UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA, Plaintiff | ) Fort Myers, Florida |
| | ) Case 2:20-CR-114-FtM-66MRM |
| vs. | ) Tuesday, March 23, 2021 |
| | ) 9:00 a.m. to 5:03 p.m. |
| CASEY DAVID CROWTHER, Defendant | ) Courtroom 5D |

TRANSCRIPT OF JURY TRIAL

DAY 1 OF 4, VOLUME 1 OF 4

HELD BEFORE THE HONORABLE JOHN E. STEELE,

United States District Court Judge

Official Court Reporter:
Jeffrey G. Thomas, RPR, CRR
2110 First Street, Suite 2-194
Fort Myers, FL 33901
Telephone: (239) 461-2033

*(Proceedings reported by Stenotype; Transcript produced by computer-aided transcription.)*

A P P E A R A N C E S

COUNSEL FOR GOVERNMENT:

United States Attorney's Office
Middle District of Florida
United States Courthouse
2110 First Street
Room 3-137
Fort Myers, FL 33901
(239)461-2200
BY: TRENT REICHLING, ESQ.
MICHAEL V. LEEMAN, ESQ.

COUNSEL FOR DEFENDANT:

FisherBroyles LLP
2390 Tamiami Trail North
Suite 100
Naples, FL 34103
BY: NICOLE HUGHES WAID, ESQ
BRIAN E. DICKERSON, ESQ.

* * *

**I N D E X**



\- - -

(Index Continues on Following Page)

I N D E X
(Continued From Previous Page)

GOVERNMENT EXHIBITS ADMITTED



\- - -

(Index Continues on Following Page)

I N D E X
(Continued From Previous Page)

DEFENSE EXHIBITS ADMITTED



* * *

* * * P R O C E E D I N G S * * *

\- - -

THE COURT: I think we're still waiting for a couple jurors, so just be at ease.

MR. LEEMAN: Your Honor, we did have the issue that is almost assuredly going to come up today, depending upon how the Court rules about the mortgage fraud and how it intersects with the remaining counts. I know Miss Waid filed a motion last night, and the government is prepared to respond. I don't know if the Court would like to address that before the jury comes in.

THE COURT: I would not. I haven't read the motion, so kind of pointless right now. But as I understand it, that's your fourth or fifth witness?

MR. LEEMAN: Yes, Your Honor, it should be our fourth witness would be the first time that would come up.

THE COURT: All right. We'll deal with it then.

(Court stood at ease from 9:01 a.m. to 9:10 a.m.)

MR. LEEMAN: Your Honor, may we go on the record for a moment?

THE COURT: Yes.

MR. LEEMAN: Thank you. At this time, Your Honor, the government would like to invoke the rule of sequestration.

THE COURT: All right. With the exception of case agent for the government and expert witness for the defense, any objection?

MS. WAID: No objection, Your Honor.

THE COURT: All right. The rule of sequestration will be invoked. Since I don't know who the witnesses are, I'll leave it up to counsel for each side to inform their witnesses that they may not be present prior to their testimony in court or discuss their testimony with other persons. Again, prior to the time they testify.

MS. WAID: And, Your Honor, while we're on the record, we just want to make sure that the government will not be speaking about any type of 404(b) evidence in their opening.

THE COURT: That's my understanding.

Is that correct?

MR. LEEMAN: That is correct, Your Honor.

THE COURT: All right.

MS. WAID: Thank you, Your Honor.

(Court once again stood at ease, from 9:11 a.m. to 9:30 a.m., while awaiting the arrival of the jurors.)

THE COURT: Counsel, it's 9:30. One of the jurors is not present. The clerk has attempted to call her. According to my notes, she apparently indicated to us yesterday that she had a doctor's appointment at 8:45. I frankly didn't remember that, but that appears to be the case. And so I assume that's where she is. Or is coming from. I assume our attempts to contact her, like I said, I don't know if we've got her cell phone or a landline. So maybe we'll be able to figure something out in a few minutes. If not, my question to you is how do you wish to proceed?

MR. REICHLING: Your Honor, the government believes it may be prudent to maybe just wait a little while longer. I know she had indicated that she did have a doctor's appointment this morning. Assuming that is the reason why she's unresponsive at the moment, the government believes it may be best to wait a few more minutes, or moments. I don't know of a proposed time period yet at this time, but that's what the government's thinking is.

THE COURT: Do you see it any different?

MS. WAID: No, Your Honor. It's fine to wait. Do you have the juror number, so we just can confirm?

THE COURT: Current Number 3.

MS. WAID: Thank you.

THE COURT: All right. I'm told the juror has arrived. It will take a few minutes, I guess, to get the jurors up here, but they're here.

(Thereupon, the Court once again stood at ease, from 9:32 a.m. to 9:37 a.m., while awaiting the arrival of the jurors.)

(At 9:37 a.m., the jury was escorted into the courtroom.)

THE COURT: Be seated, please.

Good morning, ladies and gentlemen.

Madam Deputy, if you'd place the jurors under oath, please.

COURTROOM DEPUTY: Yes, Your Honor.

Please stand. And please raise your right hand.

Do you solemnly swear or affirm that you will well and truly try, and true deliverance make in the case now on trial, and render a true verdict according to the law and the evidence?

(All jurors indicated affirmatively.)

COURTROOM DEPUTY: Thank you very much. Please be seated.

THE COURT: Members of the jury, you have now been sworn as the jury to try this case. By your verdicts, you will decide the disputed issues of fact. I will decide all questions of law that arise during the trial; and, before you retire to deliberate together and decide the case at the end of the trial, I will instruct on the rules of law that you must follow and apply in reaching your decision.

Because you will be called upon to decide the facts of the case, you should give careful attention to the testimony and the evidence presented for your consideration during the trial; but you should keep an open mind, and should not form or state any opinion about the case, one way or the other, until you've heard all of the evidence and have had the benefit of the closing arguments of the lawyers as well as my instructions to you on the law.

During the trial, you must not discuss the case, in any manner, among yourselves or with anyone else, and you must not permit anyone to attempt to discuss it with you or in your presence. Insofar as the lawyers are concerned, as well as others who you may come to recognize as having some connection with the case, you are instructed that, in order to avoid even the appearance of impropriety, you should have no conversation whatever with those persons.

Sometimes lawyers get a little bit concerned that you think they're being standoffish, or rude. They may see you in the hallway, or outside on the street, and turn around and walk away. They're just following the orders of the Court not to have any contact with the jurors, so don't take that personally.

You are also to avoid reading any newspaper articles, or any articles on any device, which we discussed at some length yesterday, and that continues now that we have begun the trial. The reason for the cautions, of course, lies in the fact that it will be your duty to decide the case only on the basis of the testimony and the evidence presented during the trial, without consideration of any other matter whatsoever.

From time to time during the trial I may be called upon to make rulings of law on motions or objections by the lawyers. You should not infer or conclude, from any ruling I may make, that I have any opinion as to the merits of the case favoring one side or the other; and if I sustain an objection to a question that goes unanswered by the witness, you should not speculate as to what the answer might have been, nor should you draw any inferences or conclusions from the question itself.

During the trial, it may be necessary for me to confer with the lawyers from time to time out of your hearing. For the most part, we'll try do that the same way that we did during the jury selection -- that is, using the headphones -- so we don't have to use the sidebar that we used to. On occasion, it may be necessary to excuse you from the courtroom so we can have more extended discussions. I will try and limit that as much as possible.

Because transcripts will not be available, you will be permitted to take notes during the course of the trial if you wish to do so. We have pens and note pads for those of you who wish to do so. On the other hand, of course, you're not required to take notes if you do not want to do that. That choice is up to each of you individually.

If you do decide to take notes, I suggest that you be careful not to get so involved in the note-taking process that you become distracted from the ongoing proceedings. Again, I would suggest that you not try to summarize all the testimony, but instead limit your note taking to specific items of information that might be difficult to remember later, such as dates, or times, amounts, that kind of thing. But remember, you must decide the credibility, or the believability, of each witness, and you must therefore observe the demeanor and the appearance of the witness while testifying. Note taking must not distract you from that task.

Also, your notes should be used only as aids to your memory; and, whether you take notes or not, you should rely on your own independent recollection or memory of what the testimony was, and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony was.

I will begin by affording the lawyers from each side the opportunity to make opening statements to you in which they may explain the issues in the case and summarize the facts they expect the evidence to show. After the testimony and the evidence has been presented, the lawyers will then be given another opportunity to address you, at the end of the trial, and make their summations, or their final arguments to you.

The statements that the lawyers make now, as well as the arguments that they present at the end of the trial, are not to be considered by you either as the evidence in the case, which comes only from witnesses and exhibits, or as your instructions on the law, which will come only from me. Nevertheless, the statements and arguments are intended to help you understand the issues and the evidence as it comes in, as well as the positions taken by both sides. So I ask that you now give the lawyers your close attention as I recognize them for the purpose of making opening statements.

And, by a show of hands, anyone like to take notes? We have the pens and paper, whatnot.

(Pens and writing tablets were handed out to the jurors.)

THE COURT: Mr. Leeman, you may proceed.

MR. LEEMAN: Thank you, Your Honor.

May I get the overhead up, please?

Good morning, everybody. Thank you for being here today.

During the height of the first coronavirus wave, back in mid 2020, Casey David Crowther, the defendant in this case, called his bank to authorize a wire transfer, $689,417, from his company, Target Roofing and Sheet Metal. He tells the bank the purpose of the wire is for, "Equipment."

What kind of equipment would a roofing company buy? Maybe something to lift shingles up on a roof? Maybe something to lay adhesive down on the roof to stick the shingles to?

Well, turns out the equipment was a brand new 40-foot Invincible catamaran, filled with tense of thousands of dollars in upgrades, and four 400-horsepower motors on the back. Why would Mr. Crowther call this boat equipment?

Well, that's what this case is about. It's a fraud. It's a criminal fraud.

Crowther lied to his bank, Sanibel Captiva Community Bank, to get a PPP loan for his company during the height of the pandemic. And he said he was gonna use it to cover things like payroll and rent. Instead, he spent it on himself to buy a luxury boat. That boat was put in his name, by the way. It wasn't put in Crowther Roofing's name.

The government is going to prove to you that Mr. Crowther had a lying problem. He lied to his bank over, and over, and over again.

It's interesting, because Mr. Crowther owns a company. It's a real company. Target Roofing exists, it has real employees, and it makes money. But it's always better to spend somebody else's money.

That's especially the case here. Because this isn't just a loan, this is a loan that has the potential to be forgiven. You never have to pay it back. And if you can work it just right, you can get a free boat. That's what Casey Crowther set out to do, and that's what the evidence is going to show you.

I want to make something really clear at the outset of this case. It this was harped on yesterday. This is a criminal case, and we are the government, and we have the burden to prove this man guilty. He is presumed innocent right now; but, at the end of this trial, we're going to have proven him guilty. We embrace that burden. And the evidence is going to show you what happened here.

Let's go back to the case. Late March, 2020, coronavirus is sweeping across the country for the first time. The United States Congress creates the Paycheck Protection Program, the PPP program. It's designed to help small businesses cope with what's going on out there. People were hurting. Businesses were hurting.

The gist of the program was that banks could make loans to borrowers, small businesses, and then those loans could be federally guaranteed by something called the Small Business Administration, which is an agency of the United States, sort of like the post office. It's also called the SBA. We'll call it the SBA.

So these banks are loaning out their own money, and the Federal Government is backing them, backing those loans. Now, before you got a PPP loan, you had to make certain representations to the bank, like any loan. That's not uncommon. If you did, and you did some other things as well -- you had to be a small business, other things you had to do to qualify -- you could get this PPP loan, and then that guarantee would be in place.

So what types of representations was a borrower required to make under the PPP program? It happened in this case, happened probably in every PPP case across the country. One of the things you needed to represent if you wanted a loan was that the loan was necessary to support the ongoing operations of your business. All right? That's one thing.

You also had to represent how you intended to use the money. Not only represent, you had to certify it. You had to certify to the bank that I was going to use, or you were going to use, the borrower was going to use the money for a particular way. You'll see, in this case, Mr. Crowther made a certification that said borrower, Target Roofing, will use the proceeds of this PPP loan solely for.

What types of things? Payroll. Makes sense. The Payroll Protection Act. Group healthcare benefits for your employees. Mortgage interest for your business. Rent your business may owe. Utilities your business may owe. Certain interest on debt that had been incurred prior. And I've got it up here, but you have the ability to refinance certain loans you might have had with the SBA before. It's not something in this case, but those are the types of things you were allowed to use the money on.

A boat wasn't on the list. You're not going to see a single document in this case that suggests to you that PPP money could be used to purchase a boat in someone's personal name. Not once. You also couldn't use it to pay principal on debt. I'll get to that in a minute. Principal on past debt, I should say.

So let's get back to the timeline here, March, late March, March 30th and 31st of 2020. It's coronavirus time, it's just come out, people are panicking. Mr. Crowther is out looking for a boat. Nothing wrong with that. March 30th and March 31st.

A day later, he contacts his bank, asking about a PPP loan. In fact, he fills out an application on that date, as well, April 1st, a day after he goes boat shopping. Submits that application. It's for about a $1.5 million loan, at that time, for his company. And on April 8th he's told he's approved. The bank has approved this approximately $1.5 million loan. Two days after that, he goes and agrees to the price of the boat with the boat dealer.

Three days after that he goes back to the bank, amends his application, this time seeking $2.1 million, approximately. It's approved for that. The difference in the two loans is approximately the base price of the boat.

That loan closes very quickly. PPP, the money's coming out quick. Actually closes the next day, April 14th. Goes to the bank -- or, excuse me, signs documents to get the loan, the bank funds the loan. Approximately $2.1 million. That's where it ends up.

All along the way, Mr. Crowther is making misrepresentations, representations that aren't true. In his first application, he's telling the bank I'm going to spend the money on payroll, rent, utilities. No mention of a boat. Second application, April 13th, I'm going to use the money, payroll, rent, utilities. Ain't no mention of a boat. Goes to close on the loan. Another representation, borrower will use the proceeds solely for, the things I listed. No mention of a boat.

Ten days after he gets the loan, after the marina has finished putting all his requested upgrades in, he pays for it. That's the $689,000 wire transfer we started with.

How's this money work? Well, he gets the loan from the bank, $2.1 million, and he requests that it be put in its own account, a PPP account. And the money in that account is PPP funds only. It's not mixed with anything else. It's not mixed with any of Target Roofing's other money. It's sitting in a bank account that he created to hold the PPP funds.

And here's what he did too. Bank asks if he'd like anybody else at Target Roofing to have access to the account. They had access to his other accounts. You can imagine people in a company, accountants and things like that, needing access to your operating account. And Mr. Crowther said no. Just me.

So there's $2.1 million sitting in the account. Directly from that account was the wire for the boat.

Directly.

Now, I mentioned something to you, before, about payment on a debt. You could use PPP loans to pay down the interest on a preexisting debt. You couldn't use it to pay down principal.

Here is something else Mr. Crowther did. Three days before he bought the boat, he paid an old business partner a hundred thousand dollars. That money came directly out of the PPP account, as well. And that was to pay down principal on a debt he owed. Well, Mr. Crowther told the bank that was for payroll. Payroll.

The problem is, his ex-business partner wasn't owed any back pay, wasn't owed any salary from the time he used to work there. No. The ex-business partner was owed money because he used to own the business, and he decided to get out. He sold his stock back. It's not payroll.

That gentleman's name is Steve Adkins. He's going to come in here, and he's going to talk to you. He used to own Target Roofing with Mr. Crowther. He also used to own a couple other companies: Laredo, LLC, and Jade Avenue, LLC. Look, the names of these companies aren't particularly relevant, but you're going to hear them, I'm going to preview them here.

Laredo, LLC was a company that owned the land that Target Roofing sat on. All right? He set up a company to hold that real estate. Jade Avenue, LLC, was a company that

Mr. Crowther and Steve Adkins formed. It owned a house. All right? That was it. Just owned a house.

Mr. Adkins says I want to get out. 2019. Mr. Crowther says okay. I'll pay you for your ownership interest. Not for salary, not for payroll, not for back pay, not for overtime, not for group healthcare benefits. He paid a hundred thousand dollars and called it payroll.

So why am I mentioning that? Well, a little bit about how the PPP program works, you can see why this is relevant. Calling stuff payroll when it's not really payroll helps you get forgiven. When the PPP program first came out, borrowers could get their loan, and within eight weeks, if they spent it appropriately, and 75 percent of it was used on payroll, you were eligible for forgiveness. He showed some other things. So labeling money for payroll, even when it's not, helps ensure the loan gets forgiven.

Now, the law changed sometime after the PPP program came out. June 5th is when that law changed. Congress made it a little easier for small businesses. Said you don't have to pay it over eight weeks anymore. You don't have to use everything within eight weeks, you've got to use it within 24. And if you show you spent 60 percent on payroll instead of 75, and some other things, you could be forgiven, as well. Right? So adding numbers to your payroll helps ensure forgiveness, which helps ensure you get a free boat.

There's more to this scheme. Mr. Adkins was falsely --

MS. WAID: Objection, Your Honor.

THE COURT: Basis?

MS. WAID: 404(b).

THE COURT: Overruled.

MR. LEEMAN: Mr. Adkins, listing him as payroll, helped ensure the loan would be forgiven.

But Mr. Crowther had other ways to ensure that the loan would be forgiven, as well. You're going to hear in this case that, during the period the PPP loan was outstanding, Mr. Crowther added 39 fake employees to Target's payroll. Thirty-nine of them. Well, how do we know they're fake? Well, you're going to have somebody come in here from the Social Security administration. There were documents, actually, that were copied within Target Roofing for these people. You'll see copies of those documents. There's a green card for each one of them, and a Social Security Card.

The Social Security administrator looked at the documents, and is going to come in here and tell you that all 39 of the documents are either unassigned Social Security numbers, meaning nobody in America has them, or they're complete mismatches with the names that go along with them. All right? Some evidence that these people don't exist.

Well, what's some more evidence that these people didn't exist? Well, you're going to hear from the human resources manager of Target Roofing, the lady who does the hiring. She's going to come in here and tell you she never saw them. She's actually going to tell you it's unusual because the way this worked is Casey Crowther brought her the documents for these people. She's also going to tell you that these 39 people were hired to work at a roofing company to shred paper. To shred paper. That's what Mr. Crowther told her. Shred paper.

Here's something else. All of these people, all 39 of them, every single one hired during the period of the PPP loan, all fired on June 5th, 2020. June 5th, 2020. The day the law changed. The day the law changed, and he no longer had to spend the PPP had money approved to a bank, you spent it within an eight-week period. No longer had to use 75 percent of it on payroll. You could use 60 percent. And now you had 24 weeks to do it.

