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' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR NEW TRIAL

The United States responds in opposition to the defendant's renewed motion for judgment of acquittal and alternative motion for new trial. In viewing the evidence presented at trial in the light most favorable to the government, there was more than sufficient evidence to support the jury's verdict of guilty on all counts beyond a reasonable doubt. Further, the defendant's claim that the government's case was marked with inconsistencies and uncertainties is without merit and does not warrant a new trial. The evidence at trial preponderated heavily in favor of a verdict of guilt, not against it. Accordingly, the defendant's motion and alternative motion should be denied.

LEGAL STANDARDS

Federal Rule of Criminal Procedure 29(c) applies when a motion for judgment of acquittal is made after a jury verdict. "The sole ground for a posttrial motion under Rule 29(c) is that the evidence was insufficient to sustain a conviction." *United States v. Miranda*, 425 F.3d 953, 962 (11th Cir. 2005) (quoting *United States v. Fozo*, 904 F.2d 1166, 1171 (7th Cir. 1990)). In considering such a motion, the Court must view the evidence at trial in the light most favorable to the government, with all reasonable inferences and credibility choices in favor of the jury's verdict. *United States v. Williams*, 390 F.3d 1319, 1323 (11th Cir. 2004).

Upon reviewing the evidence, the Court is to determine whether a reasonable jury could find that the evidence established guilt beyond a reasonable doubt. *United States v. Vera*, 701 F.2d 1349, 1357 (11th Cir. 1983). A jury is free to choose among reasonable constructions of the evidence. *Id.* Thus, the evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt. *Id.* In the end, the Court should not overturn a jury's verdict "if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt." *United States v. Crabtree*, 878 F.3d 1274, 1284 (11th Cir. 2018) (quoting *United States v. Wilson*, 788 F.3d 1298, 1308 (11th Cir. 2015)). Under this well-settled legal standard, the jury's verdict in this case should not be disturbed.

A motion for new trial is governed by Federal Rule of Criminal

Procedure 33, which provides the Court discretion to "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33. Motions for new trial based on the weight and sufficiency of the evidence are not favored. *United States v. Martinez*, 763 F.2d 1297, 1313 (11th Cir. 1985). Thus, "[c]ourts are to grant them sparingly and with caution, doing so only in those really 'exceptional cases.'" *Id.* Specifically, the Court must find that the evidence preponderates heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand. *Id.* at 1312-13. Courts, therefore, have only granted such motions in rare instances where the government's witnesses have been impeached and the government's case had been marked by uncertainties and discrepancies. *Butcher v. United States*, 368 F.3d 1290, 1297 n.4 (11th Cir. 2004); *Martinez*, 763 F.2d at 1313.

DEFENDANT'S CLAIMS

In support of his renewed motion for judgment of acquittal, the defendant argues a number of reasons why the evidence at trial was insufficient to support the jury's finding of guilty.[1] The defendant argues he complied with the CARES Act, and that the governing law was ambiguous because the CARES Act and Interim Final Rules conflicted with one another.

[1] Most of these arguments were previously made in the defendant's motion for judgment of acquittal that was filed at the close of all the evidence and denied by this Court. Docs. 123, 125.

Doc. 140 at 14-21. The defendant further argues that, given this purported ambiguity, the government cannot prove the falsity of the defendant's representations. *Id.* at 21-24. The defendant also argues his acts were only deceitful and did not rise to the level of fraud which he claims is supported by the *Takhalov* case, and that the evidence was insufficient to prove the elements of counts three and four. *Id.* at 24-27. Finally, the defendant argues the evidence did not establish the defendant knowingly engaged in criminal conduct. *Id.*at 27-28.

The defendant also offers two arguments in support of his alternative motion for new trial. The defendant argues that uncertainties and discrepancies mark the record, mandating a new trial to serve the ends of justice. *Id.* at 28-29. The defendant also argues that the admission of evidence concerning the 39 fake employees confused the jury, was unduly prejudicial, and warrants a new trial. *Id.* at 29.

