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 RELEASE PENDING APPEAL

The United States responds in opposition to defendant Casey Crowther's (Crowther) motion for release pending appeal. Doc. 175. In support of his motion, Crowther identifies a single appellate issue that he claims presents a "substantial question," warranting his release pending appeal. The basis for this single issue, which has been previously raised by Crowther in his motion for judgment of acquittal (Doc. 123) and renewed motion for judgment of acquittal (Doc. 140), does not satisfy the "substantial question" prong that is a prerequisite for release pending appeal under 18 U.S.C. § 3143(b)(1). Crowther's motion should therefore be denied.

LEGAL STANDARD

The Bail Reform Act, 18 U.S.C. § 3143(b), presumes that a defendant who has been convicted and sentenced to a term of imprisonment should be detained without bond. *See United States v. Giancola*, 754 F.2d 898, 900 (11th Cir. 1985) ("Specifically, Congress intended to reverse the presumption in favor of bail that existed under the prior state, the Bail Reform Act of 1966.") It also presumes that a defendant's conviction is valid and that he should be incarcerated. *Id.* at 900-01. The defendant bears the burden to overcome these presumptions. *Id.* ("The 1984 Act was intended to change the presumption so that the conviction is presumed correct and the burden is on the convicted defendant to overcome that presumption.")

A defendant may remain on bond pending appeal only if the defendant can demonstrate the following four elements:

> (1) that the defendant is not likely to flee or to pose a danger to the safety of any other person or to the community if released;
>
> (2) that the defendant's appeal is not for the purpose of delay;
>
> (3) that the appeal raises a substantial question of law or fact; and
>
> (4) that if the substantial question is determined favorably to the defendant on appeal, the decision is likely to result in reversal of conviction, an order for a new trial of all counts on which imprisonment has been imposed, a sentence that does not include a term of imprisonment, or a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b)(1); *Giancola*, 754 F.2d at 901.

ARGUMENT

Crowther cannot meet his burden and satisfy the third requirement (*i.e.*, demonstrating the existence of a substantial question), making him ineligible for release pending appeal. In his motion, Crowther raises the sole issue of whether the Court erred in denying his renewed motion for judgment of acquittal or alternatively for a new trial. The crux of this issue, per Crowther, is whether "the [g]overnment can sufficiently prove legal falsity under the bank fraud and bank false statement statutes when the loan was governed by the Paycheck Protection Program (PPP) of the CARES Act and the governing law was in constant flux, ambiguous or conflicting." Doc. 175 at 5.

This is not a "substantial question" for purposes of the Bail Reform Act. A "'substantial question' is one of more substance than would be necessary to a finding that it was not frivolous." *Giancola*, 754 F.2d at 901. It must be a "'close' question or one that very well could be decided the other way." *Id.* "[T]here are no blanket categories for what questions do or do not constitute 'substantial' ones." *Id.* Instead, that determination needs to be made "on a case-by-case basis." *Id.*

The government's proof of legal falsity at trial as it pertained to the bank fraud and false statement charges does not present a "close question or one that could very well could be decided the other way." *Id.* As this Court noted in its order denying Crowther's post-verdict motion for judgement of acquittal and for a new trial, the "[d]efendant was not charged with violating the CARES act," and the "offenses relate to defendant's misrepresentations to secure a loan, and then the use of the loan proceeds for various monetary transaction." Doc. 155.

In this case, there was sufficient evidentiary support of the Court's denial of Crowther's motion. The bank fraud and false statement charges focused on misrepresentations and false certifications Crowther made to secure a $2.1 million PPP loan. The primary focus being on Crowther's false certification and representation that the PPP loan funds would be used "to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments." Gov't Trial Ex. 6, 8. There was more than sufficient evidence presented at trial that proved the falsity of Crowther's representations. This included evidence that, leading up to and during his application for a PPP loan, Crowther was shopping for a $700,000 boat and was discussing his plans of using PPP funds to pay off debt principal owed to a former business partner via text message.

Further, evidence of Crowther's misuse of the PPP funds proved the falsity of the representations he made to Sanibel Captiva Bank concerning his use of PPP funds. The evidence presented at trial was that Crowther instructed the bank to deposit the PPP funds in a separate standalone bank account that could not be viewed or accessed by Target Roofing employees. *See* DiIorio, Tr. at 17-18. Further, after the PPP funds were deposited into the separate account on April 14, 2020, Crowther wired $100,000 to his former business partner on April 21, 2020. Gov't Trial Ex. 31, 32, 107. Three days later, on April 24, 2020, Crowther wired $689,417 to a marina for the purchase of a brand new 40' catamaran boat. Gov't Trial 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 Trial 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 Trial 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 Trial Ex. 74. Crowther's clear misuse of PPP funds is evidence that he made false representations in his PPP loan application.

Crowther's argument that the changing, ambiguous, or conflicting law governing PPP and the CARES Act dilutes the falsity of his representations is without merit. Interim rules or guidance issued after Crowther received a $2.1 million PPP loan does not negate his intent to defraud. Even if that was possible, no guidance or changes have been made to PPP that would have allowed Crowther to use loan funds to purchase a $700,000 boat. DeCicco, Tr. v.2 at 52. Further, the evidence at trial was that, had Sanibel Captiva known Crowther would use a portion of the PPP funds to purchase a boat, they would not have approved his loan request. *Id.* at 27-28, 46-47. Therefore, Crowther has not raised a substantial question or a "close" question that very well could be decided the other way on appeal. *See Giancola*, 754 F.2d at 901.

CONCLUSION

For the above reasons (as well as those set forth in the United States' Response in Opposition to Defendant's Motion for Judgment of Acquittal and Motion for New Trial), the Court properly denied Crowther's Motion for Judgment of Acquittal or Alternative for a New Trial. That decision has not given rise to a "close" or "substantial" question for appeal. In the absence of such a question, Crowther should be imprisoned during the pendency of his appeal. Accordingly, the United States requests that this Honorable Court deny Crowther's motion for bond pending appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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/s/ Trent Reichling
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