How else are we going to prove they didn't exist? Well, how about this? You're going to see, and you're going to hear, these people never cashed their paychecks. These people worked there for three weeks, two weeks, whatever. None of them cashed their paychecks. One. One paycheck was cashed. One paycheck was cashed. For these 39 people that worked multiple weeks. We're going show you whose account it went into, and who signed that check. Casey Crowther.

These people didn't exist. They're added to the payroll to further the scheme to ensure Mr. Crowther got money that he never had to pay back and could buy a 40-foot Invincible boat.

He also hired five family members. Human resources manager is going to tell you never saw them working there. All also terminated on June 5th. Interestingly, each of the five family members was paid something amounting to a hundred thousand-dollar salary if you extrapolated it out over a year. Why is that relevant? Because the most payroll you could spend for any particular person and get forgiven is a hundred thousand dollars per year prorated. Five of those people. The human resources manager didn't see them working there. That's fraud, folks, and we intend to prove it.

How does the case work from a logistical perspective? You're going to get a copy of the second superseding indictment. There's four counts in it. One is bank fraud. Two is false statement to a financial institution. Those counts focus on the false representations and certifications that Mr. Crowther made to his bank to get these loans and the scheme that he set up to ensure it would be forgiven. All right?

You might be asking yourself, the Judge is certainly going to give you a lot of instructions about how and what the law actually is at the end of this case. Bank fraud versus false statement, what's the difference? Sounds kind of similar, perhaps, to a lay person.

The big difference is that, in a bank fraud, you've got to do something, represent something, which has a tendency to influence the bank in making their decision, to get the loan. In a false statement to a financial institution, there's no requirement that your false statement tends to influence the bank. You'll be instructed on that later.

There's also Counts 3 and 4. Those each charge money laundering. All right? Money laundering is bewildering to a lot of people, even lawyers, but this is the gist of the case, or of the charge. You will hear about it later. When you spend $10,000 worth of illegally gotten money, when you spend that, when you transfer it, that's money laundering.

So the money laundering counts focus on the transfers of the money. More than $10,000 worth of illegally gotten money, as the government alleges, was transferred to buy the boat. That's Count 3. Count 4, over $10,000 of that money was transferred to Mr. Adkins. That's Count 4.

That's the case, folks. That's going to come in over the next however many days. Hopefully not that many. You're going to hear a lot of evidence about what Mr. Crowther did. I ask you to pay attention closely. At the end of this case, we're going to get back up -- I don't know who's going to get back up, someone's going to get back up and summarize this, and point you to the exact evidence that came in: That he called it equipment, that he called it payroll, that these people never cashed their checks, that he put the boat in his name. We're going to ask you to return a guilty verdict on each and every count charged.

Thank you for your time.

THE COURT: Thank you.

Mr. Dickerson.

MR. DICKERSON: Actually, Your Honor, I'm just setting the computer up for her.

MS. WAID: He's my IT guy, Your Honor.

THE COURT: Well, we'll make him do some work then.

MS. WAID: Thank you, Your Honor.

MS. WAID: Good morning, ladies and gentlemen.

Facts matter. All of the facts matter. And you, as the jury, are the fact finders, and we want you to hear all of the facts. Not the parts that the government wants you to hear, but all of the facts and evidence, before you make your determination. And there are several indisputable facts, not in dispute in this case, that the government doesn't want you to hear.

The first indisputable fact is this is a loan. That's all it is. It's a loan between Sanibel Captiva Bank and Target Roofing. You're going to hear it's a one-percent interest loan with a five-year term; an agreement between the borrower and the lender.

It is not government money. It's the bank's money pursuant to the loan agreement. The loans are guaranteed by the SBA, but the loan in this case is still outstanding. The first payment is not due until later this year. The bank has not invoked any default provisions on the loan even though Casey Crowther has been charged with a federal crime. Consider that when you're listening to the evidence.

There has been absolutely no loss to the bank. There's been no injury to the bank. When Target Roofing pays back the loan, the bank gets paid. Target Roofing and Casey Crowther remain in good standing with Sanibel Captiva Community Bank. They still bank there. Think about that when you are considering the actual facts.

Indisputable fact Number 2: Target Roofing paid its employees. They paid them. Paid them millions of dollars over the $2.1 million loan that was obtained by the company. That is an important fact.

Now, when you're going through the case, you're going to hear about certain things. One is the CARES Act. The government briefly on it, and I don't want to bore you with the long, 400-page CARES Act; but as you know, when COVID first hit, Congress was pushing out, as quickly as possible, monies to small businesses and individuals. They were actually trying to resuscitate the economy to make sure things weren't going under.

Part of the -- the CARES Act is a statute. It's a statute that was passed by Congress. The Interim Final Rules that you're going to hear about are just that. Temporary rules that the SBA or the Small Business Administration puts forth. And they're doing it so quickly that they have changed over 25 times, 25 times, from April of 2020 until, most recently, in February, 2021.

This is an Interim Final Rule from 2020, and it states: Section (a)(B) of the Small Business Act provides that, subject to several important limitations, such as the amount on payroll, how much you can pay on the mortgage interest payment, those types of issues, borrower shall be eligible for forgiveness of their PPP loan in an amount equal to the sum of the following costs incurred and payments made during the covered period.

Think about that. In an amount equal to the sum of the following costs incurred and paid made during the covered period. It doesn't state exact proceeds. This is the ten dollars you must use, or this is the ten dollars you don't have to use. It states the sum of the proceeds.

The crux of the case is that the government confuses the loan, the one-percent five-year term loan that's not due until later this year, with the forgiveness. They are two different buckets. The loan is with the bank, and forgiveness is not even applicable until and if the borrower applies for forgiveness. That's when certain forgivable expenses must be proven to the SBA. And the SBA can forgive, or they might decide not to.

But that does not trigger until the borrower actually applies for forgiveness. And it is an indisputable fact that Target Roofing never applied for forgiveness in this case. Again, the government's telling you forgiveness, forgiveness, and they needed to do this. They don't tell you that Target Roofing has never applied for forgiveness. It's just an outstanding loan.

But even more important, when you are going back and you're going to hear evidence, and you're going to look at that evidence, and you're going to hold in your hands the payroll costs. So during the covered period, which was originally eight weeks, and then turned into 24 weeks, Target Roofing spent on payroll over $3.3 million. The government's complaining about forgivable expenses, yet these expenses could possibly qualify for forgiveness. 3.3 million. 2.1 over the million dollars of the loans that was actually obtained.

And you're going to hear that Target is actually an S corp. What does that mean? It means that Casey Crowther is the sole owner of Target; and, as an S corp, the tax goes to Casey Crowther. So any amount of money that he was spending over that $2.1 million in payroll is money coming out of his own pocket, money that he is paying the community members to work during the pandemic, money that he is using to maintain and rehire the employees that they had to layoff prior. Money paid.

Well, there's also interest mortgage payments. And you're going to hear that Target Roofing paid over $56,000 in mortgage interest payments. Again, forgivable expenses that the government's claiming were never paid, but clearly have been. Payments on business rent obligations, over $7,000. Business utility payments for the distribution, so paying off your utilities, over $27,000.

So Target Roofing can apply for forgiveness well over the $2.1 million loan because Target Roofing paid exactly what they needed to. The law was intended to pay your employees, and they did that. So why are we here?

One through four of the rules the first couple weeks, so the first eight weeks, and this is original again -- this originally began in April. The rules kept changing. And as Congress is realizing the extent of damage to businesses, they're expanding the rules, and they're continuously doing so. And they actually issued an interim final rule in February, 2021, that retroactively -- so no one knows exactly what the rules are on a day-to-day basis -- but retroactively included additional expenses, additional expenses that Target actual did, so covered operations expenditures, another $21,000.

Property damage costs, Target didn't have any of that. Covered suppliers costs. Over $198,000, and that's being conservative. Covered worker protection? Again, nothing that would actually be eligible for that type of forgiveness.

But we're totaling over $3.6 million in expenses that could possibly be forgivable, and the government didn't provide you with those facts. Make sure that you listen to all the facts.

Indisputable fact Number 3. And here we agree with the government. Target is a legitimate business. This is actually a photo that's taken every year, at Christmas, of Target's company.

MR. LEEMAN: Your Honor, I would object to introducing evidence.

THE COURT: Overruled as to this photo.

MS. WAID: Your Honor -- sorry, Your Honor. Thank you, Your Honor.

This is Target's company. It is their actual business operations, including a fleet of cars. And again, they are real employees. You're going to hear a little bit about Target, and about how it was actually created, and you're going to hear that Casey Crowther started Target with his business partner, Steve Adkins, and they started that business about five years ago. And originally Steve Adkins was the actual investor, kind of silent partner with the money, and

Casey Crowther, he's the sweat equity. Casey is the one that actually put together the business and built that business over the past five years. It is has grown to over 125 -- and again, I'm being conservative -- employees. They provide roofing for Southwest Florida, and they provide it to all of the community.

It wasn't always easy. It wasn't. And it was difficulty sometimes. And they ran into some financial problems. But Casey would always come to the plate, and he would actually, at certain times, not take distributions, not take salary, and even sold his home in order to actually put money back into the business. This is his business.

When COVID-19 hit last February, it was a really difficult time for everybody. And hindsight is 20/20, but we need to sit back and actually remember what was going on during that time. There was fear. There was confusion. There was confusion in the regulations. You're going to see that. But there was even confusion amongst everybody else. There was panic. People were panicked. At the time, back in February and March, they were closing down construction sites. They weren't letting building inspectors onto premises to inspect buildings.

And Target was concerned that they were going to lose their business. So they actually sat down, the management team, and decided what do we gotta do? They considered laying off people, they considered cutting salaries, and they considered doing all those types of things.

The management team decided, as a team, that they should apply for the PPP funds. And one of the managers, Brad North, kind of took control of that application process. Mr. Crowther was busy dealing with customers, trying to make sure -- allay the panic. We've got this, we've got this. Talking to inspectors. He was actually putting in safeguards for COVID for his entire building. They were putting in six feet, but not only six feet, you actually have to stay in your office. You're not allowed to come out of your office. You need to do this, you need to do that, to make sure that the employees were actually safe.

He delegated the PPP application process to Brad North, who is the supervisor of estimates and sales, and to Evelyn Portinari, who was the head of human resources. You are going to see evidence from the government that Brad North is on the PPP applications. It's actually his name on the contact. And that Evelyn Portinari is exchanging e-mails, and Casey -- by all means, Casey Crowther actually authorized, and wanted them to apply for the PPP. But he was not the main person involved because it was management decision as a team, not that Casey Crowther was actually getting money because he's selfish, and he wants to do these things.

This was a team decision, a company decision. And the entire company was involved. Nobody was trying to hide this from the company. The company wanted the money to pay their employees. And they paid their employees. The money was utilized exactly for what the money was supposed to be utilized for.

You're going hear that there was a first loan. And Evelyn Portinari was in charge of putting that together. Evelyn put together the paycheck records, all the payroll records, and all of the underlying documentation that actually had to be submitted to the bank.

After Target Roofing submitted that first loan, the bank and Target had communications about the calculations that were utilized, and whether or not FICA and state taxes need to be coming out. Again, this is confusing. The banks didn't have a lot of guidance. The banks didn't know what they were doing. On April 1st, when they were still discussing this, the banks didn't even have a loan application that would apply to PPP.

But days later, and weeks later, Target Roofing is submitting an application. This is thrown together. It was rushed through. And you are going to see the problems with that on the loan documents themselves. The calculations are wrong. It's that simple. The bank employees are going to tell you that the calculations were done, and so they submitted a second calculation. And it was Brad North who was actually speaking with the bank about the wrong actual calculations, and how confusing they were, and going back and forth, and you're going to see that Casey Crowther is not even on those e-mails. Facts matter.

The second application is actually filed by -- on April 13th by Brad North. He actually signs Casey Crowther's name. Again, Casey Crowther authorized it. They wanted the PPP money on behalf of Target Roofing, but he didn't even sign the application. Brad North submitted it to the bank, and the bank actually has the e-mailed submission from Brad North.

Now I want to go over the 39 employees. When you look at the superseding indictment, you're going to see that those 39 employees aren't even mentioned in the superseding indictment. You know why? Because the government can't prove it. The government can speculate, and they can make up theories, but how can there be a fraud if the government never submitted any payroll for forgiveness to anybody? I mean, if Target never submitted any payroll to the bank or the SBA. How could there possibly be a fraud? And the government wants to shift the burden to Casey Crowther, and to Target Roofing.

But you're going to hear that, again, during this time period, when Target Roofing is trying to employ members of the community, they weren't sure, and they were trying to bring workers back, but they weren't sure if construction sites were going to be open. So they brought them back, they brought back people they had laid off to do whatever they need to do. So if it was shredding paper, if it was painting walls, if it was cleaning out the utility storage places, that's what those workers were doing.

What the government didn't tell you, and what you will hear, is that the human resources director had a preexisting condition. And Evelyn Portinari was in her office specifically so she wasn't around workers, because of COVID-19. And put yourself in that mindset back then, when everyone was terrified. And Target Roofing did its best. That's what Casey Crowther was doing. He was putting together COVID safety precautions. That was exactly what he was doing and the reason he wasn't applying for the PPP, so that the workers weren't actually commingling with each other.

But you're also going to hear that the human resources director doesn't normally see the workers. They're there far earlier in the today, about 5:00 a.m., and she doesn't get into work until 9:00. Most of the time, the workers are already on sites at that point in time. And listen to her testimony. Listen to it closely, and remember that facts matter.

Now, the government alleges that the sole false statement was that, when the management team collected the data and submitted the application with Casey's blessing, it misrepresented how he was going to use the PPP loan funds. But again, the government clearly confuses the regulations, because

Target Roofing spent the money exactly as the law requested and provided.

You're going look at the application. There's no other lie on that application. It's the exact right number of employees, the actual calculations. The second time they, in fact, got it right. They are saying that, when he signed that, he intended to actually take that money to buy a boat, but he paid his employees. How could they possibly prove beyond a reasonable doubt that he intended to do anything but that? And look at the other expenses. Over $3 million. The loan was for 2.1. It's their burden.

Now, let's talk a little bit about the history of that boat. Again, listen to the testimony the government of the witnesses alone. Facts matter. The government put up a timeline, but you're going to hear testimony that that timeline is just not accurate. Casey Crowther has a history of buying and selling boats. He does. And he has a knack for actually getting rid of that boat while it actually has some value, where he can actually make a buck or two, instead of all the stories we heard yesterday about people actually losing money on boats. He's got a knack for it. He's good at it.

And you're going to hear from employees and others that the boats were used to entertain clients, to bring out customers, employees were brought out on the boat oftentimes as bonuses, they were actually provided the boat, parts of the management team. He also brought out his family, but he also then gave charity events. The boat was utilized by Target for charity events and things of that nature.

You're also going to hear an extremely important fact -- again, facts matter -- that he sold a boat of a similar size just weeks prior to applying to the PPP, and he received about $400,000 for that boat. $400,000 in cash. Facts matter.

You're also going to hear that he received a great deal on the catamaran. But he'd been looking for this well before the pandemic started. He went to the Naples Boat Show in January, when we were all still going to the Super Bowl, and nobody knew COVID-19 was going to be here. He'd been looking for this boat.

And, at the time, did he make a bad decision? Possibly. But that's not illegal. And you need to remember that. He goes to the boat dealership, it's Sara Bay Marina, and they tell him it's a fire sale, because we're panicked. I'm sure they regret that now, knowing how the boat business has boomed. But they say it's a fire sale, and we're going to sell this boat.

And you're going to hear that the boat was originally $800,000, and Casey got over $161,000 off the original sales price of that boat because it was a fire sale. And the salesperson actually told him, you are going to make money. This is a good investment. You are going to make money on this boat. It's a good, good purchase.

And the other thing that the government failed to mention in opening is, before he was even arrested, he went to sell the boat. He went to sell the boat with the exact same salesperson who he bought the boat from. And he was going to sell it at a profit. But Special Agent Kirby seized that boat before the sale went through.

They're going to talk a lot about the boat funds. Don't be distracted. And that's exactly what they're trying to do, to throw things against the wall. Don't be distracted. Remember the facts. Remember the $400,000 in cash. When they're showing you the bank accounts, you're going to have them in the jury room. At the end of the trial, we're going to ask that you look at those. We're going to ask that you look at all of the accounts.

Do they include all of the accounts? Does the government even bother to get the accounts receivable of Target Roofing? You will see that $600,000 comes into the operating account within days after the sale. Or the purchase of the boat. That wire. Remember those facts.

Now, the government brings up he's a liar, he's a liar, he lies to the bank over and over. Well, ladies and gentlemen, if he's a liar, he's a pretty bad one. When Casey Crowther requests the wire transfer from Sanibel Captiva Bank, the wire goes to Sara Bay Marina. Three bank employees confirm that wire. Three. He's not hiding the fact that he's buying a boat. The bank just didn't care.

And you're gonna hear, too, they make a huge deal about equipment, and what's the purpose of the wire. And bank employees are going to tell you that they verify what account it's going to, the date of the account, the origination of the account, and so where it's starting from and where it's going to, and that's it.

The purpose of the wire is actually like the memo section of your personal checks. It's for the account holder. The bank doesn't rely on that. They know where your wire is going. They actually know it's going to Sara Bay Marina. And I don't know what else he'd be purchasing from Sara Bay Marina for that amount of money. This isn't a fraud.

Steve Adkins. The bank actually knows Steve Adkins. You're going to hear that the bank has actually been dealing with relationships with Target Roofing and Casey Crowther for years. They know Steve Adkins was a business partner of Casey Crowther. They have the stock redemption agreement. They actually have the promissory notes, and their books and records. They wired the money to Steve Adkins knowing it was going to Steve Adkins.

The government wants to change the rules. They want to add more stringent requirements that are not in the regulations that you will have with you in the jury room. You are going to see that there are no regulations requiring segregation of bank accounts. There's actually no requirement for the -- whether funds can be commingled or not commingled. There's no requirements that the loan proceeds are specifically earmarked, you have to use the ten dollars in your left pocket instead of the ten dollars in your right pocket.

There's no requirements in those regulations that state any of those things, but the government wants to add those requirements, after the fact, and charge somebody with a federal crime for actually not following those requirements.

The government must prove, beyond a reasonable doubt, that Mr. Crowther knowingly made a false statement on his loan application, and knowingly defrauded the bank. It's the government's burden. But the evidence is going to show that only -- not only did Mr. Crowther follow the spirit of the law by paying his employees and spending it on forgivable expenses that could possibly be forgivable by the SBA, he followed the regulations while he did it. The government can't change the regulations now because they feel they didn't put in stringent enough requirements.