ARGUMENT

During the trial, the United States proved beyond a reasonable doubt that the defendant committed bank fraud, false statement to a financial institution, and illegal monetary transactions. The defendant, on the other hand, suggests the government's evidence was insufficient to support a conviction. *See* Doc. 140. Specifically, the defendant claims that since he did not violate the CARES Act, he cannot be found guilty of the crimes he was charged with. *Id.* at 14-16. In support of this claim, the defendant, in his motion, argues "the only law Crowther was required to follow was the CARES Act" *Id.* at 16. While the CARES Act and Paycheck Protection Program (PPP) are relevant to the case, the laws the defendant was obligated to follow were those contained within 18 U.S.C. §§ 1344, 1014, and 1957. The defendant further claims he did not commit bank fraud because he never sought forgiveness of his PPP loan. *See id.* However, the defendant was charged with making false and fraudulent representations to a lender to secure a forgivable loan with a 1% interest rate. The defendant was not charged with making false and fraudulent representations to secure loan forgiveness.

A. The evidence at trial was more than sufficient to prove the defendant committed Bank Fraud, 18 U.S.C. § 1344.

The evidence the government presented at trial was more than sufficient to prove the defendant committed bank fraud, by both alternative methods, beyond a reasonable doubt. These two alternative methods required the government to prove the "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." Doc. 126 at 10-11.

1. The defendant's scheme to defraud.

"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." *Id.* at 12. In general, the defendant's scheme was to use his company, Target Roofing, to secure a PPP loan from Sanibel Captiva Bank by false and fraudulent pretenses and to use the PPP loan funds for his own personal enrichment. These misrepresentations caused Sanibel Captiva Bank to approve Target Roofing's initial PPP loan application for approximately $1.5 million and their revised PPP loan application for approximately $2.1 million. The PPP loan funds were deposited in a segregated bank account, that only the defendant had control over, and a large portion of the funds were used for the defendant's own personal enrichment. As will be discussed further below, the defendant's scheme to defraud not only encompassed false and fraudulent representations made to secure a $2.1 million forgivable loan, but it also included disguising the defendant's misuse of PPP funds, and the hiring of 39 fake employees to further the scheme.

2. The false and fraudulent representations to Sanibel Captiva Bank.

The evidence at trial proved the defendant made false and fraudulent representations in his initial and revised PPP loan applications in furtherance of the scheme to defraud. Specifically, the defendant made false and fraudulent representations that Target Roofing would use PPP loan funds "to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments." Gov't Ex. 6, 8. Other false and fraudulent representations made by the defendant included that "all SBA loan proceeds would be used for business related purposes…", and that "current economic uncertainty makes the loan request necessary to support the ongoing operations of the [a]pplicant." *Id.* The defendant made further false and fraudulent misrepresentations concerning his intended use of PPP loan funds in loan agreement documents executed with Sanibel Captiva Bank. Gov't Ex. 10, 12-14.

The defendant's representations were false or fraudulent because, as the government established at trial, they were about a material fact the defendant knew was untrue or made with reckless indifference as to the truth and with the intent to defraud. Doc. 126 at 13. To establish the defendant made false and fraudulent representations to Sanibel Captiva Bank, the government presented evidence of the defendant's conduct leading up to his application for a PPP loan, including but no limited to, his shopping for a boat that cost approximately $700,000 and the timing of the transaction, his communication with his former business partner S.A. about paying down the principal on the note related to the sale of the former partner's share of Target Roofing, and the defendant' subsequent use of the PPP loan proceeds inconsistent with his representations to Sanibel Captiva Bank. The defendant claims the record clearly showed he utilized the PPP loan proceeds for payroll expenses. Doc. 140 at 10. However, the evidence the government presented at trial, which included bank statements and documents, wire transfer records, summary exhibits, and testimony from Diane Knott proved a bulk of the PPP loan funds were never utilized for payroll expenses.

The April 2020 bank statement for Sanibel Captiva account ending in 6781 showed that, on April 14, 2020, $2,098,700 in PPP loan funds were deposited in the account. Gov't Ex. 107. Before the date of the deposit, the account's balance was $0. *Id.* The first transaction following the deposit was a $126,000 transfer of funds to Target Roofing's operating account (account ending in 1791) titled "loan from casey" on April 16, 2020. *Id.*; Gov't Ex. 73. These funds were then used to pay off the balance of a JP Morgan Chase credit card on April 17, 2020. Gov't Ex. 73 at 3, 161; Knott, Tr. at 12-17. The PPP loan application and loan documents executed by the defendant did not contain a provision that permitted the use of funds on existing credit card debt, nor did the defendant represent his intent of doing so to the bank. *See.* Gov't Ex. 6, 8-10, 12-15.

