know it's going back, a lot of people, a lot of time. Do you recall receiving an e-mail from somebody on April 13th with this loan application?
A It may or may not have come directly to me. It probably went to one of my staff members that was assigned to be the relationship manager for Target Roofing during this time.
Q All right. Go back, look right up there, maybe that helps, the primary contact and e-mail address. To the right.
A Brad.
Q And who is Brad?
A Brad, I believe, was comptroller, or CFO, or involved with finance at Target.
Q And do you remember communicating in e-mail back and forth with Brad?
A He was on the e-mail chain.
Q All right. And so this application's April 13th; correct?
A Dated April 13th.
Q And the loan closed on what date? And if you need to look at Exhibit I, you can look at Exhibit I.
A Thank you. Fourteenth.

Q So it closed right back to back?
A Very quickly after.
Q Do you recall actually receiving this loan application at the end of the day on the 13th, in an e-mail?
A No.
Q Now let's look at Government's Exhibit 9. And what is that document, sir?
A It's the promissory note associated with the loan documents.
Q And it's in Exhibit I?
A It is in there.
Q Okay. Thank you. And this is the document that the bank had drafted?
A We hired a third-party attorney that specialized in SBA 7(a) lending to provide us, and we paid for that service, for a loan document package, which is Exhibit I.
Q Okay. And, because this was a new program with . . . whether it was going to be guarantied, or whether it was going to be forgiven; correct?
A Our bank did not have, nor did any bank have, any specialty knowledge for creating a loan doc pack for an SBA PPP program, because it never existed.
Q Right.
A And they gave us very little knowledge at that time about how to fund the loan proceeds and how to create the loan

package. So, to the best of our ability, with the limited information we had, that's the choice that myself and management made. We hired a third-party attorney to create those loan documents.

Q And so you learned, what, on the 27th/28th, the CARES Act, as far as the program being approved and passed by the President; correct?

A Of March?

Q Yes.

A Yes.

Q And you had until about what, April 3rd, to start implementing and accepting applications?

A Correct.

Q What was that time period like?

A Pretty hectic. Not much sleep.

Q Sorry? What did you say?

A Pretty hectic, not much sleep, and funneling a lot of requests, as you can imagine, from our clients, and non-clients as well.

Q And then you had to put the team together, it was your duty to put the team together to be able to handle this influx of work.

A Yes.

Q And you said was it 700 or 800 applicants that petitioned you, Sanibel Captiva Bank received?

A In round one?
Q Yes.
A We did over 700 applications and approved loans, funded loans. Nearly $70 million.
Q All right. So round one, Sanibel Captiva loans out $70 million.
A Correct.
Q In a very short amount of time period.
A Yes.
Q Was that just all April, or did that go past April?
A I'm sure it was April and May.
Q And it was first come first served; right?
A Yes. There were actually two periods during round one. Round one had 349 million of available -- billion, excuse me -- 349 billion that did not last long, because the loan amounts could go up to $10 million. And, as you can imagine, the larger businesses took the vast amount of the money very quickly. And then the government issued -- Congress approved additional funds, and that dragged on a little bit longer, until that ended. And I don't remember the date that that ended.
Q Okay. But safe to say that you had a rush with everybody thinking this money was limited.
A Yes. There was a rush at the beginning.
Q And you don't have the loan documents, so you hire

outside counsel to draft these documents.

A Yes; that was the decision that was made.

Q And Exhibit 9 is one of these documents.

A Yes.

Q If you would, what does Paragraph 1 -- just read it to the jury, make sure everybody can hear and see it.

A Promise to pay?

Q Yes.

A "In return for the loan, borrower promises to pay the order of lender the amount of $2,098,700.00 plus interest of unpaid principal balance and all other amounts required by this note."

Q Standard loan note --

A Very standard for a promissory note.

Q And then the second paragraph, is that standard language in a promissory note?

A This was very specific to this program.

Q Okay. And this is what you had as far, as received from your counsel, as far as the language; correct?

A They created this document.

Q Right. And that's what I'm saying, your lawyer created this document.

A Yes.

Q And what does that significantly say as far as Paragraph 2?