Again, we understand that there's confusion at this point in time, and hindsight is 20/20; but the government themselves confused the law. As I told you earlier, the CARES Act statute, the Interim Final Rules are just the regs that interpret the statute, and the government -- the SBA couldn't even interpret correctly the statute itself. The CARES Act states --

MR. LEEMAN: Your Honor, again, I would object to introducing this at this time. It's evidence. It's also argumentative in an opening.

THE COURT: The latter objection is sustained.

MS. WAID: When you have the CARES Act in front of you, I want you to look at it. I want you to actually see what the wording is. The CARES Act requirement, which actually is the statute, says during the covered period an eligible recipient may, may, in addition to the allowable use of the loan made under the subsection, use the proceeds of the covered loan for payroll costs or other forgivable sections. The Interim Final Rule, however, says PP loans are to be used for. When you're looking at those, ask yourself, does that make sense?

When you're looking at the loan documents between Sanibel Captiva Community Bank and Target Roofing, look to see what they say and whether they contradict each other. And this goes back to our original discussion about two buckets. The loan documents with Sanibel Captiva, borrower may apply to lender for forgiveness. The CARES Disclosure Act, which is an SBA document, states that it shall. Think about that. In one loan packet, when you're looking at this, and you're looking at the evidence, consider what that means. Differing language between -- in the single loan packet.

Now, the government itself actually, in its Interim Final Rule, admits that it provided conflicting guidance in the most recent IFRs, and it incorporates the April, the original one, in the February IFR. And it states the Economic Aid Act overrides any conflicting guidance in the facts, and the SBA will be revising the facts to fully conform to the Economic Aid Act as quickly as feasible.

When you're sitting here, during your taking in as a fact finder, as listening to the evidence -- and again, what I say in opening is not the facts. The facts come in as you sit here. And you're the fact finders, and you listen to the evidence. Think to yourself, is it okay for the government to make these mistakes, to be confused, to admit confusion, but if a small business owner misinterprets that guidance, he is charged with federal crimes?

The government holds the burden, and the burden is heavy. And he's going to tell you, at the end, that a reasonable doubt is a real doubt. The Judge is going to instruct you it's based on your reason and your common sense, after you've carefully and impartially considered all the evidence in the case. It's proof beyond a reasonable doubt that's so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs.

He will instruct you -- the Judge will instruct you that at the end, but I want you to think about it as you're actually taking in the facts and taking in the evidence. Is it reasonable to believe that, under Mr. Crowther's interpretation of the law and regs, that he believed he complied with the spirit of the law?

Throughout this trial, I ask that you remember the indisputable facts. Target Roofing had a loan with Sanibel Captiva. The loan is not yet due. There's no default on the loan. There's no government funds involved. Target has not requested forgiveness. They haven't requested it. They still owe the $2.1 million back to Sanibel Captiva that will come due later this summer. There's no loss amounts, there's no injury to the bank. There's no loss amounts, there's no injury to the SBA.

Target Roofing is a legitimate business that hired back, employed, members of the community during a global pandemic. These facts, the ones that you're going to hear, are the reasons that Casey Crowther is not guilty of the charges in the second superseding indictment.

Thank you.

THE COURT: Thank you.

The government may call its first witness.

MR. REICHLING: Yes, Your Honor. At this time the government would call Ryan Bradley. If you'll give me just one moment to move the lecturn and set up my laptop?

THE COURT: Sure.

MR. REICHLING: Thank you.

THE COURT: If any of the jurors need to stand and stretch, now is a good time.

COURTROOM DEPUTY: Good morning.

THE WITNESS: Good morning.

COURTROOM DEPUTY: Please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give in the case now before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I swear.

COURTROOM DEPUTY: Thank you, sir. Please take a seat, and state your name when you're seated.

THE WITNESS: Ryan Bradley.

MR. REICHLING: If you could turn me off for now? Because I'm going to open this up, and I don't want it to be on my e-mail or anything. Sorry.

RYAN BRADLEY,

called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REICHLING:

Q Mr. Bradley, did you already state and spell your name for the record?

A I stated my name, I didn't spell it is.
Q Can you spell your last name for the record, please?
A B R A D L E Y.
Q And where are you currently employed?
A I'm self-employed currently.
Q What do you do for a living?
A I'm actually working property development building a marina.
Q Did you ever work for a company called Sara Bay Marina?
A Yes, I did.
Q Did you work for a business affiliated with Sara Bay Marina calls Naples Bay Marina?
A Yes, I did.
Q When was that?
A From February of last year to January of this year.
Q And what did you do there?
A I was there with boat sales.
Q And did you have a boss, or supervisor?
A I did have a supervisor.
Q And who was that?
A The owner, Gary. Oh. My supervisor was Brian Peterson, and my boss was Gary Shrigley.
Q And who was Brian Peterson?
A Brian Peterson, at the time, was a manager.
Q Did there come a time when you met somebody named Casey

Crowther?

A Yes.

Q Do you recall when that was?

A That would have been right at the end of March, 2020.

Q And do you see Mr. Crowther in the courtroom today?

A Yes, I do.

Q Can you point to him and identify him by an article of clothing please?

A Blue tie, blue suit, right in front of me.

MR. REICHLING: Please let the record reflect that Mr. Bradley, the witness, has identified the defendant, Mr. Crowther.

THE COURT: Any objections? Hearing none, it may so reflect.

BY MR. REICHLING:

Q Now, what were the circumstances surrounding why you met Mr. Crowther?

A He had called in a couple of times to look at a boat that we had in stock.

Q And did he actually come and physically look at the boat?

A Yes, he did.

Q And did you show him the boat?

A Yes, I did.

Q And what boat was he looking for?

A Invincible 40-foot catamaran.
Q And did that boat have engines on it?
A Yes.
Q What type of engines did it have?
A Quad 4 -- four 400-horsepower Mercury engines.
Q Now, at the time you met with Mr. Crowther, did you begin negotiating the sale of the boat at that point?
A On the day in question we first met, no.
Q Okay. And when was that again, I'm sorry?
A That was right -- it would have been right at the end of March, 2020.
Q Did you have any follow-up with him after he came and looked at the boat?
A Yes. Over the next -- it happened very quickly, the next day or so, I followed up, and we talked a little further about the boat at that point.
Q Did he ever discuss what he planned on using the boat for?
A Fishing far offshore and being comfortable.
Q Okay. And what was the price of the boat, if you recall, at the time he came to first look at it?
A I could not recall the exact price of the vessel. I can give you a ballpark, but I don't know the exact of what it would have been.
Q Ballpark is fine.

A It would have been roughly around about the $800,000 mark for the vessel.
Q Now, did there come a point in time that you weren't the direct salesperson on the transaction?
A Yes, there was.
Q And when did that happen?
A That would have happened probably around April 1st or 2nd, something like that, when negotiations went further with the vessel.
Q And who took over the sale?
A Sales manager, Brian Peterson.
Q Okay. And could you just briefly describe why he took over the sale?
A We got to the point we had talked about pricing, it was something that I could not do as a salesperson, so we moved on to the sales manager to see if he could make it happen.
Q And did you continue to follow up with Mr. Crowther while he was dealing with Mr. Peterson?
A Yes, I did.
Q And why was that?
A New to the company. Felt like I had been cut out of something that I was working on to sell the vessel.
Q Did you have a disagreement with the price of the vessel with the management?
A Yes, I did.

Q Why was that?
A Because it was out of my scope to sell the vessel for the price that it was requested.
Q Now, did you actually physically observe Mr. Crowther come and pick up the boat?
A No, I did not.
Q Okay. Were you involved in executing a contract with Mr. Crowther for the boat?
A Selling, the final contract, yes.
MR. REICHLING: Okay. I'm going to show you that right now.
Showing defense counsel what's been previously marked as Government's Exhibit 2.
(Counsel provides evidence to the witness.)
MR. REICHLING: I've provided the witness a copy -- or the original, actually, of Government's Exhibit 2 that's been marked for identification.
BY MR. REICHLING:
Q Mr. Bradley, do you recognize that exhibit?
A Yes.
Q And what is it?
A This is the signed contract with the date we finalized the deal for the boat.
Q And is your signature on that contract?
A Yes, it is.

Q Is it a fair and accurate copy of the final contract that you signed?
A Yes, it is.
MR. REICHLING: At this time, Your Honor, the government would be moving what's been previously marked into evidence as Government's Exhibit 2 as Government's Exhibit 2.
THE COURT: Any objections?
MS. WAID: No objection, Your Honor.
THE COURT: Exhibit 2 will be admitted into evidence.
(Government's Exhibit 2 admitted.)
MR. REICHLING: Permission to publish, Your Honor.
THE COURT: You may.
MR. REICHLING: Now, I wanted to zoom into the top of the contract.
COURTROOM DEPUTY: Are you ready?
MR. REICHLING: Oh, sorry. Yes. My apologies, ma'am.
(Evidence was published via the projector.)
BY MR. REICHLING:
Q Now I will zoom into the top of the contract. Excuse me. Sorry.
Can you explain the date of April 10, 2020, on the top of your sales contract?
A The date of April 10th would have been the day the contract was executed in the sales system, and a deposit would

have been taken -- should have been taken at that time to secure the vessel for the buyer. So no other salesman can sell it.
Q And I'm going to now zoom in. What was the final price of the boat?
A 675,917 and two cents before taxes.
Q Actually, could you read that again? What was the final --
A With taxes, title, everything, $689,417.02.
Q Was that your signature located at the bottom of the sales contract?
A Yes, sir.
Q And what about the signature of the purchaser?
A That is Casey's signature.
Q And let me ask you this: In your experience as a guy who sells boats, are you familiar with certificates of titles for boats?
A A little bit.
MR. REICHLING: I'm showing defense counsel what's been marked as Exhibit 152; and Your Honor, this purports to be a certified title document which the government believes is self-authenticating as a certified title.
MS. WAID: No objection, Your Honor.
THE COURT: Exhibit 152 will be admitted.
(Government's Exhibit 152 admitted.)

(Evidence was published via the projector.)
BY MR. REICHLING:
Q Now, Mr. Bradley, do you recall if this boat was put in the name of Mr. Crowther's company?
A The boat would have been put in his name because that's what we have on the contract unless something was noted elsewhere.
Q And what does the certificate of title indicate which is Exhibit Number 152?
A Casey David Crowther is who the boat is titled to through the State of Florida.
MR. REICHLING: Your Honor, I'm going to ask permission to publish Exhibit 152, if that's okay with you.
THE COURT: You may.
MR. REICHLING: Thank you, Your Honor.
(Evidence was published via the projector.)
BY MR. REICHLING:
Q What you're referring to, I'm going to show it here on this exhibit. Is that what you were testifying to?
A Yes, sir.
Q Okay. And what's the date of issuance of title, if you can see that, above where it says Casey David Crowther? I'm sorry.
A May 8th, 2020.
Q And is this for the 40-foot Invincible vessel that you

sold Mr. Crowther?
A That should be, yes, sir.
Q Do you recall how Mr. Crowther paid for the boat?
A It was a wire transfer.
Q For the entire amount?
A The original deposit was by credit card. And then the rest was the wire transfer.
Q Okay. Were you contacted by Mr. Crowther following the sale of the boat?
A Yes.
Q And did he indicate he was happy with the boat?
A We had warranty issues.
Q Okay. And what were those issues?
A We had an engine that had ingested water. We were trying to figure out why, and what we could do to assist with Mercury. And then we had a lean in the hull. The boat was leaning to one side when running at speed.
Q What about the fuel tank?
A Oh, yes. I forgot about it too. The fuel tank was 800 -- we were told the boat had 800-gallon fuel tanks, as all 2020 models -- I looked, and -- from what we did when we calculated in our math, and from filling the boat, it did not have 800-gallon fuel tanks.
MR. REICHLING: One moment, Your Honor.
(Mr. Reichling and Mr. Leeman confer privately.)

MR. REICHLING: One moment, Judge. I apologize.

BY MR. REICHLING:

Q Could you turn to Page 5 of that exhibit, Exhibit 152? And I'd like you to refer to one particular area on that page.

Does it indicate, in the middle part of that page, what this boat was being purchased for? And I'm going to zoom in on it here on Exhibit 152. Does it state if it's being used for recreational purpose? You can look at the screen in front of you.

A Yeah. Recreational. Yes.

MR. REICHLING: No further questions, Your Honor.

THE COURT: Thank you.

Counsel?

CROSS EXAMINATION

BY MS. WAID:

Q Good morning, Mr. Bradley.

A Good morning.

Q Now, you stated that you no longer work for Sara Bay Marina; is that correct?

A That is correct, yes.

Q And is that because that actual branch of Sara Bay no longer is in existence?

A No.

Q Can you tell me why?

A I had actually went -- I'll give you the quick

background. I went to Sara Bay with the intention of stepping backwards because in my old job I wanted less responsibility, because I wanted to work on developing my marina here in Fort Myers. And January came around, and my partner just went it's time. So that's why. So I'm going to build a marina.
Q Good luck.
A Yeah. I need some.
Q Okay. So you stated, on direct, that actually you first initially came into contact with Casey Crowther around the end of March; is that right?
A Yes.
Q Okay. And that was the first time, March 30th, that you came in contact with him, or had you had contact with him prior?
A Not prior, no.
Q Okay. Is there someone else, perhaps, or are you aware of anyone else at Sara Bay Marina who might have had contact with Casey Crowther prior to the March --
A No.
Q So you're saying that March is actually the -- March 30th is the first time that you actually saw Mr. Crowther.
A And spoke to him; yes.
Q Okay. And I'd like to show you what has been marked previously as Government's Exhibit Number 1 that they haven't

shown you before.

Permission to approach?

THE COURT: You may, freely.

(Counsel provides evidence to the witness.)

BY MS. WAID:

Q Do you recognize that document?

A Yes.

Q Okay. And, in that document, can you tell the jury what that document is?

A These are my notes from our customer relation management. So whenever we reach out to somebody to talk to anybody, I put my notes in as to what we discuss, so if my supervisor or my owner wants to look up, and the guy comes in, there's notes in the system about what we talked about, and also what I've done to protect myself.

Q Okay. And the first note on this indicates that you spoke to Mr. Crowther on 3/30; is that correct?

A Yes.

Q But the third line actually says that he had called a second time; is that right?

A Yes.

Q Is that he called the second time for you or somebody else?

A He had called twice.

MR. REICHLING: Your Honor, the government would object. This particular exhibit isn't in evidence.

THE COURT: That's true. Are you moving it in?

MS. WAID: Yes, Your Honor.

BY MS. WAID:

Q These actually -- are these actually -- can you explain again to the jury what this is?

A These are my notes from our customer support system. So these are my notes that I typed in myself.

Q Okay. And you, yourself, typed these notes in; correct?

A Yes. Each one of us has a password.

Q And is your customer representative system actually a software that the company had?

A Yes.

Q Okay. So you would actually put these in as part of the business record of what you did.

A Yes.

MS. WAID: Yes? Okay.

The defense would like to move in Government's Exhibit Number 1.

MR. REICHLING: Your Honor, the government would object. This is hearsay. Of course, Miss Waid can use the document to refresh the witness's memory, but this is a hearsay document. It shouldn't be admissible.

THE COURT: That objection is overruled, and the Court will admit what's been marked as Government's Exhibit 1.

MS. WAID: Permission to publish, Your Honor?

THE COURT: You may.

(Government's Exhibit 1 admitted.)

(Evidence was published via the projector.)

BY MS. WAID:

Q While they're doing that, Mr. Bradley, why don't you tell us a little bit about how that process worked, how do you actually put the information into the computer system for Sara Bay Marina.

A Anybody who has access to the system as a salesperson or anyone, you have your own individual password, you type that in, so you're the only one who can enter your system and actually type it and put your notes in. So it's just a notes section. You create a contact, and just notes in the section. I guess. If that makes sense.

Q Yes. Makes complete sense. And I assume that part of that reason that you actually put this into the system is for exactly the reason you discussed before, that there could be some confusion between sales people.

A Um-hum.

Q And you said there might have been some type of conflict prior, a little bit of conflict between the sales people that this was actually taken away from you. Is that correct?

A That's why -- yes. That was me.

Q Was it the sale -- you would have gotten commission on

the sale; right?
A Um-hum.
Q And was that taken away from you because it was something that the marina believed you shouldn't be handling because of the price?
A So what basically happened at that point, it wasn't taken away from me, we agreed to let the sales manager because of the price point. I have a limit to where I'm allowed to go. That was past my limit.
Q Okay.
A So the discount was too great for what I could do myself.
Q Oh, the discount on the boat was too great for what you could do yourself.
A Yes.
Q I get it. So originally you had stated the sales price of the boat was about $800,000; correct?
A That's the retail price of the boat; yes.
Q The retail price. And you, yourself, have a catamaran; correct?
A Yes.
Q Okay. So it was about $800,000. And the sales price that you ended up selling the boat for was approximately 630; correct?
A Something -- yes.

Q Okay. Well, let's --
A Yes. Six for the boat, plus the electronics; yes.
Q So the actual sales price was 630.
A Yes.
Q So you weren't allowed -- because of the huge deduction, you weren't allowed to actually authorize that; is that right?
A That is correct.
Q And so you would agree that Mr. Crowther got a great deal on that boat; right?
A Oh . . . yes.
Q Really good. Yes or no, sir?
A Yes. Sorry.
Q No, no. No worries. Just for the record we have to do that. And, at that time, would you agree that, at that price, he would be able to sell that boat later on and actually make a profit?
A No.
Q Why?
A The mark -- even though, as we all know -- the market, for what it is right now, in this niche type of boat, it's very tough to work with that afterwards. It's not -- that size bracket is not doing . . . . He wouldn't lose money, but he's not going to make money.
Q Okay. I --
A Break even.

Q I'm sorry. Go ahead.
A Probably break even.
Q Okay. And are you aware that Mr. Crowther actually had a buyer for that boat, later this year, for more money?
A I was aware of that when we spoke about the engine being blown up, because he was thinking about maybe later on selling it, yes.
Q Thank you. All right. So now we actually have, up on the screen -- although, for the jury, it's a little bit difficult to read, your notes about this original introduction to Mr. Crowther; correct?
A Yes.
Q Okay. And in these notes he actually states that you actually -- Mr. Crowther ended up calling a second time; is that right?
A Yes.
Q All right. Are you aware that Mr. Crowther was looking, months before, at a catamaran?
A No.
Q Okay. Did the Sara Bay Marina actually have a Naples Boat Show early in 20,000?
A Yes.
Q Okay. And, at that Naples Boat Show was there a catamaran there?
A I would not have known. I wasn't there at that point.