The second transaction, dated April 21, 2020, was a $100,000 wire transfer to the defendant's former business partner. Gov't Ex. 31, 32, 107. The third transaction was a transfer of $3,300 to his Sanibel Captiva personal checking account on April 22, 2020. Gov't Ex. 94, 107. The fourth transaction was a $689,417 wire to Sara Bay Marina on April 24, 2020. Gov't Ex. 33, 34, 107. In total, $918,737 in PPP funds were used between the dates of April 14-24, 2020. Gov't Ex. 107. None of the $918,737 was used for payroll, rent, utilities, or mortgage interest. $1,179,963 of the PPP loan funds remained and, on May 7, 2020, the funds were transferred to Target Roofing's operating account. Gov't Ex. 74 at 2, 108; Knott, Tr. at 19-20.

Following the transfer of the remaining PPP loan funds into Target Roofing's operating account, $800,000 was used to pay down a $1.5 million line of credit on the same date. Gov't Ex. 74 at 2; Knott, Tr. at 20. Thereafter, approximately $379,000 in PPP loan funds remained in Target Roofing's operating account. Gov't Ex. 74. The defendant's clear misuse of PPP funds is evidence that the defendant falsely represented his intended use of the funds. Coupled with his prior activity related to shopping for a boat and discussions with his former business partner, S.A., there was clear intent to defraud and not just mere deception as claimed by the defendant. Further, approximately $918,737 in PPP funds were misused within 10 days of the date the funds were deposited into Target Roofing's PPP account.

The defendant asserts his representations were not false or fraudulent and cites to loan officer Kyle DeCicco's testimony on cross examination. Doc. 140 at 12, 26. However, the defendant makes no mention of DeCicco's testimony on redirect examination. On redirect examination, DeCicco confirmed the defendant used PPP funds to buy a boat. DeCicco, Tr. v.2 at 45. DeCicco also confirmed the defendant made misrepresentations in his PPP loan application and in loan documents executed with the bank. *Id.* at 47, 51-52. Most importantly, DeCicco's testimony was clear that there were no changes or amendments to the PPP loan program that would have allowed for the purchase of a boat with the funds. *Id.* at 52.

3. The defendant's false and fraudulent representations to Sanibel Captiva Bank were material.

The government presented substantial evidence at trial that established the defendant's false and fraudulent representations were material to Sanibel Captiva Bank and the SBA. As stated in the Court's jury instructions at trial, "[a] fact is 'material' if it has the capacity or natural tendency to influence a person's decision." Doc. 126 at 13. Moreover, "it does not matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false." *Id.*

The false and fraudulent representations on the defendant's PPP loan applications and loan agreement documents influenced Sanibel Captiva's decision to approve his loan request. To receive a PPP loan, the defendant was required to certify that he would use the funds on payroll, mortgage interest, rent, or utilities. Miller, Tr. at 9-10; DeCicco, Tr. v.2 at 7. The testimony at trial was that Sanibel Captiva Bank would not have approved the defendant's PPP loan request had they known he would use a portion of the funds to purchase a boat. DeCicco, Tr. v.2 at 27-28, 46-47. Furthermore, DeCicco confirmed that Sanibel Captiva relied on the defendant's certifications concerning his intended use of PPP loan proceeds in approving the loan. *Id.* at 52. The evidence at trial established the defendant's misrepresentations would have the natural tendency to influence a PPP lender's actions.

4. The defendant's intent to defraud Sanibel Captiva Bank.

"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." Doc. 126 at 12. To prove the defendant intended to defraud Sanibel Captiva Bank, the government introduced a considerable amount of circumstantial evidence at trial. A boat sales associate from Naples Bay Marina testified that in late March of 2020, the defendant inquired about the purchase of a 40-foot Invincible catamaran boat. Notes of these interactions were entered into evidence and revealed that, no later than March

30, 2020, the defendant began to inquire about the purchase of the boat. Gov't Ex. 1. After contacting the marina, the defendant sent a text message to Senior Loan Officer Kyle DeCicco about the PPP program on April 1, 2020. Gov't Ex. 19.

The evidence at trial further showed that the PPP loan application process and boat negotiation process paralleled one another. After the defendant received an email on April 8, 2020, that Target Roofing's initial PPP loan application was approved for $1.5 million, he finalized the purchase of the boat on April 10, 2020. Gov't Ex. 2, 15. On April 13, 2020, three days after finalizing the price of the boat, the defendant sent a text message to DeCicco indicating Target Roofing's initial PPP loan application was wrong and that he would be submitting a revised PPP loan application. Gov't Ex. 20. On April 14, 2020, the revised PPP loan application for $2.1 million dollars was approved and funded. The timing of the boat's purchase and the PPP application process proves the defendant intended to use the PPP funds for a prohibited purpose and not on payroll.