A Loan forgiveness?
Q Yes.
A "Borrower may apply to lender for forgiveness of the amount due on this loan in the amount equal to the sum of the following costs incurred by the borrower during the eight-week period beginning on the date of first disbursement of this loan."
Q And then it has the A through D; correct?
A Correct.
Q And then what is the last paragraph?
A "The amount of loan forgiveness shall be calculated, (and may be reduced,) in accordance with the requirement of the Paycheck Protection Program, including provisions of Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act, the CARES Act, not more than 25 percent of the amount forgiven can be attributed to non-payroll costs."
Q So do you understand that provision to be, if somebody, being an applicant, a borrower in this case, applies for forgiveness, they're not required to, but they may; correct?
A Correct.
Q And if they do apply for forgiveness, then it is triggering the requirements of the Paycheck Protection Program, and specifically that last paragraph you read.
A That's what it says; yes.
Q And so if somebody doesn't apply for forgiveness, that

paragraph, that section, doesn't even apply to that borrower.
A Correct.
Q And they're still responsible . . . .
A For the loan. For the promissory note.
Q Yeah, and Paragraph 1, promising to pay.
A Correct.
MR. DICKERSON: Sorry, Your Honor. Hit the wrong button.
BY MR. DICKERSON:
Q Reach for Government's Exhibit 14, please, sir. And again review that and see if that document is within Defendant's Exhibit I, the loan package.
A The loan agreement, yes, it's in this package.
Q And what -- tell the ladies and gentlemen of the jury what this loan agreement is.
A It spells out the terms of the loan.
Q And at this point in time it was still a two-year maturity; correct?
A Yes.
Q And that's why we have that term right there; correct?
A That's correct.
Q And that's changed.
A Yes.
Q To five years.
A It has.

Q But you don't need to have any writing to change the loan agreement for that, that's just going to be because the law has changed as it applies to five years.
A That's how I understand it.
Q Okay.
A That the updates to the interim final rule supersede the loan documents.
Q Okay. Go to Page 2, Paragraph 2, under, "Loan." What's your -- I mean, take your time to read it, I know you haven't read it, but take your time to read it, and let me know when you've completed it.
(Witness examines evidence.)
A Speaks specifically about forgiveness and what that process would look like if or when the borrower decides to apply for forgiveness.
Q And does it not state that . . . in which or all portion loan proceeds, on the third sentence down, will be forgiven provided the borrower has complied with all terms of the Act?
A That's what it says.
Q So again, not until that borrower actually submits for forgiveness that application, the supporting documents are submitted and approved, is there any SBA proceeds pursuant to the CARES Act and the payment -- Paycheck Protection Program.
A That's what it says; yes.
Q For forgiveness, if you know, I'm sure you do, but what

is the process of what a borrower does to seek forgiveness?
A At Sanibel Captiva Community Bank?
Q Correct.
A We have another third-party portal system of which the borrower submits specific information that's requested, certain basic information that's readily available. But the premise of it is primarily submitting payroll records if they are specifically only applying for forgiveness on payroll. If they are providing -- or, excuse me, if they are requesting forgiveness on that other 25 percent, which later changed to 40 percent, but if there are mortgage interest, or rent expense, or items like that that they're applying for, then they have to provide that information as well.
Q The backup data.
A The backup financial data to support the request that's being made.
Q So if a borrower were to file for forgiveness now, you just mentioned it's 60 percent payroll, 40 percent the non-payroll items.
A Yes. There is another interim final rule that changed that 75/25 split to 60/40.
Q Okay. And then, after you have that third-party portal accept the data, is it that third party reviewing for you, or is there someone internally in the bank that's reviewing it?
A Internal in the bank is reviewing. And then, once it

passes with us, we submit to the SBA.
Q And then it's the SBA who then reviews it to determine whether it's forgiven or not.
A That is correct.
Q The bank, Sanibel Captiva Bank, they can't make the final decision, they just make the recommendation on what the bank has reviewed from the application for forgiveness submission.
A That is correct.
Q If you would look at Exhibit 13. And is that document in the loan packet?
A Yes.
Q And, with regard to that, is it the same -- this is a business certificate saying that, if the monies are used for the business purposes for the SBA Paycheck Protection Program, then it can be forgiven?
A Yes.
Q Thank you.
Exhibit 10, please, sir. That is the CARES Act disclosure; correct? That's what you have?
A Yes.
Q And is that within the Sanibel Captiva loan packet, Exhibit I?
A Yes.
Q Now, the prosecutor had you read and look at