Q Okay. Were you aware that Mr. Crowther had actually, a few weeks prior, sold his own boat?
A No.
Q Is there anything that would refresh your recollection?
A No. He owned a 39 Yellow Fin, as I put there; but he did not -- he hadn't sold it at that point when I first met him.
Q Okay. Can you just read for me the paragraph -- the first paragraph, starting with, "Last night"?
A Oh, I see that he just sold his 35 Yellow Fin -- 39 Yellow Fin. I didn't read that far down. I'm sorry. That was not something I recollected. So I do apologize.
Q No worries. No worries. But could you read that line for the jury, please.
A Yes. "As he just sold his 39 Yellow Fin. Twelve-foot beam. Will be good with him lift 25,000 pounds."
Q So the new boat that he was buying, this is kind of stating, would be a good fit because it was a similar size; correct?
A Yes. Weight-wise. Um-hum.
Q Weight-wise. For his boat lift; is that right?
A Yes. Um-hum.

MS. WAID: Okay. No further questions. Thank you, Mr. Bradley.

THE COURT: Thank you. Any redirect?

MR. REICHLING: No, Your Honor.

THE COURT: You may stand down. Thank you.

(The witness left the witness stand.)

THE COURT: We got a little bit of a late start. So we have a choice: Either work till noon, or take a morning recess, and then probably work a little bit after noon. Anyone need a recess now? All right. Let's make it through noon, then, and we'll take a lunch recess.

You may call your next witness.

MR. REICHLING: At this time, the government would call Brian Peterson.

COURTROOM DEPUTY: Good morning.

THE WITNESS: Good morning.

COURTROOM DEPUTY: Pleas raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give in the case now before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

COURTROOM DEPUTY: Thank you, sir. Would you please take a seat?

And, once seated, would you please state your name and spell your name?

THE WITNESS: Absolutely.

COURTROOM DEPUTY: Thank you.

THE WITNESS: Brian Peterson. B R I A N,

P E T E R S O N.

BRIAN PETERSON,

called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REICHLING:

Q Good morning, Mr. Peterson.

A Good morning.

Q What do you currently do for a living?

A Currently, I'm a sales manager for Galati Yachts.

MR. REICHLING: And if I may approach the stand?

I'm just going to retrieve these documents from you.

THE COURT: You may.

BY MR. REICHLING:

Q I'm sorry, Mr. Peterson, could you state again what you do for a living?

A Absolutely. I'm a sales manager for Galati Yachts here in Fort Myers.

Q And, if you feel comfortable, you can take the mask off.

A Thank you.

Q Did there come a time that you worked for a company called Naples Bay Marina?

A Yes.

Q And how are they affiliated with Sara Bay Marina?

A It's a sole proprietorship, DBM, LLC. They're all under

that umbrella.
Q And what did you do at Naples Bay Marina?
A I was the sales manager for them, as well.
Q And who did you manage back in March and April of 2020?
A Sure. So Ryan Bradley was one of the employees. We had, you know, eight employees altogether. I was mainly in charge of the sales department.
Q Now, did there come a time that you became involved in the sale of a 40-foot Invincible catamaran boat?
A Yes, sir.
Q Do you recall around about when you became involved in that sale?
A Yes. It was -- it was . . . I believe in April is when I got involved.
Q And who was the person interested in buying that boat?
A Casey Crowther.
Q And do you recall what your -- or why you took over the sale?
A Absolutely. So, as the sales manager -- and the parameters of this deal was it was larger vessel; so, really, that it fell under my jurisdiction, excuse me, so to speak. Ryan was a newer employee with the company, so that was really protocol for us to do that.
Q And when you say parameters, are you speaking about price parameters?

A Yeah; price, and size, and somewhat brand as well.
Q Now, do you recall what discussions you had with the defendant about the boat?
A I mean, multitude. I mean, we discussed everything from, you know, power, price range, options. So it was pretty comprehensive.
Q Did the defendant ever tell you how he planned on purchasing for the boat when you first began talking to him?
A You know, that was not really a part of our initially conversations; and, throughout the course, we did talk about financing, financing options. You know, bank options, rates. You know, and then the conversation progressed as we got closer to the sale.
Q I'm going to show you what's previously been admitted into evidence as Government's Exhibit 2.
(Counsel provides evidence to the witness.)
MR. REICHLING: And, Your Honor, permission to publish Government's Exhibit 2?
THE COURT: You may.
MR. REICHLING: Thank you, Your Honor.
(Evidence was published via the projector.)
BY MR. REICHLING:
Q Could you just briefly explain what Government's Exhibit 2 is?
A So Government's Exhibit 2 would be a standard sales

contract.
Q Okay.
A Initiated between the dealership and Casey.
Q And could you explain, at the upper right-hand corner of Government's Exhibit 2, what the date of April 10th, 2020, means?
A So this date would have been pertaining to the date that it would have been entered into the system, along with -- along with the price, and the dealer-installed options, the accessories that you see there.
Q Would that have been the date that the price of the boat was finalized?
A That would have been, yes. So typically we'll prepare a sales contract, we place the specific boat to the contract, along with the price and, in this instance, options. Then we would submit that for the prospective buyer to view, to go over and make sure everything was aligned. And it is a key part of cementing the sales process.
Q Now, is that your signature on the contract on Government's Exhibit 2, or is that someone else's?
A No; that's Ryan Bradley's.
Q And could you explain why his signature is on the contract and not yours?
A Yes, absolutely. So this was at the beginning of COVID, and so, from a dealership level perspective, I was working more

from home. For several reasons. One, I have a family member that's a little more susceptible to COVID that we're trying to protect. And so it was very common for me to -- you know, I had access, remotely, to the systems that we use, and so it would have been very common at that time, or anytime, for me to, you know, be involved in the process. I would have viewed or looked at this, and then Ryan probably would have either sent it or been there on site to sign with Casey.

Q Now, after the date the original price was finalized, were there any discussions about upgrades or additions that would have been made on the boat by Sara Bay Marina?

A There were, I'm sure. And, you know, between the time of initiating a contract, and before delivery, there's always conversation about options. Sometimes, you know, changes to those options. So, you know, I'm sure that that was an ongoing conversation.

Q Does Government's Exhibit 2 contain an itemization of those upgrades or additions that were made by the dealer?

A It is not itemized. You have to the left, under optional equipment and accessories, those are the standard features that would have been ordered from the factory on that particular vessel. It looks like the dealer-installed accessories were not itemized simply because there isn't room on the sales contract with the amount of options there are.

Q Now, did you eventually leave Naples Bay Marina?

A I did.
Q And when did you leave Naples Bay Marina?
A You know, I left approximately, you know, June.
Q And let me get back to the price of the boat. My apologies. Do you recall what the original price that the dealer was going to sell the boat for at the time, before Mr. Crowther contacted you all?
A We have -- so any manufacturer has what they call an MSRP. That is the suggested retail price. There's always a negotiation from that number, but that is your kind of your baseline, or where it starts. So, you know, there's always going to be some fluctuation, with a lot of factors involved.
Q So could you just give a ballpark figure as to what you believe the MSRP was of this boat at this time?
A Yes. The MSRP was somewhere in the neighborhood of 675 to 685 without the dealer-installed accessories.
Q Did Mr. Crowther get the price of the boat at a reduced price for the boat?
A Yes.
Q And what factored into the Sara Bay's, or Naples Bay Marina's ideas into why they lowered the price of that boat?
A Absolutely. So we were coming into COVID. So typically, you know, when you have market fluctuations, or a potential downturn in the market, recreational industries tend to get first and the hardest. So, you know, when COVID was

initially coming to fruition in the United States, we . . . you know, we were almost in a -- not panic mode, but we were very concerned with the amount of inventory we had, especially the higher-priced units. We didn't know what was going to happen. So we were, at that time, you know, motivated to get rid of inventory and to, you know, basically sell at a better price than typically.

Q Is a 40-foot Invincible catamaran boat a difficult boat to get rid of?

A It's a very desirable boat, but the clientele for that boat is small.

MR. REICHLING: Your Honor, I'm going show defense counsel and the witness what's been previously marked as Government's Exhibit Number 4. And I believe that they're going to stipulate to its introduction.

Is that correct?

MS. WAID: Yes, Your Honor.

THE COURT: All right. Government's Exhibit Number 4 will be admitted and may be published.

(Government's Exhibit 4 admitted.)

(Evidence was published via the projector.)

BY MR. REICHLING:

Q I'd like you to take a look at Government's Exhibit Number 4. Is that the boat that Mr. Crowther bought?

A It is, yes.

Q And could you turn to Page 2 of that exhibit? And is that another photo of the boat?
A It is, yes.
Q Okay. There seems to be . . . in looking at that picture, does there appear to be any upgrades regarding the speaker system or electronics of that boat?
A It appears so, yes.
Q Were those things that you, the dealer, Naples Bay, put on the boat, or was that something that was -- you believe would have been added by Mr. Crowther?
A So during the period where, you know, a lot of the discussion about the dealer-installed accessories that you see were done more with Ryan than myself.
Q Okay.
A But, if I recall correctly, that those were aftermarket after-sale installations.
Q All right. And you stated you left -- when did you say you left Naples Bay Marina?
A I left in, really, June. And there's really not a hard stop date, because there were some deals that were still in process, so it was kind of a fluid departure.
Q Following the execution of a final sale contract, did you have any interactions with Mr. Crowther while you worked at Naples Bay Marina?
A You know what, I did. I had a few. You know, it's

customary, after sale, to have some involvement. You want to make sure that the boat is doing well, that the client's happy. And then we also had some interaction based on some fuel tank specifications.

Q And can you just briefly explain the fuel tank issues?

A Absolutely. So the 40-foot Invincible Cat was brought to market probably two to three years before Casey bought his. At that time, they had a standard 640-gallon fuel tank, that was the capacity of the boat, and with the option to upgrade to 800 gallons.

So what -- Invincible made a decision for that year model that they were going to make the 800 gallons standard. They advertised that this particular boat would have the 800-gallon fuel capacity. We even checked with the factory. That was what they relayed back to us after looking at the hull or the VIN number. In actuality, what happened was this was the last very last boat -- they made a mistake at the factory level -- this was the very last boat that left the factory with the 640-gallon fuel tank.

So our discussions were between Casey and myself and the factory on how to rectify the situation and get him a larger fuel capacity.

Q Any explanation from the defendant as to why he wanted a high fuel capacity?

A Yes. So Casey was a guy that did a lot of -- you know, a lot of fishing, a lot of serious fishing. And so when we discussed, you know, boats, and why this was a good boat for him, it was typical for Casey to go 80 miles, a hundred miles off shore to go fishing. So it was explained to me by him that he needed that extra tank for the actual range of the boat and the fishing that he did.

MR. REICHLING: Okay.

No further questions at this time, Your Honor.

THE COURT: All right. Thank you.

Counsel?

CROSS EXAMINATION

BY MS. WAID:

Q Good morning, Mr. Peterson.

A Good morning.

Q Is this March, 2020, timeline regarding the catamaran the first time that you had actually had communications with Casey Crowther?

A It is not, no.

Q Can you explain to the jury when you actually first came into contact with Casey?

A Sure. Sure. So I talk to lot of people, I have a lot of client interaction; and you can imagine, as the years go by, I try to do a diligent job. In November of 2017, Casey and I had some interaction. I believe that occurred at the Fort Myers Boat Show. I don't really recall our face-to-face

interactions; but, looking at my phone, there was some text history there.
Q Okay. And do you recall what that text history was?
A I do. So Casey was looking at our Invincible lines. At that time we didn't have any cat boats, and so he was looking at an Invincible boat and was asking questions about it. So we discussed some price questions, some boat questions.
Q Okay. So, back in 2017, which was, you know, approximately three to four years ago, Mr. Crowther was looking at the same line of boats; is that accurate?
A Same brand of boats, yes.
Q And are you aware that Mr. Crowther has a history of selling boats?
A Yes.
Q Okay. And can you tell us a little bit about that?
A Sure. So, as we -- I don't remember our discussions from '17, but, you know, as they apply to the recent 40 purchase, you know, he had, at the time, I believe, a Yellow Fin. He explained -- you know, and that's just part of our standard protocol, is get to know the client a little bit, his boating history. And so Casey explained that, in the past, you know, he had the Yellow Fin he was looking to sell, and he's owned several boats in the past.
Q Okay. And are you aware if Mr. Crowther actually sold that Yellow Fin?

A Yes. He had told me that he did, yes.
Q And did he sell it in the weeks prior to actually purchasing the new catamaran?
A I believe that's correct.
Q Okay. Now, you stated that, at the time that Mr. Crowther came in to purchase the catamaran, it was, you think, the beginning of COVID; correct?
A Correct.
Q And you were actually working from home.
A I was remote; yes.
Q Okay. And, even when you came to the office, you had little contact your co-workers; correct?
A Correct. Correct. Correct.
Q And there was some confusion originally about who is going to take the boat purchase -- or the boat sale; right?
A Originally. Originally, yeah. Because, when Casey came in, he had talked to Ryan, but Ryan wasn't aware of our interaction or involvement prior to his contact, so.
Q And in the boat industry it's kind of first come first served; whoever spoke to the person first, that's your sale, right?
A It can be, yes.
Q And Ryan actually didn't have the authority to authorize the kind of deduction that Mr. Crowther got on the catamaran; correct?

A Correct. He did not.
Q But you were the manager, so you can actually --
A Yes. Absolutely.
Q -- authorize that deduction; right?
A Right, correct.
Q And you would agree that Mr. Crowther got a great deal on that catamaran?
A I believe he did, yes.
Q And, at the time that you were speaking to Mr. Crowther, did you actually -- did you inform him that you thought it might be a good investment, even, to purchase the catamaran?
A Yeah, I believe I did, yes.
Q Let's talk a little bit about the boating industry.
A Sure.
Q Because COVID, when it first started, you were panicked; correct?
A Correct.
Q And so it was kind of almost a fire sale of boats; right?
A There was. There was. And Wells Fargo had released an article -- there's a boating publication called Trade Only, and they had released an article talking about high inventory levels and a little bit of unsure times. That was pretty much not just with our company, but that was industry wide, a major concern.

Q And what was almost a surprise to all of us is that the boating industry actually boomed after the pandemic; correct?
A Correct.
Q Everybody is trying to get out of their house; right?
A Right.
Q So everyone is trying to buy boats; correct?
A Correct.
Q And you actually did very well in boat sales after that; correct?
A Correct.
Q And I assume that's probably why you went to Galati Yachts; correct?
A Correct, yes.
Q There came a time, correct, where Mr. Crowther actually contacted you in the summer of 2020; is that right?
A It is, yes.
Q Okay. And he contacted you because he actually wanted to sell the catamaran that he had actually purchased a couple months before; right?
A Yes.
Q And you actually had found a purchaser for Mr. Crowther; correct?
A I had, yes.
Q And that person was actually willing to pay the same or more than Mr. Crowther had actually purchased the catamaran

for; is that right?
A It is correct, yes.
Q Okay. And was it the same or more?
A So he was willing to pay -- so Casey paid 630 for the boat, but then he had $45,000 worth of installed options. So we had not come to an agreed price, but I believe our last correspondence with the potential buyer, he was at 660 was his offer, and we were still negotiating going back and forth. So it would have been right at about the price that Casey paid.
Q But over the initial purchase price of the boat itself; correct?
A Yes.
Q And the reason that -- well, that actual boat sale never went through; correct?
A It did not.
Q Okay. And the reason that that never went through is because the boat was seized by the government; is that accurate?
A It is, yes.
Q Now, you mentioned that Mr. Crowther was offered financing, right?
A Or it was discussed.
Q It was discussed. Financing was discussed. And isn't it true that a lot of your clients don't get financing?
A It is. In Naples, yeah. Yeah. In Naples.

Q And would that be because the interest rates on financing are pretty astronomical? Correct?
A I mean, yeah. There's a variety of reasons. One is the wealth of Naples. And, yeah, and the other is sometimes the financing terms are just not up to expectations.
Q Are you aware whether or not Mr. Crowther actually had been to the Naples Boat Show in January of 2020?
A So I did not -- I did not meet Casey at that show. He stated he was there and had talked to one of my sales guys that I had on the Invincible product.
Q In January of 2020, the 40-foot Invincible catamaran was actually at that Naples Boat Show, was it not?
A It was, yes.
Q And it was months prior to the pandemic hitting the hitting; correct?
A Correct, yes.
MS. WAID: I have no further questions. Thank you, Mr. Peterson.
THE COURT: All right. Thank you.
Any redirect?
MR. REICHLING: Yes, Your Honor. Very briefly. Somewhat briefly.

REDIRECT EXAMINATION

BY MR. REICHLING:
Q Good morning again.

A Good morning.
Q Mr. Peterson. In the summer of 2020, could you describe the demand for boats at that time?
A The summer of 2020?
Q Yes.
A Yes. So it would be . . . . I can't -- I don't know that I can put a hard date on it, but somewhere between pre-COVID, COVID coming to fruition, and then everybody realizing what the world was going forward, the demand -- you know, it switched. And the demand became very -- you know, very hot.
Q And defense counsel asked about you assisting Mr. Crowther in the resale of that catamaran boat; correct?
A Correct.
Q And did you actually finalize the resale of that boat?
A We did not, no. We were very close, but we had not finalized it. To me, finalizing it would mean putting it to contract, and we did not do that.
Q And defense counsel asked about the frequency of financing, I think?
A Correct.
Q Is it possible that someone can get a one-percent loan on the purchase of a 600 to $700,000 boat?
A You know, it's FICA driven, so everybody is different, and -- I, personally, is it impossible? No, maybe not. I have

not seen that rate, but . . . . So it's -- you know, it's tough to say.

Q Would you agree that a one-percent interest loan is rather low, based on your knowledge of financing boats?

A That would be extremely low, yes.

MR. REICHLING: No further questions, Your Honor.

THE COURT: Any recross?

MS. WAID: Nothing, Your Honor. Thank you.

THE COURT: You may stand down. Thank you.

THE WITNESS: Thank you.

(The witness left the witness stand.)

THE COURT: You may call your next witness.

MR. LEEMAN: The United States calls Steven Adkins, Your Honor.

Your Honor, I can only expect that maybe Mr. Adkins stepped away to the bathroom or something. I believe they were asked to sit outside the courtroom door. If you give me a minute, I can inquire into what's going on.

THE COURT: That's fine.

Right up front here, please.

Have him placed under oath.

COURTROOM DEPUTY: Good morning.

THE WITNESS: Good morning.

COURTROOM DEPUTY: Please raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give in this case now before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

COURTROOM DEPUTY: Thank you, sir. Please have a seat in the box; and, once you're seated, would you please state your name and spell your name?