The PPP loan funds were deposited into stand-alone bank account previously opened by the defendant on April 10, 2020. According to the trial testimony of Branch Manager Kristin DiIorio, the defendant directed DiIorio to deposit the PPP loan funds in a separate account "to keep it separate from the [Target Roofing] employees that had access to either on-line or other accounts." DiIorio, Tr. at 17-18. The defendant has suggested that the government imposed a stricter condition on the use of PPP funds, which included requiring PPP funds to be deposited in a segregated bank account. Doc. 140 at 10-11. To the contrary, the government offered evidence of the segregated account to show the defendant's desire to hide his use of PPP funds from others in Target Roofing as a means of proving the scheme and his intent to defraud. Further, the defendant's choice to deposit the funds in a segregated account made it easier for the government to prove the defendant misrepresented his intended use of PPP funds.

Once the $2.1 million in PPP loan funds were deposited into the defendant's segregated PPP account on April 14, 2020, the defendant made two wire transfers which were the focus of the government's case. Both wire transfers occurred within ten days of the defendant's receipt of the PPP funds. Gov't Ex. 107. The first, was a $100,000 wire to the defendant's former business partner on April 21, 2020. The defendant stated the purpose of this wire was a "payroll transfer." Gov't Ex. 31, 32; DiIorio Tr. at 21-26. The second, was a $689,417 wire to Sara Bay Marina on April 24, 2020. The defendant stated the purpose of this wire was an "equipment purchase." Gov't Ex. 33, 34. The true purpose of the $100,000 wire was a principal payment on a promissory note, and the $689,417 wire was for a 40-foot catamaran boat.

Evidence of the purpose of the two wires was presented to establish the defendant's intent to defraud. The defendant provided purported wire descriptions that were business related or payroll related as a means of disguising his misuse of PPP funds. The purpose of the $100,000 wire was most illuminating. The defendant stated the wire was for a "payroll transfer," and the amount of the wire ($100,000) was the cap on individual employee salary that would be eligible for forgiveness. Gov't Ex. 16 at 12. This evidence showed the defendant intended to disguise his improper use of PPP funds to avoid detection which circumstantially established his intent to defraud. Further, the government introduced evidence of a $150,000 wire that was later sent to the same former business partner on July 17, 2020 from Target Roofing's operating account. Gov't Ex. 30. The purpose on the wire request was "note payment" and not payroll transfer. *Id.* The defendant argues the purpose of a wire transfer is akin to the memo line on a check and is not significant to the bank. Doc. 140 at 25. However, the claimed purpose of the wires was significant enough *to the defendant* that he falsely represented each wire's purpose.

The "payroll transfer" and "equipment purchase" wires were not the only wire transfers the defendant disguised. On June 1, 2020, the defendant disguised a $55,000 wire for the purchase of a horse as a "roofing materials" purchase. Gov't Ex. 35-38. The evidence at trial established the defendant had eight weeks from the date of the PPP loan's funding (April 14, 2020) to use the loan funds. Miller, Tr. at 12. The $55,000 horse wire occurred within this eight-week period. Additionally, two weeks before the horse wire, DeCicco confronted the defendant about his use of PPP funds to purchase a boat. Gov't Ex. 22; DeCicco, Tr. v.2 at 33-38. The government introduced evidence that demonstrated the lengths to which the defendant went to disguise the horse wire. This included an email the defendant sent to Kristin DiIorio requesting confirmation that the wire transfer went through "so the guys can pick material up now." Gov't Ex. 38 at 2. The horse wire was further evidence of the defendant's intent to defraud.

The government also introduced evidence of the defendant's hiring of 39 fake employees during May 2020 as evidence of his intent to defraud. As previously discussed, the defendant originally had eight weeks to use the PPP funds on payroll, mortgage interest, rent and utilities. Miller, Tr. at 12. If at least 75% of the funds were used on payroll after the eight-week period, the loan would be forgiven. *Id.* at 13. In applying for forgiveness, the defendant would only be required to supply payroll record and invoices to Sanibel Captiva Bank, and a PPP lender was not required to conduct an audit of the borrower's bank accounts. *Id.* at 15-16. All that was required was that the lender "make a good-faith effort in reviewing the borrower's forgiveness documentation." *Id.*