Paragraph 10. Do you remember doing that, where it says borrower will use proceeds for this PPP loan solely for?
A Yes.
Q Is that use tied to the CARES Act?
A Is that use tied to the --
Q That use, that limitation on use, tied to the CARES Act? It's called a CARES Act disclosure?
A It's in this disclosure, yes.
Q So if the applicant, now the borrower, was going to submit for forgiveness pursuant to the CARES Act --
A Yes.
Q -- then that's what they had to comply with.
A That's correct.
Q And it says borrower will use the proceeds; correct?
A Yes.
Q Paragraph 12. Just read that for yourself. And then I'll ask you a question.
(Witness examines evidence.)
Q Have you read it?
A Yes.
Q Paragraph 12, applying to if a borrower applied for forgiveness, and used the proceeds improperly, what the SBA would do?
A Yes, it does.
Q And it says there that the SBA will direct borrower to

repay those amounts; correct?
A That's what it says; yes.
Q And you're unaware of any demand, direction, by the SBA, to Target Roofing, to repay any amount back to Sanibel Captiva Bank.
A Correct.
Q Number 12. Government's Exhibit Number 12. Again, review and let me know if that's in Exhibit I, the loan packet.
A Settlement statement, yes, it is.
Q And this is an SBA form; correct?
A That's a standard Form 1050; yes.
Q And again, the use of proceeds in Exhibit 12 is discussing the use of proceeds if the borrower applied for forgiveness.
A Yes.
Q I'm going to go to 149. Same exercise. Look at it and let me know if it's in the packet.
A Loan forgiveness affidavit. Yes, it's in the package.
Q And again, this loan forgiveness affidavit is -- I mean, this was signed at the time of the actual loan closing; correct?
A Correct.
Q So there's been no submission of -- excuse me -- of loan forgiveness request at this time.
A No.

Q But this is affirming that, if there is an application for loan forgiveness, the person who executes this document is aware of the responsibilities if they seek forgiveness.
A Yes.
MR. DICKERSON: May I approach the witness, Your Honor?
THE COURT: You may.
(Counsel provides evidence to the witness.)
BY MR. DICKERSON:
Q I've shown you what's been marked as Exhibit J. Just take your time and look at it. It's five pages?
A Yes.
Q Do you recognize that document?
A I recognize it as a DocuSign, which is a third-party secure signature company that we utilized for this program.
Q And is that the DocuSign secured summary of when the loan, Exhibit I, was executed?
A Yes.
Q And is this a document that Sanibel Captiva Bank maintains in its normal course of business with the loan application?
A We have this maintained for all of our borrowers.
Q Every borrower, period, if they used DocuSign.
A If they used DocuSign. Which the vast majority of them did.

Q And during this time process, we go back to April, 2014, the question of were you inside, could you be with people, that was an issue; correct?
A Yes.
Q As far as coming straight to the bank and having someone do a closing in person.
A That is correct.
Q And was it that you -- the bank promoted using DocuSign during this time period?
A Yes. Absolutely. That, and I couldn't sign 800 sets of documents in a very short period of time.
Q Right. I was about ready to get to two things. Number one, you couldn't be at every closing.
A Correct.
Q And were you even in the office, or were you working from home during that time period?
A I was in the office the entire time.
Q You were working.
A Yes.
Q How about your staff, were they at home, or were they working remotely?
A It was a mixture.
Q The manner used in Exhibit J, the DocuSign, was enabling the bank to be able to get everybody to be able to participate and execute these loans in a timely fashion.

A Yes. And secure.
Q And tell me about the secure part. I missed that. That's a good point.
A I'm not a -- I don't have . . . I'm not a specialist in IT, by any means, but I know DocuSign is a secure way, and our IT department of our bank worked with our attorneys to make sure that we were doing it in a safe and secure way, and it was allowable for the PPP program.
Q The CARES Act actually said, for these loans, they could be done electronically.
A Yes, it does.

MR. DICKERSON: Your Honor, defense moves in Exhibit J.

THE COURT: Any objection?

MR. LEEMAN: Your Honor, at this moment there is an objection. It wasn't on the exhibit list. I also haven't heard a proffer of relevance. That would be the objection at the moment. We may withdraw it.

THE COURT: The objection is overruled. Exhibit J will be admitted.

(Defendant's Exhibit J admitted.)

MR. DICKERSON: May I publish, Your Honor?

THE COURT: You may.

MR. DICKERSON: Thank you.

(Evidence was published via the projector.)

BY MR. DICKERSON:
Q Now, Mr. DeCicco, this is the document we're talking about as far as the DocuSign; correct?
A Yes.
Q And it has the timestamp, signature as far as when Mr. Casey Crowther signed this on behalf of Target Roofing; correct?
A Yes.
Q And it shows . . . I'm not going to say. You tell me what that timestamp means to you.
A Exact time.
Q Okay. What does that mean?
A When he sent it and clicked those signature buttons.
Q Okay. And then what does viewed and signed mean?
A Can you point to it directly, please? Oh. Sorry. Viewed means -- I'd assume that means when he opened the document to view it. And signed it a very short period of time after. It does not take long to sign electronically.
Q So this is just open it, view it, and then you just go through and you click it; correct?
A If you choose to do it that way, yes.
Q And then what I'm showing you right there, that is your DocuSign electronic signature; correct?
A Yes.
Q And you access it on the same day, 4/14; correct?