THE WITNESS: Sure. This box?

COURTROOM DEPUTY: Please.

THE WITNESS: My name is Steve Adkins. Oh. Sorry. My name is Steve Adkins. S T E V E, A D K I N S.

THE COURT: Thank you.

MR. LEEMAN: May I inquire, Your Honor?

THE COURT: You may.

STEVE ADKINS,

called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q Sir, you can remove your mask so the jury can see you, please.

Good morning. Are you employed?

A Yes, I am.

Q And by who?

A Target Builders Construction Management, Inc.

Q All right. What's your position with that company, sir?

A I am the president and the owner.
Q All right. What does that company do?
A We provide construction management services for commercial and public entity projects.
Q How long has it been in business?
A Almost 30 years. 1992 we forward the company.
Q You have been the owner the entire time?
A Yes, I have.
Q Any other people own the company with you?
A No.
Q Do you know an individual known as Casey Crowther?
A Yes, I do.
Q Do you see him sitting here in the Court today?
A Not yet. Yes, I see him.
Q Can you identify him by a piece of clothing and where he's sitting?
A Right here with the tie on.
Q I think there's more than one individual with a tie on. Maybe be a little more descriptive, sir?
A Sitting in front of me with the tie and the blue suit. This table.
Q Okay. What color is his tie, sir?
A Blue tie.
MR. LEEMAN: All right. Thank you.
May the record reflect that the witness has

identified the defendant, Casey Crowther, Your Honor?

MS. WAID: No objection.

THE COURT: The record may so reflect.

BY MR. LEEMAN:

Q How do you know Mr. Crowther?

A Casey and I were partners in Target Roofing and Sheet Metal.

Q How did that come about?

A Well, Casey and I have known each other a long time, and several years ago, maybe nine years ago, I mentioned to him if he ever wanted to go into business, that I would be interested in partnering with him. So we talked about it from time to time, and about . . . about seven years ago he called me and wanted to know if that offer was still good, and we formed the company the next day. About seven years ago.

Q And what company was that?

A Target Roofing and Sheet Metal, Inc.

Q Let me step back a little bit to something you said. You said you've known each other for a long time. How would you characterize your relationship with Mr. Crowther? Obviously, you had some type of a business relationship. Would you characterize it any other way?

A Yeah. We've been friends. You know, I've probably known Casey for 10 or 11 years at this point. And we were friends before we became partners.

Q How about family members? Are you friends with family members of Mr. Crowther, as well?
A Yes, I am.
Q Okay. Such as who?
A Well, Casey's wife, Margo, and my wife are friends. You know, we're all friends together. And Casey's sister, his dad. I know a lot of the family members.
Q How do you know so many of these people?
A Just being 30 years in business here. You know, I've dealt with a lot of Casey's relatives, and I do business with Casey's sister, Danielle, and so just kind of evolved over the years.
Q Target Roofing, I'll just call that Target Roofing and Sheet Metal, if you don't mind, you formed with Mr. Crowther, and was your role in that company, at least upon its formation?
A We formed it together as partners. I was 51 percent stockholder when we started, and Casey was 49 percent. And I put up the original money to start the company, and we had the agreement that, once I got paid back my investment, you know, first, we would be 50/50 partners.
Q Did that happen at some point when you -- during the course of your relationship with --
A Yes, sir, it did.
Q So, at some point, you became a 50-percent owner of the company.

A Yes, that's correct.
Q Did you own any other companies with Mr. Crowther?
A Yes.
Q What were they?
A We had a couple of real estate investments together: 3801 Jade Avenue, LLC, and 8790 Laredo, LLC.
Q What did the Jade Avenue, LLC company, what did it do?
A We were partners in that company in a real estate investment at Saint James City.
Q All right. Give the jury a little idea of what that means, you were partners in a real estate investment. Did the company own some particular asset?
A Yes. 3801 Jade Avenue, LLC owned property at 3801 Jade Avenue. We bought it in an LLC for liability and tax reasons, but we were 50-percent partners in that particular house and real estate investment.
Q What did you all intend to do with that property, if anything?
A Well, I think, with the property values increasing out there, it was a good real estate investment to begin with; but originally we had ideas of doing an Air B and B with it, but we never did air B and B the property. We basically just used it ourselves, and occasionally would entertain clients at that residence.
Q All right. How about the Laredo, LLC property? Let me

ask you a little bit better question for the record.
A Sure.
Q What did the Laredo, LLC company do?
A Again, it was a real estate investment for Casey and I. You know, set up by our lawyers, you know, for liability protection and tax reasons. But it was basically the -- a purchase we made for the Target Roofing office and headquarters.
Q Target Roofing sat on property owned by Laredo, LLC? Would that be fair to say?
A Yeah. Target Roofing rented the property from Laredo, LLC.
Q Understood. All right. Are you still -- and you were an owner of each of those three companies with Mr. Crowther; is that right?
A Yes, that's correct.
Q Are you still?
A No, I am not.
Q Okay. When did that change?
A Casey purchased my interest in all three companies in 2019.
Q All right. Can you explain to the jury how that came about?
A Sure. Casey and I were very good partners together. We formed a roofing company that became very successful quickly.

There was a day in January of 2019 that Casey and I were both working in Panama City. After that meeting, I just left with some thoughts, and approached him, I think that evening or the next day, just by him being a guy that's, you know, in his early '30s, and me being a guy that's in his early '50s, there would become a time that our business ideas would be different in strategies, and I thought, if he was interested, we could put together a win-win situation for him to buy me out.

Q Mr. Crowther was willing to take on more risk than you were with the business? Is that true or not?

A I don't know if that's true, but, typically, from what I -- you know, including myself, a guy, or a businessman, young, in their '30s, is going to be willing to take more risk than a guy that might be, you know, older, and getting close to the end of his -- you know, his run.

Q So was he more willing to take on more risk in your eyes than you were, as someone older than him?

A I would say probably yes.

Q And you decided to step away from the company?

A Yes, I did.

Q And that was friendly? A friendly stepping away?

A It was. We worked on the agreement together for several months, and really didn't have much -- we didn't have analyses of our income statements or anything, it's just something that he and I put together as an agreement.

Q All right. Let me ask you a little bit. I'd like you, if you would, to explain to the jury, sort of in broad strokes, what you -- what the contract did when you stepped away from these three companies? What did you get out of it?

A As far as what I got out of it is, is basically, in rough numbers, about a $750,000 agreement for him to pay me, on a balloon note over five years, at a seven and a half percent interest rate.

Q Balloon note means what?

A A balloon note would mean that he would only make the interest statements to me on a monthly basis. The principal would not be due until that five-year period expired. And the reason we did that was just concerns for . . . you know, Casey's cash flow reasons and the Target Roofing's cash flow. Which I really didn't have any problem with, because Casey had always -- you know -- been motivated to do whatever he tells me that he's going to do, and I knew that he was motivated to pay me as soon as he could.

Q What did you give up in return? You get a promise to be paid that amount of money. What did you give up?

A I gave up my stock at Target Roofing, and I gave up my membership interest in the two real estate, LLCs.

Q All right. Any of that money that you said is roughly $700,000 is, I believe, what you said, sir; right?

A I think 750 or so, yes.

Q Did any of that money represent salary that you were owed by any of those three companies?
A No, it did not. I do know that, in the stock purchase agreement for Target Roofing, it was . . . . For the year that he purchased the stock, that remaining couple of months, they were going to pay me a certain salary to get to about a $20,000 annual W-2 income to avoid, or, you know, minimize investment tax for me, which we were advised by our CPA to do.
Q All right. Let's unpack that a little bit. There was a small portion of salary that was going to be owed to you pursuant to the agreements you signed to get away from these companies; is that right?
A That's correct.
Q Now, that salary was due to you in 2019; is that right?
A Yes. They just, at 2019, kept me on the payroll until we reached that $20,000 or so threshold.
Q And you were paid that; is that right?
A Yes, I was paid that.
Q And you were paid about that before 2020.
A Yes; that's correct.
Q So, in 2020, you weren't owed any salary, or payroll, or overtime, or anything like that, from Target Roofing; is that right?
A That's correct.
Q Or any of those three companies.

A That's correct.

MR. LEEMAN: All right. I want to show you --

If I may approach the witness, Your Honor, Government's Exhibit 62 and 63?

THE COURT: You may.

(Evidence was published via the projector.)

BY MR. LEEMAN:

Q Mr. Adkins, if you could take a minute and look over those two documents, and then look up at me when you're done reviewing them.

A Okay.

Q Thank you, sir.

If you wouldn't mind, the computer has shut down.

With respect to Exhibit Number 62, sir, what is it?

A This is the agreement for the stock purchase and the membership interest of the buyout that we were speaking of a moment ago.

Q Does it appear to be a true and accurate copy of that agreement, sir?

A Yes.

MR. LEEMAN: Your Honor, at this point in time, I'd ask to admit Government's Exhibit 62 into evidence.

MS. WAID: No objection.

THE COURT: Government's Exhibit 62 will be admitted and may be published.

(Government's Exhibit 62 admitted.)

BY MR. LEEMAN:

Q Showing you Government's Exhibit Number 62, Mr. Adkins, do you recognize that document?

A Yes. It is the promissory notes in reference to the agreement that we, you know, previously spoke of.

Q How many promissory notes are there?

A Three promissory notes.

Q Why are there three?

A One was for each entity purchased.

Q So one for Target Roofing?

A Yes.

Q One for Jade Avenue?

A That's correct.

Q One for Laredo.

A Yes, sir.

Q I'm going to publish Government's -- oh, let me ask this. I'm sorry, Your Honor.

Is Exhibit 63 a true and accurate copy of those promissory notes?

A Yes.

MR. LEEMAN: Your Honor, at this time I'd ask to move Government's Exhibit Number 63 into evidence.

MS. WAID: No objection.

THE COURT: Sixty-three will be admitted and may also be published.

(Government's Exhibit 63 admitted.)

BY MR. LEEMAN:

Q Mr. Adkins, in front of you I'm going to pull up a copy of Exhibit 62, and you can follow along on your screen.

I just want to focus on the very bottom of this page I'm going to highlight and pull up. If you might read Paragraph 1.1 allowed into the record?

A Subject to the terms and conditions of this agreement, and on the basis of the representations and warranties hereinafter set forth, Adkins agrees to sell, assign, transfer, and deliver the Adkins' stock to the company and the company.

Q All right. I'll move on to the next page. All right. And then go ahead and read from the top there, what I've just highlighted, beginning with "agrees"?

A And agrees to redeem the Adkins' stock from Adkins in full consideration for the redemption by the company of Adkins' stock, the company shall pay Adkins $337,574.

Q Okay. Thank you for reading that. There are two more provisions that follow that read almost identically; is that true, Mr. Adkins?

A Yes.

Q And those are essentially what you're earning from giving up your stock, and that's where it's memorialized in the contract; is that right?

A Yes.
Q You add those three numbers together, you get to the roughly $700,000 you mentioned before; is that right?
A Yes.
Q You said before this was a balloon note, so interest payments were due well before principal; is that right?
A Yes.
Q Did you receive interest payments on these notes?
A Yes. We have received all the interest payments.
Q How did that work? Logistically, how were interest payments received?
A We basically just established a loan interest statement, as outlined in these agreements; and we would send a monthly statement to Casey, and showing the interest, and, you know, he would make the interest payment, and we would reflect that on the next month's statement.
Q Roughly what are we talking for a monthly interest payment? I don't need a number to the penny.
A 6,000, 7,000.
Q Was there ever a point in time where you received a much larger payment, in April of 2020, from Mr. Crowther?
A Yes.
Q When did you receive that payment?
A We received that payment on April 21st of 2020.
Q How much money was that for?

A 100,000.
Q And did Mr. Crowther indicate to you what the payment was for?
A I believe that we communicated back and forth a little bit, but yeah, it was a principal payment to the note.
Q Okay. It wasn't interest on any of the notes at the time; right?
A No.
Q There wasn't -- what -- was $100,000 of interest accrued, at that time, on the notes?
A No. No, sir.
Q Was there ever a point in time before that payment was made where you had suggested anything to Mr. Crowther about making a principal payment?
A Yes.
Q Okay. What had you said to Mr. Crowther?
A Well, we always shared a lot of different ideas. And one thing that I noticed about the upcoming PPP loans were that . . . you know, I didn't know if he was going to meet his payroll numbers, or not, but I suggested to him that, if -- you know, he might want to look into using some of that money to pay off or pay down his note with me, because it was my understanding this particular government loan was going to be -- even if you had to pay it back at a very low interest rate, and I was charging him seven and a half percent on the

note that I have with him.

Q All right. So a couple of things to unpack there. Why did you consider that he may be unable to meet his payroll numbers as you said? What did you mean by that?

A I did not really know whether or not he was meeting his payroll numbers. I knew that . . . you know, I don't have access to the financials anymore, but I just -- you know, just in thinking in broad terms . . . that with the hurricane slowing down, the work showing down, I just wasn't sure if he was meeting those numbers. I didn't know what his revenues were at that point.

Q Okay. 2019 was a particularly busy year for Target Roofing, is that right, because of hurricanes?

A Sure. Yes.

Q And so the question was how busy was 2020 in comparison?

A That's correct.

Q All right. Let me ask you this: At the time you suggested that, had you applied for a PPP loan?

A I'm not sure. It was right at the same time as far as the applications going out, so it would have been within a day or two, and it was probably on my mind as far as what this is all about, and what this money is all about. So, you know, this is well before any of us received money, but, you know, again, Casey and I were very good about sharing ideas, and brainstorming different -- you know -- business decision, so, you know, I threw it out there for him to consider or, you know, check it out.

Q Was your idea for him to pay you $100,000 in principal based on any reading you had done of the law, and whether it was permissible or not?

A No, I had not looked at anything do with the law. You know, we share ideas all the time, but we -- you know, under the assumption, even with Casey, too, that, you know, we're not going to do something illegal. We do have multiple lawyers that advise us, so, you know, ultimately, at the end of the day, we would check with the lawyers and our CPA.

Q You would have expected Mr. Crowther to check and see if it was okay?

MS. WAID: Objection, Your Honor.

THE COURT: Basis?

MS. WAID: Speculation.

THE COURT: Overruled.

A You know, I don't . . . . I really don't -- you know, I don't know if . . . how it all played out, and what Casey did to check it out or not. I don't know the answer to that.

Q If Mr. Crowther had told someone that the hundred-thousand-dollar payment to you in April of '21 was for payroll, would that be true or false?

A It wouldn't be for payroll. It would be false.

MR. LEEMAN: Thank you. May I have a moment, Your Honor?

THE COURT: You may.

(Mr. Reichling and Mr. Leeman confer privately.)

MR. LEEMAN: No further questions, Your Honor.

THE COURT: All right. Thank you.

Ms. Waid?

MS. WAID: Thank you, Your Honor.

MR. LEEMAN: Your Honor, may I approach the witness and put the exhibits back?

THE COURT: Certainly.

CROSS EXAMINATION

BY MS. WAID:

Q Good morning, almost afternoon, Mr. Adkins.

So you stated earlier that you were originally a 51-percent owner of Target Roofing; is that correct?

A Yes, that's correct.

Q Okay. And then you became a 50-percent owner; is that right?

A Yes.

Q And you said you became a 50-percent owner because Casey Crowther had actually paid you back; is that accurate?

A That's right.

Q Okay. When you first started, you were the money of the investment; right?

A Yes.

Q Okay. And Mr. Crowther was the sweat equity, is that accurate?
A Yes, absolutely.
Q Okay. So he handled the daily operations; correct?
A Yes, he did.
Q He was the one who was actually on site, every day, with the workers; is that correct?
A That's correct.
Q And when you say he stated you -- when you say that he actually ended up paying you back, how did he do it?
A When we started the company, we just both agreed that we would leave the earnings in the company until I was paid back first, before we would look at any distributions or anything to each other as partners. So yeah.
Q So Mr. Crowther wasn't taking any distributions until you, in fact, were paid back; is that right?
A That's correct.
Q Okay. And he actually didn't take any salary until you were paid back; is that correct?
A He did take a small salary just for living. It was what I would consider a small salary for what he was doing.
Q Okay. But no profit left --
A No.
Q -- to Mr. Crowther until you were paid back; is that accurate?

A That's correct.
Q And then you actually sold -- you sold -- or Casey sold part of the shares -- or -- to you. You sold part of your shares to Casey Crowther; is that correct?
A That is correct.
Q And that was pursuant to a stock redemption agreement; is that accurate?
A Yes.
Q And you stated earlier that was that that was a balloon payment on a note. Right?
A Um-hum, yes.
Q And that note was at a 7.5-percent interest rate.
A That's correct.
Q So you stated earlier that you actually suggested to Casey Crowther that maybe we should look into this PPP money in order to actually pay off the principal; correct?
A That's correct. Yes.
Q And, at that time, where were you getting your understanding of how the PPP loan application process, or what it was, worked?
A At that point, I didn't know much about the PPP except that it was out, and people were filling out applications based on last year's payroll numbers, I believe, and I -- I did didn't know a lot about it except maybe just like what just people were talking about, you know, out and about, but I had

not read into it, I had not talked to anybody that would really know.

Q Okay. And were you having cursory conversations with the banks at that time?

A We didn't really talk too much to the bank about it. I talked to a lawyer, just briefly, about whether or not we should do it. And our CPA.

Q Okay. And your CPA. So your certified public accountant was somebody that you had actually discussed the PPP with, as well.

A Yes.

Q And, at the time that you made the suggestion, you realized that that . . . you just put it out there as a possibility of a way to pay off the principal; correct?

A Yeah. I mean, at that time I believe I had heard that it was a one-percent payback interest, and I mean it's pretty easy math, if he's paying me seven and a half percent, and he can pay one, it's a lot of savings.

Q So it's your understanding that the PPP loan is just a loan; correct?

A Unless it's forgiven? I guess. Off of the payroll numbers. Yeah. Yes.

Q So, in the very beginning, when you get the PPP loan, the PPP loan is actually an agreement for a loan between the borrower and the bank; is that accurate?

A I would say yes.
Q Okay. And the SBA, or the Small Business Administration, doesn't get involved unless the borrower requests forgiveness; correct?
A That's correct.
Q Okay. And it is your understanding the borrower doesn't have to request forgiveness; right?
A From my understanding, that's correct.
Q And the borrower could actually pay off the one-percent loan.
A That was my understanding.
Q Okay. So at this time, when you're saying this is your thinking to Mr. Crowther, and stating we have 7.5-percent interest balloon payment, if we got a PPP loan, that would be one percent; correct?
A That's -- that was my thought, yes.
Q And that would just be a better business decision, a 7.5-percent interest rate versus a one-percent interest rate; correct?
A Yes.
Q And that would actually free up money, as you stated earlier, for cash flow to Target Roofing; is that accurate?
A That would definitely free up cash flow for Target Roofing, yes.
Q And you state, also, that you were talking about

payroll, and perhaps there was, you know, a decreased payroll; is that right?