Additionally, the defendant's hiring of the 39 fake employees was prompted after DeCicco sent the defendant an email notifying him that the SBA would further review PPP loans of over $2 million for compliance with heightened scrutiny of the loan because of its size. Gov't Ex. 17, 64, 146. The defendant first hired a batch of 20 fake employees on May 15, 2020, two days after DeCicco's $2 million dollar loan email. *Id.* at 64. The second batch of 19 fake employees were hired approximately a week later. *Id.* The 39 fake employees, as well as the defendant's five family members that were hired but were never seen working at Target Roofing, were all fired effective June 5, 2020. Portinari, Tr. v.1 at 8-17, 29; Gov't Ex. 64. This was the same date the Paycheck Protection Program Flexibility Act was signed into law, which gave PPP borrowers the option of 24 weeks to use PPP funds instead of 8 weeks. Miller, Tr. at 14. The act also changed the required ratio of funds that needed to be used on payroll from 75% to 60%. *Id.*

The timing of the firings was not a coincidence. The evidence of the mass hiring and firing of 39 fake employees proved the defendant intended to bolster his payroll number to defraud Sanibel Captiva Bank into granting his future forgiveness request. The hiring of 39 fake employees also proves the defendant never intended to use PPP loan funds on payroll.

The government presented substantial evidence which proved the employees were fake. More than 90 paychecks were issued to the 39 fake employees over a three-week period. Gov't Ex. 64, 65. Only one of the paychecks was cashed or deposited. *Id.* That paycheck, issued to Augustin Castillo on May 29, 2020, was deposited into the defendant's personal checking account on August 20, 2020. *Id.* at 66, 138 at 67. Moreover, Target Roofing's Human Resource Director never observed any of the 39 employees working at Target Roofing and received all their hiring paperwork from the defendant. Portinari, Tr. v.1 at 19-29.

The defendant argues that his intent never rose to an intent to defraud. Doc. 140 at 24-25. The case the defendant cites in support of this argument states that in order to "intend to defraud," one must "intend to harm the victim." *United States v. Takhalov*, 827 F.3d 1307, 1312-13 (11th Cir. 2016). Intent to harm is then defined as "to obtain, by deceptive means, something *to which the defendant is not entitled*." *Id.* at 1313 (emphasis added). The defendant did exactly that – used false and fraudulent representations to trick Sanibel Captiva Bank into disbursing $2.1 million in PPP loan funds, a portion of which he used to purchase a brand new catamaran boat and pay back

$100,000 in principal on a debt with a former business partner. The defendant would not have otherwise been able to obtain a 1% interest rate loan for the purchase of a $689,417 boat or to repay old debt. *See* DeCicco, Tr. v.2 at 57.

The fact that Sanibel Captiva Bank does not consider itself a victim[2], or has yet to suffer a financial loss, does not negate the defendant's intent to defraud. "While an honest, good-faith belief in the truth of the misrepresentation may negate intent to defraud, a good-faith belief that the victim will be repaid and will sustain no loss is no defense at all." *United States v. Benny*, 786 F.2d 1410, 1417 (9th Cir. 1986). The government presented sufficient evidence which showed the defendant misrepresented his intended use of PPP loan proceeds. Further, Sanibel Captiva Bank would have not approved the defendant's PPP loan request had he indicated the funds would be used to purchase a boat. DeCicco, Tr. v.2 at 27-28, 46-47. Further, the crime of bank fraud does not require the government to prove the bank suffered a financial loss. *See Shaw v. United States*, 137 S. Ct. 462 (2016). The government presented sufficient evidence that proved the defendant's intent to defraud.

[2] At trial, the bank's loan officer testified he did not know what the elements of fraud were and admitted the bank did not know if it was a victim in a criminal case. DeCicco, Tr. v.2 at 48-50, 56-57

B. The evidence at trial was more than sufficient to prove the defendant made a false statement to a financial institution.

The evidence at trial proved the defendant knowingly made false statements about his intended use of PPP funds with the intent to influence Sanibel Captiva Bank's approval of the defendant's $2.1 million PPP loan application. As previously discussed, the government proved the defendant's representations that he would use PPP loan funds on payroll, mortgage interest, rent, and utilities were false. Moreover, the defendant knew the statements were false. The defendant was negotiating the purchase of a boat while he was also engaged in the PPP loan application process. Further, the purchase of the boat was finalized two days after the defendant was notified that his initial PPP loan application had been approved. Gov't Ex. 2, 15.