A Yes.

Q And then that's when you viewed it, and then that's when you signed the document.

A Yes.

Q And same thing, you've been signing these things, you're going through, getting them done, because you have so many to do; correct?

A Yes.

Q And did you ever read the entire loan documentation, or did you rely upon the bank's counsel, and he was telling you what the documentation consisted of, and relied upon him?

A I read the majority of them, but I did not read everything word for word.

MR. DICKERSON: Okay.

May I have one second, Your Honor?

THE COURT: You may.

(Mr. Dickerson and Ms. Waid confer privately.)

MR. DICKERSON: Nothing further, Your Honor.

THE COURT: All right. Thank you.

(Following Redirect Examination, the following Cross-Examination took place:)

THE COURT: All right. Thank you.

Any recross, Mr. Dickerson?

MR. DICKERSON: Yes, Your Honor. I'll be brief.

RECROSS EXAMINATION

BY MR. DICKERSON:

Q Hello, sir. We discussed this before, but, based upon the government's questions, I'm going to, in a second, get the right exhibit -- Exhibit 10, CARES Act disclosure? May I have it published, please?

(Evidence was published via the projector.)

BY MR. DICKERSON:

Q Now, we talked about this is disclosing to the borrower what the CARES Act is; correct?

A Yes.

Q And go down to Paragraph 11. That's talking about the 75/25, as far as what's needed for loan forgiveness; correct?

A Yes.

Q The CARES Act is discussing, if somebody submits for forgiveness, this, right here, the CARES Act disclosure, is what's allowable for forgiveness under the CARES Act; correct?

A Yes.

Q So it has nothing do with somebody buying a boat, or misrepresenting a boat, if they've never filed for forgiveness, because it's still just a loan; correct? Take your time. Read it.

A Based on that statement right there?

Q Yes.

A I'd say yes.

Q Okay. So, now, if someone bought a boat, and applied for forgiveness, and used the boat as forgiveness, that would be violating this provision; correct?

A I would certainly assume so.

Q Yes. So this is specifically to the CARES Act, disclosing to the borrower, if they applied for forgiveness pursuant to the CARES Act, what they can use the funds for.

A Yes.

Q Thank you.

Exhibit 7. Reading the entire document, specifically the top. The purpose of this is for the guaranty; correct? The purpose of Sanibel Captiva Bank, yeah, look at it, sir. Take your time. The purpose of seven, which this is your lender application form, the purpose of this is so Sanibel Captiva Bank, if there is either a forgiveness application or the borrower defaults, the bank then has the guaranty; correct?

A This accompanied every loan.

Q Right.

A These loans were done in accordance with the program so that they would be guaranteed.

Q Correct. And this is the bank's representation for the guaranty.

A Yes.

Q And the only time that the Sanibel Captiva Bank can invoke that guaranty is, one, if the borrower submits for

forgiveness.
A I'm trying to think of another situation where the bank would invoke the guaranty prior --
Q I'll rephrase my question, because there is more than one. There is the loan forgiveness and if the borrower doesn't pay.
A That would be the next point. If the loan was not forgiven, and the first payment was missed, we could invoke the guaranty.
Q And there have been no payments missed on this loan; correct?
A Correct.
Q And there's been no forgiveness filed; correct?
A Correct.
Q So the guaranty doesn't kick in until one of those things happen, either application for forgiveness, approval by the bank, approval by SBA, then there's payment, being one; correct?
A I'm not a specialist to know if the loan is currently guaranteed or if it is only guaranteed upon the two items that you're talking about.
Q Okay. But there are no SBA loan proceeds in this loan at all.
A The loan was funded out of liquidity of Sanibel Captiva Community Bank.

Q Right. And Sanibel Captiva Community Bank does not receive any proceeds from the SBA unless there is either a forgiveness payment by SBA or a guaranty by SBA for this loan.
A The bank received a loan origination fee from the SBA.
Q Right. The bank received a fee, but that wasn't towards this loan. This didn't fund the loan.
A That is correct.

MR. DICKERSON: Okay. Nothing further, Your Honor.

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(Thereupon, at 11:55 a.m., the cross-examination of Kyle DeCicco was concluded.)

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CERTIFICATE

I CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPT FROM THE ORIGINAL STENOGRAPHIC RECORD IN THE ABOVE-ENTITLED MATTER.

Dated this 25th day of March, 2021.

Jeffrey G. Thomas

JEFFREY G. THOMAS, RPR, CRR