A I'm sorry, a what payroll?

Q You stated that there might have been decreased payroll at that time. Is that accurate?

A Oh, as far as Target Roofing. I just, you know, I . . . I didn't know. Because again, with the agreement of my stock sale, you know, Casey was not required to provide me any financial documents or information as a part of the payback. So I just -- I did not know where they were as far as revenues went.

Q Okay. But at that time, would you agree, in your industry, which is the construction industry, a lot of companies were experiencing the aftereffects of Hurricane Irma? Is that accurate?

A Yes.

Q And can you explain to the jury a little bit about what -- how does that work, the hurricane, and how that would affect something years later?

A I'll try to. I think I know what you're asking. When Casey and I formed Target Roofing, we were fortunate to come out of the gate right away and get some very . . . high profile jobs, because of our credibility. Casey did a good job with those. But then we were kind of blessed with the perfect storm in the roofing business with having Hurricane Irma, followed by

Hurricane Michael, which really ramped our company up fast.
Q And that was under Casey's management at the time; correct?
A Yes.
Q And how big did the company grow under Casey Crowther's management?
A Well, we at one point had, I believe, 250 plus employees working.
Q Do you know if Mr. Crowther has a history of selling boats?
A I don't know in detail a lot about his boats, but I do know that he has bought and sold some boats for sure; yes.
Q And you stated earlier that you shared a Jade property; is that accurate?
A Yes.
Q And you would utilize that Jade property for Target Roofing to entertain clients; is that accurate?
A We did. We did do some entertaining there; yes.
Q And are you aware that Mr. Crowther utilized his various boats to entertain clients?
A Yes.
Q And did he entertain vendors?
A And what? Sorry?
Q Entertain vendors?
A Oh, yes. I'm sure. Yes.

Q And are you aware that Mr. Crowther would take employees out on the boat?
A Yes. Yes.
Q Are you aware that Target Roofing would utilize Mr. Crowther's boats for charity events?
A Yes.
Q Do you still do business with Mr. Crowther?
A I do.
Q Do you still do business with Target Roofing?
A I do.
Q Is Mr. Crowther making the monthly payments on your promissory notes?
A Yes, he has.
Q And are all those notes currently still in good standing?
A Yes, they are.
Q Do you have any concern whatsoever that Mr. Crowther is not going to pay you back?
A Um . . . outside of being here, you know, and the outcome of what's happening here? But no. Casey's always done everything that he's ever told me, he's done, so.

MS. WAID: Thank you. No further questions.

THE COURT: Thank you.

Any redirect?

MR. LEEMAN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. LEEMAN:

Q Mr. Adkins, as I recall, when you were speaking with me, you indicated what you knew about the PPP program at the time. You suggested to Mr. Crowther to make a payment with the money was from what you had heard from other people just talking; is that right?

A Yes. Yes, that's correct.

Q Would you base a decision to spend $100,000 in the course of your business -- I'm asking you personally -- on just what word on the street --

MS. WAID: Objection, relevance.

THE COURT: Overruled.

A I . . . . I would probably ask for advisement on that.

Q Might you look at the documents you signed that might -- a contract that you signed, for instance, in getting the loan, before you made that decision?

A It probably would be a good idea.

MR. LEEMAN: No further questions, Your Honor.

THE COURT: Any recross?

MS. WAID: Just brief recross.

RECROSS EXAMINATION

BY MS. WAID:

Q Mr. Leeman just asked you about intent. Are you aware that Mr. Crowther intended to pay back his employees with the

PPP loan funds?

MR. LEEMAN: I would object. That assumes a fact not in evidence, Your Honor.

THE COURT: Sustained.

BY MS. WAID:

Q Are you aware of how Mr. Crowther was going to utilize the PPP loan funds?

MR. LEEMAN: Same objection, Your Honor.

THE COURT: I'll take a yes or a no answer.

THE WITNESS: Will you ask me that again, please?

BY MS. WAID:

Q Are you aware of how Mr. Crowther intended to utilize the PPP loan funds?

A Yes?

THE COURT: No, sir. The answer is only yes or no, not anything further.

A Yes.

Q How?

A Am I allowed to answer that?

MR. LEEMAN: Your Honor, I would object. This is testimony -- it's, A, speculation, B, testimony on an ultimate issue.

MS. WAID: Your Honor, he's either aware of how he's going to spend it or not.

THE COURT: Well, we've established he's aware, we haven't established how he's aware, and it almost has to be hearsay. So at this point the objection is sustained.

MS. WAID: Briefly, Your Honor.

(Ms. Waid conferred with co-counsel privately.)

MS. WAID: Mr. Adkins, I'm going to show you, after I've shown defense counsel, what's been marked as Defendant's Exhibit E18.

Permission to approach, Your Honor?

THE COURT: You may.

(Counsel provides evidence to the witness.)

BY MS. WAID:

Q Is that the Government's Exhibit -- I mean Defendant's Exhibit E18. Do you recognize it?

A Yes.

Q What is it?

A This is the text with Casey that I suggested that we look into the possible use of the PPP money to pay down the note that we mentioned earlier.

Q Okay. Did you write that text?

A Yes.

Q Is it a fair and accurate depiction in E18 of what you and Mr. Crowther exchanged that day?

A Yes. It is.

MS. WAID: Defense would like to move in E18, please.

THE COURT: Any objection?

MR. LEEMAN: It's the same objection, Your Honor. It's his statement, out of court, hearsay. He can be asked here.

THE COURT: That objection is overruled. E18 will be admitted.

(Defendant's Exhibit E18 admitted.)

MS. WAID: Permission to publish, please?

THE COURT: You may.

(Evidence was published via the projector.)

BY MS. WAID:

Q Okay. I'm looking at the text messages. Is this a text message between you and Mr. Crowther?

A Yes.

Q Okay. And it says good morning. "I just want to plant a seed for you to think about with the stimulus package and your last year payroll numbers maybe we can use to reduce the loan balance on the note for the stock. Although I know all of the proceeds will not be forgiven with your reduced payroll, I'm understanding it's going to be at a very favorable interest rate. Let me know your thoughts when you have a chance. Thanks."

Is that your text to Mr. Crowther?

A Yes.

Q Okay. And when you're writing this text to Mr. Crowther, you say, "I know all the proceeds will not be

forgiven with your reduced payroll." Is that accurate?
A That's what I wrote, yes.
Q Okay. And do you write that I know all of the proceeds will not be forgiven with your reduced payroll because Mr. Crowther was intending to use those funds to pay the employees he actually had on payroll?
MR. LEEMAN: Objection. Again, Your Honor, it calls for hearsay. And it's also testimony about an ultimate issue.
THE COURT: The latter objection is overruled. Both objections are overruled.
You may ask the question.
BY MS. WAID:
Q Are you, in this text message, discussing Mr. Crowther paying payroll for Target Roofing in relation to forgiveness?
A In general, I think, we're just sharing an idea there, but I think every business owner that I know had the same intent of trying to maximize their payroll and whatever forgivable expenses we had during that time period. Does that answer that question?
MS. WAID: Yes. Thank you very much. No further questions.
Just permission to approach for the exhibit, Your Honor?
THE COURT: You may get that back.
MS. WAID: Thank you.

THE COURT: And any re-redirect?

MR. LEEMAN: No, Your Honor.

THE COURT: You may step down. Thank you.

(The witness left the witness stand.)

THE COURT: Ladies and gentlemen, we're going to take a lunch recess. Normally I'm going to give you an hour, but the lawyers and I have a matter to discuss, and I want to give them an hour, too; so let me have you come back . . . 1:30 we'll get started.

Every time we take a recess, I'm going to repeat the same instruction. You're going to get tired of it, but it's important. Do not discuss the case among yourselves, or allow anyone to discuss it with you or in your presence. Don't do anything on any device to either look at any publication or publicity that may have come up; or, if you get a text or some such thing sent to you, just delete it if it relates to the case. You've got the best seat in the house, and you have to rely on just the evidence presented. So it's very important still.

I'll see you as close to 1:30 as we can.

(At 12:10 p.m., the jury was escorted from the courtroom.)

(The witness left the witness stand.)

THE COURT: All right. You may be seated.

All right. I've read the defendant's motion to exclude evidence of mortgage fraud and guilty plea that was filed, I think last night. Is the government prepared to make argument? I know you said you were this morning.

MR. LEEMAN: It is, Your Honor.

THE COURT: All right. Go ahead.

MR. LEEMAN: The first issue, and I think it's unaddressed in the motion, is that the government believes the evidence related to the mortgage fraud is intrinsic in that it's inextricably intertwined with what's going on here.

Factually, to make that argument, I'd like to go back, factually, to Mr. Crowther representing that this PPP loan was necessary to sustain the ongoing operations of his company. But the evidence doesn't bear that out.

This is an individual who very quickly uses, directly, PPP money to purchase a nearly $700,000 boat. He also pays off $100,000 worth of debt that isn't due for years. After he makes those payments, Your Honor, he takes the money in the PPP account and he commingles it with what's in his operating account at Target Roofing. So everything then is lumped into Target Roofing's main operating account.

Almost immediately after that transfer, Mr. Crowther pays down $800,000 on a line of credit, which is for Target Roofing, which is yet another example of him paying off principal on a debt, which is impermissible under the loan. But more importantly, why it ties into the real estate transaction, as he admitted yesterday, in the government's factual basis, that line of credit was borrowed against to make the down payment for the $1.3 million home.

That -- again, Mr. Crowther uses PPP money to pay down $800,000 worth of Target Roofing's line of credit. When he goes to buy this $1.3 million house, which happens to be on the water and have a dock sufficiently sized to hold his new 40-foot catamaran, he goes to Target Roofing, draws on Target Roofing's line of credit, and makes the down payment on the house.

Intrinsically intertwined, Your Honor is no doubt aware, includes evidence which is necessary to complete the story of this crime. The story of this crime is someone who is looking to get a boat, and looking for a place to keep it, and he is willing to lie to any bank along the way to make that happen. That's why we believe it's intrinsic, Your Honor. For that reason, 404(b), if the Court agrees with that, 404(b) is inapplicable.

I'm happy to move on to a 404(b) argument if that's what the Court would like me to do.

THE COURT: Let me ask you a question or two, if I might. Are you seeking to introduce evidence of the transaction, or evidence of the transaction coupled with the fact that there was fraud? Because I think there's a difference. When I say you can, I don't mean I'm giving you permission, but you can distinguish between he made the transaction for the real property without talking about fraud.

MR. LEEMAN: I would not . . . . I would not intend to mention his guilty plea, Your Honor, or that he has pleaded guilty, to say that he committed fraud. We would couch the documents that he submitted to the bank . . . or submitted to the mortgage lender as false, certainly. Or set them off against the true ones, which leads to the inevitable conclusion that they're false.

THE COURT: Why would you need to do that to make the point that he's basically . . . this is part of the process in which he gets the PPP funds out of a segregated account and into whatever he wants to do with the money?

MR. LEEMAN: I'm not sure I follow the question exactly, Your Honor. If Your Honor can maybe state it again for me?

THE COURT: Sure. Let me try to do a better job.

If your theory is that the loan is somehow improper, and the proceeds are improper, you can get the dollar amount without . . . seems to me without introducing evidence of any fraud.

MR. LEEMAN: I follow you, Your Honor. The very fact that the payment for the house might, in some way, be thought of as an impermissible use of PPP proceeds would mean that we don't have to talk that he doctored bank documents while -- in getting the loan. I think that's what the Court has asked me. I can stop there, and not introduce anything about --

THE COURT: You can just talk about he applied for a loan, got a loan, and did whatever he did with the money.

MR. LEEMAN: Well, because we think that the doctoring of the bank documents themselves bears on his intent in this case. As I've tried to paint here, hopefully, the story of this case is a gentleman who's looking to buy a boat and a house on the water, and he doesn't have sufficient money to do it on his own; and he's bilking, first, Sanibel Captiva Bank, and second, Angel Oak Mortgage, to do so. And that's why I think the introduction of dock toward bank statements is relevant because it completes that entire narrative.

It's not just that he defrauded -- allegedly defrauded Sanibel Captiva Bank, it's just that he defrauded this other entity, Angel Oak; and it's all part of this much larger narrative.

THE COURT: And that's about four months after the timeframe we're talking about in Count 1?

MR. LEEMAN: He contracts on the home, I believe, on May 1st? May 9th of 2020, which is -- he bought the boat April 24th. So that's a little over two weeks difference, Your Honor.

THE COURT: When is the loan application?

MR. LEEMAN: For the PPP loan or the mortgage?

THE COURT: No, I'm sorry; for the mortgage.

MR. LEEMAN: He begins that process . . . . Well, yeah. He tries to go to Sanibel Captiva Bank first, and is turned down, and then goes to Angel Oak Mortgage, eventually submits his final application, that's July 31st, 2020.

THE COURT: So roughly four months?

MR. LEEMAN: But to the closing of the loan, yes, that's right, Your Honor.

THE COURT: Well --

MR. LEEMAN: The application that we submitted was false is actually -- you update an application immediately at the time of the closing.

THE COURT: I see. And so is it that one, or an earlier one that you claim is false? Or both?

MR. LEEMAN: Well, the bank statements that he sent in, which provide the meat to the numbers which are written into the application are false. So, on the application itself, it lists that he had one point something million dollars sitting in a bank account. The bank statements underlying that, which he submitted in conjunction with it, are what were doctored, Your Honor. The number is false because it's reliant on doctored documents.

THE COURT: So tell me, again, your theory as to why the loan proceeds in the mortgage case are intertwined, as you say, with the Count 1 fraud?

MR. LEEMAN: Intertwined because it is a part and parcel of the story of this fraud. Inextricably intertwined, under the case law, one of the ways it can be shown is that the facts are necessary to complete this story. The government believes the story of this criminal episode, Your Honor, and this scheme, is a man who has decided that he would like to buy a boat and live on the water, and he is willing to go to banks, and get them to provide him moneys that he isn't otherwise entitled to. And it's that story, Your Honor, that makes it inextricably intertwined.

THE COURT: All right. You better talk to me about 404(b), then, too.

MR. LEEMAN: I will.

404(b), Your Honor, we don't really argue with the case law insofar as it talks about the elements that Miss Waid has provided. I think there's a couple of things here. We're arguing that it's relevant to prove knowledge, intent, and lack of accident.

First of all, the fraudulent intent in these crimes is the same. Counts 5 and 6 were bank fraud and false statement to a financial institution. Counts 1 and 2, which we'd like to use it for 404(b) evidence, are the same crimes. So the legal intent required is obviously the same.

We are trying to show that the intent that he had when he had the -- when he defrauded Angel Oak and made false statements to them is evidence that he intended to defraud Sanibel Captiva Bank as well. And I think that happens because there is some similarity in the schemes. I mean, it's obvious there are doctored documents that were used, created by Mr. Crowther, to get Angel Oak to make a loan.

We also intend to prove, as we stated in our opening statements, that Mr. Crowther invented fake employees and added them to the payroll. It's not a one-to-one correlation, but to the extent the defendant is going to assert that these documents weren't doctored, which I absolutely expect him to do, I think government ought to absolutely be entitled to say but Mr. Crowther, but a few short months later, engaged in a scheme where he completely fabricated things which were needed to be sent to a bank to get a loan, or in this case to be forgiven.

So we think, in that way, it bears on his intent, it bears on his knowledge. To the extent that they say these things are not -- these are not fraudulent people, I think we absolutely should be able to point at the fact that -- well, I hope we absolutely can point to the fact that, a few months later, he doctored, literally made up, documents.

In the PPP fraud case, the government is claiming that he literally made up employees. To the extent that these two things are similar and also close in time, we think they are relevant to prove intent.

THE COURT: All right. Thank you.

Miss Waid, is this your motion?

MS. WAID: Yes, Your Honor.

THE COURT: Let me ask you, first of all, the point I was trying to make, in terms of whether the transaction may be admissible without reference to the fraud component of it, that is, just why can't the government present it as it did the boat, this is another transaction, no reference to any fraudulent activity, but it talks about money, and it is relevant? Am I off base to make the distinction there?

MS. WAID: Well, yes. You're never off base, Your Honor, but -- I would never say that.

THE COURT: That's all right. You have immunity in court. You can say it.

MS. WAID: But what we would argue is these are two completely different transactions, and I think that the problem is that the government, again, is making kind of more stringent regulations. There's no regulation against commingling. They're trying to separate the PPP funds for the boat, but -- and then put them into, all of a sudden operating account, and still, with the mortgage fraud, claim that those are PPP funds.

But the reality is, at that the point in time, Your Honor, you have all of this other money coming -- first of all, there's no regulation that says you can't commingle PPP funds with operating. In fact, that's the way that the majority of businesses did it. That's the reason that Target ended up moving it back into the operating account, is to pay things.

But second of all, in addition to that, there's money coming in through all of these weeks, so it -- it would be impossible, without a tracing of exactly where that money went, that covers anything that was included within the down payment for the mortgage.

And I think that the problem being is that that transaction comes in, I mean we already have a judge's order, Judge Badalamenti confused the two from the superseding indictment. The news every night is confusing the two, saying -- I heard four stories this morning about how he bought the house with PPP funds, and that is technically -- it's just not accurate. He did not buy the house with PPP funds.

The money can be -- and it's almost like they're speaking out both sides of their face, right, because they're claiming, oh, no, no, no, he bought the money with an LLC. An LLC is a completely different theory than buying it with PPP funds. So which one is it? He can't have it both ways.

But essentially what happens, he applies for the PPP money later on down the line, four months later, after all this money is commingled into the account. They can never trace that money to PPP funds, so it's not intrinsically intertwined.

Their whole opening is about him being a liar.

That's why they want it in.

THE COURT: All right. Thank you.

Mr. Leeman, do I understand correctly that you are not attempting to use his guilty plea? Assuming he doesn't testify.

MR. LEEMAN: Yeah. That's the only caveat that I wanted to make known to the Court, was, you know, we of course don't -- I think there's two circumstances I could potentially see a guilty plea coming up. One is if . . . if a witness provides opinion about Mr. Crowther's truthfulness, his opinion in the community, I think there may be a way to bring it in there. I don't know, quite candidly, off the top of my head, whether or not. But absolutely, if he testified, we would intend to use it.