The defendant had the PPP funds deposited in a segregated account so no one from Target Roofing could see his use of the funds. DiIorio, Tr. at 17-18. The defendant also disguised his use of PPP funds by misrepresenting the purpose of wire transfers as an "equipment purchase," "payroll transfer," and "materials purchase." The defendant's intent was to influence the actions of Sanibel Captiva Bank. The defendant knew, that in order to be approved for a PPP loan, he had to falsely represent to the bank that the funds would be used for payroll, mortgage interest, rent, and utilities.

C. The evidence at trial was more than sufficient to prove the defendant committed both counts charging illegal monetary transactions.

The evidence at trial proved the defendant knowingly engaged in two monetary transactions. The first was a $100,000 wire transfer to the defendant's former business partner on April 21, 2020. The second was a $689,417 wire to Sara Bay Marina on April 24, 2020. Both transactions involved the transfer of funds through a financial institution and the parties stipulated that the wire transfers affected interstate commerce. Gov't Ex. 170, 171. Both transactions were for more than $10,000.

The defendant knew both transactions involved funds that were the proceeds of bank fraud. The PPP funds that the defendant obtained by making false and fraudulent representations were deposited into a segregated account that the defendant instructed the bank to open. Gov't Ex. 26, 104, 107. The defendant requested the wire transfers himself, and both wires came directly from the segregated PPP account. The segregated PPP account had its own unique codeword that the defendant was required to provide when wiring funds from the PPP account. DiIorio, Tr. at 22. Further, the defendant misrepresented the purpose of each wire as "payroll transfer" and "equipment purchase." Gov't Ex. 31-34.

D. The admission of the government's summary financial exhibits was not erroneous and does not warrant a new trial.

The defendant argues that the admission of the government's summary exhibits warrants a new trial because of admitted uncertainties and discrepancies. Doc. 140 at 28. In support of this argument, the defendant cites to a portion of Diane Knott's testimony at trial. *Id.* The defendant claims Knott testified that her summary exhibits were not accurate, however that is not supported by the record and is a mischaracterization of Knott's testimony. *Id.*

Knott's testimony during cross-examination was that her summary exhibit of the defendant's Bank of America account activity began on March 13, 2020. Knott, Cross-Ex. Tr. at 17; Gov't Ex. 156. Knott did not testify that the summary exhibit contained any inaccurate or false entries. While the summary exhibit did not contain a summary of account activity during the months of January and February of 2020, the Bank of America bank statements for these months were entered into evidence by the government. *See* Gov't Ex. 138. Further, the defendant's argument that uncertainties and discrepancies mark the record is without merit. The government presented all evidence it deemed was relevant to prove the defendant committed the offenses he was charged with. Therefore, the defendant's request for a new trial based on the admission of the government's summary exhibits should be denied.

E. Evidence of the 39 fake employees was intrinsic evidence and established the defendant's scheme and intent to defraud.

The defendant claims that the Court's admission of evidence concerning the 39 fake employees was erroneous, confused the jury, was unduly prejudicial, and warrants a new trial. The government disagrees. As previously detailed in the scheme and intent to defraud sections of this response, evidence of the 39 fake employees was directly relevant to proving the defendant's scheme and intent to defraud. The defendant added these fake employees to the payroll to meet the initial deadline by which the PPP funds were to be spent, to make it appear as if he was using PPP loan funds on payroll, and to set Target Roofing up for loan forgiveness. The Court did not err in admitting this evidence at trial.

CONCLUSION

The government presented more than sufficient evidence that the defendant committed bank fraud, false statement to a financial institution, and illegal monetary transactions, such that a reasonable jury could have found the defendant guilty beyond a reasonable doubt. Moreover, the defendant has failed to demonstrate that the evidence preponderates heavily against the verdict, such that it would be a miscarriage of justice to deny him a new trial.

For all of the foregoing reasons, this Court should deny the defendant's motion for judgment of acquittal, or in the alternative, for new trial.

Respectfully submitted,

KARIN B. HOPPMANN
Acting United States Attorney

By: */s/ Trent Reichling*

Trenton J. Reichling
Assistant United States Attorney
Florida Bar No. 0084601
2110 First Street, Suite 3-137
Ft. Myers, Florida 33901
Telephone: (239) 461-2200
Facsimile: (239) 461-2219
E-mail: Trenton.Reichling@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 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:

Nicole H. Waid
nicole.waid@fisherbroyles.com

Brian E. Dickerson
brian.dickerson@fisherbroyles.com

/s/ Trent Reichling
Trenton J. Reichling
Assistant United States Attorney