If we were permitted to talk about this mortgage fraud scheme as 404(b), or as intrinsic, we wouldn't go so far as to mention that, yesterday morning, he pled guilty. We'd stick to the facts which proved the case, but we would not talk about his guilty plea.

THE COURT: All right. I want to think about it.

Yes?

MS. WAID: I'm sorry, Your Honor, I just -- that was kind of your intrinsic question for the 404(b). Can I answer that response, or do you not need that?

THE COURT: No; it might be helpful.

MS. WAID: Okay. So, for the 404(b) part, again, I would argue we know why they want to get the false statements in. They said it five times in their opening argument: He's a liar, he's a liar, he's a liar. But I think it's very important, a couple points.

One, they claim it's for intent, or accident, or mistake; but the false statement is the PPP application, and the statement made on the PPP application, that was in April. And any, you know, false bank statements that were submitted in July have absolutely no bearing on the intent of something that actually occurred in April. It's just the propensity that he lied to do it.

As far as the fraudulent employees, that's a theory that they can't prove, or otherwise they actually would he have charged it. And to that theory I have to say I don't even understand how it could possibly be a fraud, because Mr. Crowther never applied for forgiveness. He's never submitted those documents to any government agency. He's never submitted them to a bank to ask for forgiveness. They just haven't been submitted. Any checks that were done actually have been sent back to the State of Florida. There's no loss, there's no anything. It's a theory they have that they can't prove.

So are we really trying, at this point in time, to use 404(b) to prove another almost 404(b) like theory? Why can't we just stick to the facts that are actually charged? I just think it's so prejudicial to bring it in, and so confusing to a jury, they're never going to be able to understand what the difference is between the mortgage -- and they haven't traced the money, frankly. So lying in July has nothing do with somebody's intent when they filed for an application. It's just propensity, and it's just prejudicial, and it's going to affect the defendant's right to a fair trial.

THE COURT: All right. I want to think about it over the lunch hour. I'll let you know before -- this comes up with your next witness?

MR. REICHLING: No; it will not come up with the next witness, Your Honor.

THE COURT: Okay.

MR. REICHLING: The one after? I will say we will be putting in financial records with the witness after the next witness, so that may indicate, you know, obviously, that money was wired out for real estate transaction in July of 2020. That will be contained in the bank records, which are -- I'm not putting in any false statements, I'm putting in the true records for Mr. Crowther and Target Roofing.

THE COURT: That's different than what we're talking about now, seems to me.

MR. REICHLING: I will be intending to put in the Jade Avenue account records. I'm doing it because financial analysis was conducted in this case, and looking at the available funds Mr. Crowther had, at the time he bought the boat, and there's also suggestion that he made attempts to deposit money he had received from the previous sale of a boat; so, of course, we did an extensive search of bank records to make sure there are no evidences of any cash deposits or anything that happened subsequent to a certain date and time, Your Honor.

THE COURT: But do you anticipate testimony as to the mortgage fraud aspects today?

MR. REICHLING: No, Your Honor, we don't intend to -- what's that? No, not -- the mortgage fraud -- I will -- just so Your Honor is aware, in May, just what we plan on proffering, or what we would proffer now as to what one of the witnesses will testify to. So just to see that it does interplay a little bit, Your Honor.

When the loan officer of the bank, Kyle DeCicco, has a conversation that was prompted in mid May by him finding out that the defendant has entered into a contract to purchase a $1.3 million home, which is the home that, eventually, Mr. Crowther purchased with -- you know, based on fraudulent representations he made in the mortgage application in these doctored bank statements, he's going to testify that, based on him finding out that Mr. Crowther was buying this $1.3 million house in and about May 17th, May 18th, he immediately called

Mr. Crowther to confront him about the fact that he was purchasing a $1.3 million home. The reason being that Mr. Crowther had represented to the loan officer, to the bank, Kyle DeCicco, that, back in 2020, or maybe 2019, the plan was at the time was that he was going to sell a 39-foot Yellow Fin boat, and also sell his Jade Avenue home, to pay back his former business partner, Steven Adkins.

So the purchasing of the $1.3 million house and other financial transactions that Mr. Crowther was making around this time that Mr. DeCicco heard about the purchaser -- the contract that he entered into for the purchase of a home prompted Mr. DeCicco to call Mr. Crowther and confront him, hey, what you told me you were originally going do about selling your boat, and selling your Jade Avenue home, and paying back Mr. Adkins isn't what you're doing here, and within those conversations there were some conversations about the PPP loan program, and subsequent to that conversation -- and the government actually had included this in its response to the defense motion seeking to exclude evidence of the fake employees, was that that prompted Mr. Crowther to then disguise what he was doing with the funds within the main operating account, actually included in the horse wire response as well, where I talk about his pattern of concealing things seems to change after the financial institution, Sanibel Captiva Bank, calls him out on what he's doing financially with his money and his use of PPP funds.

THE COURT: Doesn't sound like you're telling me that Mr. DeCicco is going to testify anything about mortgage fraud.

MR. REICHLING: No, Judge, he will not. He will just say he found out that Mr. Crowther was looking to -- had entered into a contract to buy a house.

THE COURT: All right. And there's nothing inherently wrong with that.

MR. REICHLING: No.

THE COURT: Lunchtime. 1:30.

(At 12:32 p.m., court was recessed.)

AFTER RECESS

(At 1:31 p.m., court was reconvened.)

THE COURT: All right. Counsel, I see everyone back.

I'm told that Juror Number 11, Ms. Klein, is having a hard time seeing over the juror in the front of her, and so I suggest that we move her. We can put her at the other end. That's Mr. Hochman in front of her, and I don't know if that's better or not. Or we could substitute her out for somebody in the front row, which might be better. Any thoughts?

Someone wiser than I pointed out that, because she's short, if we put her in the front row, she may not be able to see over the equipment in the courtroom. I don't know.

Any thoughts as to what we should do, and where we should put her?

MR. REICHLING: The government's fine with doing whatever it takes to take care of her ability to see what's going on in the case, Judge.

THE COURT: Okay. Miss Waid, any thoughts?

MS. WAID: Same here, Your Honor. As a vertically challenged person, I understand her plight. So wherever she can stand or sit I'm more than okay with.

THE COURT: How about we do this. How about I just ask her what she wants, and have her tell us what she thinks is going to work, and we'll proceed from there.

All right. Other than that, both sides ready for the jury?

MR. REICHLING: Yes, Your Honor.

MS. WAID: Yes, Your Honor.

THE COURT: Have the jurors step in.

I'm not sure they're here yet.

COURT SECURITY OFFICER: They're not outside this door yet.

THE COURT: Okay.

(Court stood at ease while awaiting the arrival of the jury.)

THE COURT: All right. The jurors are here.

(At 1:36 p.m., the jury was escorted into the courtroom.)

THE COURT: Ms. Klein? Let me have you stand out for a little bit. I'm going to move you.

The jurors may be seated, as may others.

Ms. Klein, it's my understanding you were having some trouble seeing?

JUROR KLEIN: Yes. I'm very short.

THE COURT: Well, I can't do anything about that.

JUROR KLEIN: I know. I asked for a cushion.

THE COURT: Can you get a cushion?

COURTROOM DEPUTY: I can get a cushion.

THE COURT: We can get a cushion. Is that going to take care of it then?

JUROR KLEIN: I'll be in my same seat then.

COURTROOM DEPUTY: If you'd like somewhere else --

JUROR KLEIN: No. That would be fine.

THE COURT: All right. I never thought of a cushion.

COURTROOM DEPUTY: I'll have it brought.

THE COURT: Okay. Thank you.

All right. Any other housekeeping things anybody wants? Okay. We should be good. Everyone can see all right? Perfect.

You may call your next witness.

MR. REICHLING: At this time, the government calls John Miller.

THE COURT: Right up here, please.

COURTROOM DEPUTY: Good afternoon.

Please raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give in the case before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

COURTROOM DEPUTY: Thank you, sir.

If you wouldn't mind please taking a seat in the box?

And, once seated, would you please tell us your name, and spell it?

THE WITNESS: Okay.

COURTROOM DEPUTY: Thank you, sir.

THE WITNESS: Do you want me to remove the mask?

THE COURT: You may if you feel comfortable doing that.

THE WITNESS: Thank you.

My name is John Miller. J O H N. M I L L E R.

MR. REICHLING: May I proceed, Your Honor?

THE COURT: You may.

MR. REICHLING: Thank you, Judge.

JOHN MILLER,

called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REICHLING:

Q Mr. Miller, where do you currently work?

A I work at the Small Business Administration.

Q Is that also referred to as the SBA?

A Yes.

Q And what do you do at the SBA?

A I am the Deputy Associate Administrator in the SBA's Office of Capital Access.

Q And what does the Office of Capital Access oversee?

A The office oversees all of the SBA's business and surety guarantee programs.

Q And does that include the Paycheck Protection Program?

A Yes, it does.

Q Now, could you explain to the jury -- well, first, are you familiar with the Paycheck Protection Program?

A I am.

Q And how did the Paycheck Protection Program come about?

A The program was established in the CARES Act, which was the Coronavirus Aid, Relief, and Economic Security Act signed into law on March 27th of last year.

Q And, if you know, why was the Paycheck Protection

Program included in the CARES Act?

A Well, it was included because of the need to, as the name implies, protect paychecks of American workers affected during the pandemic.

Q And when did the Paycheck Protection Program become available to the public?

A The program became available shortly thereafter. On April 3rd, banks were allowed to begin lending money.

Q And you mentioned banks lend money. Whose money goes out the door? Is it the SBA's money, or is it the lender's money?

A No, it's not the SBA's money. It's the lender's money. It's the bank or the lender.

Q And who administers the program?

A The SBA.

Q And the initial time that the Paycheck Protection Program was created, how much money was available under the Paycheck Protection Program?

A Under the Paycheck Protection Program, Congress authorized $349 billion.

Q And did there come a time where that $349 billion was no longer available?

A Yes. Yes. It went fast, within 14 days, so by April 16th. April 16th, the program was out of money.

Q And do you have a rough estimate as to how many Paycheck

Protection Program loans were authorized by the SBA?
A Well, all in all, I mean, we've authorized, now, close to 8 million loans.
Q Now, who was authorized to make these PPP loans?
A Lenders. Banks, credit unions, farm credit agents -- farm credit organizations. Some non-bank lenders. Fintechs. A lot of different lenders.
Q And was this money guaranteed by the Small Business Administration?
A Yes.
Q And could you explain the guarantee briefly, what's its significant is?
A Congress gave us the authority to temporarily guarantee these loans at 100 percent, meaning if for some reason the borrower could not pay the loan back to the lender, SBA would step in and honor the guaranty if the lender requested it, and we would pay the lender for the loss on the loan.
Q And was this loan a forgivable loan?
A It was.
Q And was this forgivable in whole possibly?
A Yes. That was the intent of the Act, was that, if used properly, this loan is a fully forgivable loan for the borrower.
Q Could that explain the demand for the loan?
A Absolutely.

Q And were there requirements imposed upon borrowers with regards to use of the money?
A Yes. The use of the money was very limited. It was to be used to pay payroll, to keep American workers employed. And that would include pay plus benefits. Also, to pay very basic non-payroll expenses for the business, such as making a mortgage interest payment, making a rent payment, and making a utility -- paying for utilities. To keep the operations of the business going during the pandemic.
Q And who was -- back in April of 2020, at least, who was eligible to apply for a PPP loan?
A Small businesses. So -- and that was determined in -- Congress wrote it into the statute, businesses with 500 or fewer employees. And then, also, sole proprietors, independent contractors, self-employed individuals.
Q And how were they to apply for the loan?
A They were to apply for the loan using an SBA Form 30 -- excuse me -- 2483, which is an SBA form that the borrower had to complete and submit to a bank or a lender of its choice, and then that's how they would apply. They would apply with the bank, not with the SBA.
Q Was there supposed to be -- was anything supposed to be submitted along with the application to the lender?
A Yes. The borrower had to also submit -- in addition to filling out the application, they had to submit documentation

to support the amount of the loan request.

Q And how was the amount of the loan request to be determined?

A The amount of the loan request was determined based upon the prior year's payroll. So, because this was a payroll -- or a Paycheck Protection Loan to keep American workers employed, the prior year's -- prior 12 months' payroll was factored in, and the average monthly payroll amount spent by the borrower for payroll was then taken and multiplied by 2.5 to get the amount of the loan. So you'd get the average monthly amount, multiply that by 2.5, and that would be the maximum loan amount.

Q And why was this 2.5 multiplier used?

A That was the -- close to the period that Congress thought the pandemic was going to be of issue. Back then, it was a more -- seen to be more of a short-term thing. Two and half months.

Q Now, were there various representations and certifications contained on this standard SBA PPP application that you referenced?

A Yes. The borrower had to make certain representations and certifications.

Q And could you give us -- well, what were some of the major certifications, I'd say, that the borrower had to make?

A Well, the borrower had to certify that they were going to use the PPP loan proceeds for the -- for specific purposes: To pay payroll, to pay mortgage interest, rent, or utilities.

Q And let me ask you this: Was there another certification regarding the necessity of the loan, or the need for the loan?

A There was. There was an economic necessity. So there was a certification that the borrower had to say that the uncertainty of the economic -- the uncertainty of the economic necessity made the loan necessary to support the ongoing operations of the business.

Q And were there any representations on -- contained on the application concerning the funds needing to be used for business-related purposes?

A Yes. There was a representation that the borrower would only use the funds for business-related purposes.

Q Now, who received and reviewed the PPP application and the supporting documents?

A The bank, the lender, would have received the application from the borrower with all the supporting documents to substantiate that loan amount.

Q And why was the lender tasked with reviewing all of this information?

A Well, the lender was delegated authority by Congress to make these loans. So, because of the need to get the money out as quickly as possible, Congress wanted the lender to be able to make the decision quickly, based upon the information the borrower provided, and then fund the loan.

Q Now, after reviewing this documentation, what was the lender expected do?

A The lender was expected to confirm that they had the borrower's certifications, that they also confirmed that they had the documentation to support the loan amount and do a good-faith check of the loan amount based upon the documentation. And then, with that, then the borrower then -- or, excuse me, the lender then had to apply for the SBA guarantee for the PPP loan.

Q And how -- just briefly, how would the lender apply for this SBA guarantee?

A They had to fill out another form, called the 2483 -- 2484, which was the lender application for a PPP loan guaranty. And, once they filled that application out, they had to electronically transmit the data to the SBA so SBA could issue a loan number.

Q And, typically, how long would the lender have to wait to get this SBA loan number?

A It was very quick. Almost instantaneous. The system checks the data for some very -- for completeness, and then returns a loan number to the lender.

Q And why is this loan number of importance to the lender?

A Well, without this loan number, the lender doesn't have a guaranty, and it can't make a legitimate Paycheck Protection Program loan.

Q Other than the standard PPP applications that we talked about, did the SBA require other documents to be completed between the lender and the borrower?

A Yes. The SBA required that the lender and the borrower sign -- or the borrower sign a promissory note with the lender, which is basically the loan document that requires repayment of the loan.

Q Now, after receiving the PPP loan funds -- and this is back in April. We'll get to any changes that were eventually made to the program -- how many weeks did the borrower have to use the money?

A The borrower had to use the money within -- it was an eight-week period. So they had eight weeks with which to pay the money, because we needed to get the money out to American workers as quickly as possible.

Q And were there limits on what the borrower could use the PPP funds for?

A The majority of the funds were required to go and protect those paychecks, so make payroll; and then, also, some very basic necessities of a business to keep them operating, which I mentioned earlier: Making mortgage interest payments, making rent, and utility payments.

Q And was there a benchmark or percentage that had to go

towards each, at least back in the initial phases of the PPP program?
A Yes. At least 75 percent of the proceeds had to be spent on payroll. Pay plus benefits. And the remaining 25 percent could be used for the mortgage interest, rent, and utilities.
Q Could the forgiveness on the payroll expenses be reduced?
A Yes.
Q And how could they be reduced?
A Well, because the intent was to make sure that businesses kept people employed, if the borrower reduced the number of employees during that covered period by more than 25 percent, that could impact the forgiveness amount. There was an incentive to keep people on the payroll. The other way was if they reduced the pay of the employees. So if they cut the employees' pay too far, that would also reduce the amount. And that was also 25 percent.
Q Was there a cap on individual salaries for each member of the payroll, so to speak, each worker?
A Yes. Yes, there was. The maximum annual pay was capped at $100,000. So if somebody was making, for example, $150,000 a year, the way that the loan was calculated, they had to remove the $50,000 and calculate the loan based upon the hundred thousand dollar annualized salary.

Q And that's with regard to applying for forgiveness?
A Well, that was with regard to applying for the loan amount, as well. In determining the amount of the loan. And it would also apply to forgiveness.
Q Now, when did this eight-week period involving the use of funds and having to use it within eight weeks, when did that change?
A That changed by another law passed by Congress and signed by the President on June 5th of 2020.
Q And what was the name of that law, if you recall?
A That law was the Paycheck Protection Program Flexibility Act.
Q And what changed? Could you just briefly explain the major changes that were done?
A The two major changes were the amount of forgiveness, the minimum amount of . . . that needed to be spent on payroll went from 75 percent down to 60 percent. So now, as long as a borrower spent 60 percent of the loan proceeds on payroll, they could be completely forgiven. And, as well as that, the covered period, which is the period in which the borrower can make -- has to use the loan funds -- increased from eight weeks up to 24 weeks. Also, the maturity of the loan increased, as well, from two years up to five years.
Q Could you briefly explain how a borrower would apply for forgiveness?

A A borrower would apply for forgiveness after the funds were spent during the covered period, at the end of the covered period, by filling out a forgiveness form, called the Form 3508. 3508.
Q And does that form contain additional certifications concerning the use of funds?
A Yes, it does.
Q And are those the same certifications that are contained on the original application with regards to what the money can be used for?
A Yes. In addition, the borrower states that they knowingly -- they do not knowingly misuse the funds. They used them for the authorized purposes.
Q And what else did they submit to the lender along with this application?
A Well, they would submit all the evidence that they spent the money on the payroll -- what they spent the money for during that covered period. So it could be payroll invoices, payroll records, utility bills, invoices for that, evidence that they paid mortgage interest, and rent.
Q What does the SBA expect of the lender when they receive this information? Are they supposed to do any additional work in reviewing additional documents, or is that what the lender is supposed to do?
A Well, the lender is supposed to make a good-faith effort

in reviewing the borrower's forgiveness documentation, all the certifications, check the calculations that was on the 3508, make sure that things were calculated properly, and then, in doing that, the lender would then make a decision as to whether they wanted to forgive the loan in whole, or in part, or not at all.

Q Was the lender expected to look at the borrower's bank records at all to see if they -- see how they used the funds?

A Yes.

Q Well, what I mean is, are they supposed to conduct an audit, for instance, of the borrower's bank accounts, to determine what happened to that money after it was lent to them?

A Well, no, no. Because they were allowed to make a good-faith effort, the bank was not required to actually do some sort of a forensic audit on the borrower's information.

Q Now, after the lender makes this recommendation -- they're making it to the SBA, I suppose; correct?

A Yeah. Actually, the lender makes the decision. They make the forgiveness decision, and the decision is submitted to the SBA. So, in a way, you could kind of call it a recommendation, but it is the lender making the decision, and then that decision is sent into the SBA.

Q And does the SBA have the right to review that decision?

A Yes. Yes.

Q And is there -- are there certain -- a certain amount of loans that the SBA conducts additional reviews on automatically?

A Yes. There's an obligation to review, SBA is required to review, all loans of $2 million or more. And then SBA may review any other loans below $2 million, in its sole discretion, at any time.

Q And what's particular about these $2 million plus loans as far as the SBA review?

A Well, the $2 million plus loans had to -- had to go through a check for the economic certification, the economic loan necessity certification, which was that certification I mentioned earlier, that the economic uncertainty that the borrower was facing made this loan necessary for the operations of the business. And so all loans over $2 million have to fill out, actually, an economic necessity questionnaire, and submit that, and then SBA will make a determination as to whether or not the borrower actually needed the money.

Q Now, when did the SBA, or Treasury . . . sort of roll out this additional guidance on $2 million plus loans, if you recall?

A It was in the latter part of April.

Q Now, if it is determined, at any time, that the borrower was originally ineligible for a PPP loan, is forgiveness possible?

A No. No. If the borrower is ineligible, the forgiveness -- the loan forgiveness -- the loan cannot be forgiven. It's not eligible for forgiveness.

Q And would an example of that be that the borrower didn't need the money?

A Yes, that would be one example. If it's determined during a forgiveness review, after looking at the questionnaire, that the borrower did not need the money, then the loan would not be forgivable.

Q And what about if it's determined that the borrower falsely stated he would use the funds for certain purposes as the certification was that you had indicated earlier?

A If the borrower lacked an adequate basis for any of the certifications, including these -- the use of loan proceeds, that also could lead to an ineligible finding, that the borrower was ineligible for the PPP loan, and then the loan would be ineligible for forgiveness.

Q Has the SBA issued guidance concerning the knowing misuse of -- knowing misuse of PPP proceeds?

A Yes.

Q And what is the -- what is that guidance?

A It would be an Interim Final Rule.

Q And could you just briefly tell the jury what that guidance is concerning the knowing misuse of funds?

A Yeah. Well, the knowing misuse of funds also is in the -- it's not only in the Interim Final Rules, it's also in the form itself. And the knowing misuse of funds would mean that, if a borrower knowingly misused the funds for unauthorized purposes, they would be subject to prosecution.

MR. REICHLING: One moment, Your Honor? If I may briefly confer with counsel?

THE COURT: You may.

(Mr. Reichling and Mr. Leeman confer privately.)

MR. REICHLING: No further questions at this time, Your Honor. Thank you.

THE COURT: All right. Thank you.

Mr. Dickerson, is this yours?

MR. DICKERSON: This is mine, Your Honor.

THE COURT: All right.

MR. DICKERSON: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. DICKERSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. DICKERSON:

Q Good afternoon, Mr. Miller.

A Good afternoon.

Q My name is Brian Dickerson. I'm one of the defense lawyers for Mr. Crowther.

You just testified about eligibility purposes for the actual PPP program; correct?

A Correct.
Q And you're citing some IFRs, the Interim Final Rules?
A Yes.
Q How many Interim Final Rules are there currently?
A I believe there are 31.
Q Okay. And may I ask why there's so many Interim Final Rules?
A There have been a lot of changes to the program. There have been some changes that Congress made, like when they passed legislation; and, if the program changes, then the rules need to change to go along with it. There have also been -- due to the emergency nature of the program, it was very important that we got the first IFR, which contains the basics for the program, so that lenders could begin getting capital out. We couldn't possibly hold that until we had all of the details of the program, and so that's why additional IFRs were submitted, created, and provided. And there's been further legislation -- in fact, I believe there is a IFR that was just posted last week.
Q You're correct. So when was the first IFR?
A The first IFR was posted on April 2nd.
Q And that IFR is an Interim Final Rule; is that correct?
A That's right.
Q And that's a regulation that the SBA, in partnership with the Department of Treasury, is putting together as far as

the SBA's interpretation of the CARES Act; correct?
A That is correct.
Q It may be wrong; correct?
A I can't speculate on that.
Q All right. Are you aware of another government agency saying that the SBA was wrong in its interpretation of the CARES Act?
A No, I'm not.
Q You're not familiar with the May 8th Flash Report from the Office of Inspector General of the SBA?
A Yes, the Inspector General -- yes, I am aware of the Inspector General.
Q Why don't you tell the ladies and gentlemen of the jury what the Inspector General's responsibility is?
A The Inspector General's responsibility in all government agencies is oversight.
Q So that's an Inspector General assigned to the SBA; correct?
A Yes. And it's also -- it's to prevent waste, fraud, and abuse in programs.
Q And the Inspector General -- Office of Inspector General, called OIG; correct?
A Correct.
Q The OIG for the SBA came out with a report in May, did they not?

A They may have. I mean, they do issue quite a few reports.
Q I guess are you familiar with the OIG's -- it's called the Flash Report -- that came out in May of 2020?
A There have been other IG reports since then, so I don't recall. I don't recall what they mentioned in that particular report.
Q I didn't ask that, I said are you familiar with it. Are you aware of it?
A I'm sure I looked at it, but I don't recall . . . I can't attest to the fact that I reviewed it.
Q All right. I'll come back to that when we get to it.
So let's go back to March 27th. President Trump signs the CARES Act into law, active law; correct?
A Correct.
Q What guidance did any of the banks have, let's say the next day, March 28th, as far as how to actually implement the PPP program?
A I can't think of any guidance that they would have had at that point in time. They . . . . It wouldn't have had -- the guidance that -- there may have been a fact sheet that was issued, but the IFR that was posted April 2nd would have been the initial guidance for the program. Official guidance.
Q And was it up to, then, the banks, at that point in time, May 28th -- March 28th, until that first IFR, to actually

figure out how to implement, read the 200-plus-page CARES Act?
A Well, they could read the 200-page CARES Act, but there is not nearly that many pages that apply to this program. Only a couple of pages. Only a few pages.
Q How many pages?
A Well, I have it on -- I don't have the actual written, but it's not 200 pages. It's maybe ten?
Q And those ten pages apply to specifically what's called the Paycheck Protection Program?
A Paycheck Protection Program; correct.
Q Now, with regard to this April 2nd IFR -- I'm sorry. Yeah. April 2nd. When was it actually published to the banks and the public itself?
A It was posted on the Treasury and the SBA website on April 2nd. And then it was blasted out that -- to all the banks and the trades that the actual IFR was out there.
Q And which IFR number is that; do you know?
A I don't know the number.
Q Do you know when that IFR was actually published in the actual register for the Treasury Department?
A It was published -- it was published in the Federal Register on April 15th.
Q Right. So if someone was an applicant, they would have to actually go to the Treasury Department website to actually see the April 2nd notice. The IFR.

A Well, they would have to -- if there was a borrower, yes, they would have to go to either the SBA's website or the Treasury Department's website. And we've had a lot of traffic. Borrowers were looking at the SBA website very, very frequently.
Q Why do they go to the SBA website?
A Because there was a lot of media around the SBA carrying out this loan. Even the President mentioned it.
Q And is the SBA website something the public is supposed to rely upon?
A Well, I would -- yes, I would hope so.
Q What I'm getting at is, the SBA website is a government website.
A Correct.
Q Controlled by SBA under someone's authority at the SBA's office.
A That's correct.
Q So the information on the SBA's website is -- should be truthful.
A Should be.
Q Should be accurate.
A Should be.
Q And should be able to be relied upon.
A That's correct.
Q Does the SBA have its own Facebook page, as well?

A I believe we have a Twitter, I'm not sure if we have a Facebook page.
Q Let's just call it social media.
A Yes.
Q SBA has social media pages. Sites.
A There is, yes.
Q Who controls those sites?
A That would be our -- I believe our communications office within the SBA.
Q All right. So was part of the SBA's protocol in educating the public in the PPP program using social media, Twitter, and Facebook, as well?
A If it was an official SBA -- yes; if it was an official SBA Twitter, yes.
Q I'm not talking about other Twitters, I'm talking it's an official SBA Twitter page, or an official SBA Facebook page.
A Yes. Official SBA web page, or Twitter page, put out by the headquarters office.
Q And then I believe there was also many district offices that have their own website, as well; correct?
A Well, they have -- they all are supposed to be using the headquarters web page. And then there is content that would be approved by the headquarters office.
Q So if there's content on -- since we're the South Florida District; correct?

A Yes, I believe so.
Q Right. And do you know where the main office is?
A It's in Miami.
Q Yes. I just told you. So. They have their own sub web page from the SBA; correct?
A They would have -- yes. There's a district office web page for all of the 68 offices, but they all feed from the master web page. That's my understanding. I'm not -- definitely not that well versed in the SBA's website.
Q Okay. But the South District website, the SBA website, again, is materials being pushed out to the public to explain the PPP program.
A Well, the south . . . if there's something that is put out by the website, it is supposed to be cleared through the headquarters office.
Q All right. So if there's something on the website --
A Doesn't mean it was cleared, but it should be cleared.
Q How do we know if it was cleared?
A You don't. You wouldn't know.
Q So me, as John Doe citizen, I'm not going to know whether it's cleared or not; correct?
A You probably wouldn't. That's correct.
Q And then wasn't that part of also having the local district offices educate the public on what the program was?
A Yeah. The district offices were given materials with

which to educate the public.
Q Did the national office have some type of training for these local district offices?
A Yes, they did.
Q And what type of training is that?
A The . . . there are webinars. I believe they were given materials --
Q When you say -- sorry to interrupt, but when you say webinars, there's webinars hosted by the national office for the district offices?
A For the district offices; correct.
Q That wasn't something that, again, John Doe public could attend; that was just for the district offices?
A That was for the district offices; correct. There may have been also, then, webinars for the public; but we're talking about the district offices.
Q Right. That's correct. And would those district offices -- did they have their own social media pages?
A You know, I really am not an expert on the -- on the district offices, and what they're allowed to post, or the web pages.
Q What's your position right now, sir, with the SBA, so I understand?
A I'm over the business loan programs. And I'm not over those district offices at all. So I'd like to -- I'd like to

answer your question, but I don't know what they are authorized to and not authorized to post, as far as whether they have their own social media account.

Q Okay. But it was the SBA that was wanting the district offices to reach out and promote to the public what this basis of the PPP program was; correct?

A That is one of the district office's responsibilities, to reach out to the public, and to the lenders, as well as the -- of course, the headquarters office also put out information to the lenders and to the public; but the district office is the local boots on the ground so to speak.

Q And that local office, is it reliable to the public?

A It should be. Yes.

Q Okay. And that's one of the purposes of having it; right?

A Yes. It's to have a local presence, and to help small businesses needing assistance, or to counsel -- there's counseling that happens there. Yes, that is the purpose of the local office.

Q And you stated that part of the . . . rush -- I mean, I'm calling it a rush; if I'm wrong, tell me -- that May 27th to April 1st was -- the purpose of the program was to get the money out; right?

A That's right. It was an emergency program in the middle of a pandemic like we've never seen before.

Q Well, probably the start of the pandemic. The start?
A Yes. Yes, yes, it was.
Q And $349 million is allocated; right?
A 349 billion.
Q Billion, correct?
A We've gotten used to the B number; yes.
Q That allocation, I think you said it, but I want to make clear, that's not actually money going out from Congress to the actual businesses.
A That's correct.
Q That money is being held here so, when the lenders lend money to those businesses, and when those lenders either submit that forgiveness application that the borrower submitted, that's when that money is then used to pay the forgiveness.
A That's correct. The money was used to pay -- will be used to pay -- is being used to pay forgiveness. It will also be used to honor guaranties if the borrower can't pay the loan back and doesn't get the forgiveness.
Q Right. So there's two times that pot is used. Forgiveness is submitted to the lender, lender submits to SBA, SBA approves it and goes here you go lender, you're getting paid back, that loan can be partially or completely forgiven; correct?
A The loan can be partially or completely forgiven.
Q So that's that one tier. The second tier is, if the

borrower just doesn't pay the loan back and doesn't play for forgiveness as well.

A Yes. If the lender can then submit, for -- a request for SBA to honor that guaranty, and if the lender fulfilled its obligations, then yes, that money would then be used to pay that guaranty for that loan.

Q And what do you mean if the lender fulfilled its obligations?

A Well, there's certain things that the lender has to do too. You know, they had to execute a promissory note, for example, that we talked about earlier.

Q Well, we haven't talked about them. You guys talked about them. I'll get to the promissory note.

A So, yeah, there are certain things that the lender had to do.

Q And that promissory note wasn't provided by SBA to the lender to provide to the borrower. That promissory note was up to the lender's responsibility to create; correct?

A That is correct.

Q So when you have the totality of the documents that the lender is supposed to, under their duty, either create or utilize, and then provide to the borrower for the borrower to sign, how many documents are there?

A Well, SBA doesn't dictate how the lender -- how many documents the lender uses. They would use -- we only dictate that they have a promissory note. It would be up to the lender then to determine what other types of loan documents they wanted to obtain.

Q Okay. So promissory note is the only requirement that the SBA actually tells the lender it has to utilize.

A No, no.

Q Of the lender's documents, not SBA documents.

A That's the only document that the SBA told the lender they had to execute with the borrower. Or that the -- that's the --

Q I don't think execute is the right word. What would be the right word?

A That's the only document that the SBA told the lender that they had to use with the borrower.

Q So then the lender didn't have to use an SBA certification form?

A Well, that was part of the borrower application.

Q Okay. That's what I'm getting at. That's what I'm trying to get, the realm of documents -- maybe that was my fault. The realm of documents. So here is the SBA saying here is the documents, lender, you need to have completed for you, lender, to be able to then have an eligible participant, and show the forgiveness requirements; and then you also need, I think I'm hearing, this promissory note to go with it. So I'm trying to figure out what the universe of documents are.

A Okay. Are you talking for when the lender applies to get the PPP loan guaranty?
Q No, I'm not talking about the loan guaranty; I'm talking about the specific documentation the lender's going to have with the borrower.
A Well, the specific documentation that the lender is going to have with the borrower, they need to have the borrower's PPP loan application form, which is the 2483. They also need to have documentation that supports the amount of the loan. So that would be like payroll documentation from the previous 12 months.
Q That's the backup data. Correct?
A Well, it's documentation that --
Q Well, that's my fault. I'm trying to figure out the loan documents.
A Okay.
Q Not the backup documents. What are, specifically, the loan documents? So we have the borrower's application --
A The borrower's application, which is the 2483, along with those certifications that the borrower had to check.
Q And what form is the certifications?
A It's on that 2483.
Q Okay. And if . . . . How many pages is that?
A I don't remember off the top of my head, but I would -- I would just guess maybe three.

Q So we've got that. What's next?
A They also have to have a note. The lender has to execute a note.
Q And that's it.
A But the note does not have to be submitted with that application in order to get the loan guaranty.
Q Why is that?
A Because it's not required. The lender has to obtain the note -- well, let me tell you why it's not required. Because the lender has to get the loan guaranty before they execute the note.
Q Really.
A Yes.
Q The lender has to get the actual application.
A The lender would need to apply for the PPP loan guaranty.
Q For each individual loan?
A For each individual loan, they need to submit -- I wonder if we're talking about the same thing here. Are we talking about a loan to a borrower, a PPP loan to a borrower? Or are we talking about how does a lender get approved to do business with SBA?
Q I'm not -- the prior. I'm not talking about the lender being approved, I'm talking about the lender and the process with the actual borrower.

A All right. The lender needs to submit to the SBA -- they need to submit data, so that what they would have to have in their possession in order to submit that data is they are supposed to have the borrower's application, the Form 2483, and all the certifications, and then they also have to have the backup documentation to support the loan amount that the borrower is requesting, which is the 2.5 times the monthly payroll.

And then they need to do a check of that information, and check to make sure that the loan amount looks accurate. And then they need to transmit data to the SBA. That is on the Form 2484, the lender application for guaranty.

Once they have that guaranty, once they have an SBA loan number that comes back to the lender, the lender then has ten days to disburse the loan.

And typically a loan -- when a loan is disbursed, that's the same day the borrower would sign that promissory note. The borrower would go into the bank, sign the promissory note, say I promise to pay back a hundred thousand dollars, and the bank would disburse the money. That's typically how that would work.

Q Except we're in COVID, so a lot of people weren't going to the banks, since the banks weren't open --

A Well, that's true. Very good point. Very few people were going to the banks. So we were accepting electronic signatures, and there was a lot of electronic signatures, and DocuSign, much like a home mortgage or anything else, was being used extensively.

Q In fact, that's part of the CARES Act where they said they would accept electronic signatures.

A Yes. And SBA said they would accept electronic signatures before that, as well.

Q And I heard you answer questions for Mr. Reichling as far as that approval process, that guaranty approval process, I heard it's 15 to 30 seconds, and everybody uploads -- the lender uploads the data manually from the 2483 form into the SBA portal. Is that how you understand it?

A There are several different ways. That's one way, they can manually enter it, but --

Q I hate to interrupt you, but we have to go back to April 1st, April 2nd, through April 15th. That's the applicable time here. Back then, wasn't the manual way the only way to do it?

A No. Some banks would have already had what they call API calls, where they automatically upload data from their system into the E-Tran system because banks were already familiar with the E-Tran system. I should say SBA participants were already familiar with SBA's E-Tran system. So, with a couple of quick modifications for the data that was required for the PPP loan, they could have -- they could have had an API where the data is transferred instead of having to go and type all the information in.

Q And how many -- do you know how many banks were able to do the electronic versus the manual?

A I don't.

Q Okay. And how many seconds after that data is either uploaded manually -- or let's say somebody did have the API call E-Tran system. What's the timeframe on the review and response back?

A Well, the data isn't reviewed. The system would check it for -- there would be some system edits, to make sure it's complete, that there's a name, an address, things like that. And then, if the data is complete, then it would send back a loan number. I don't know the exact time, but I don't think what you said would be inaccurate. What did you say, 30 seconds?

Q 15 to 30 seconds.

A It's possible.

Q But again, SBA isn't reviewing the data, it's just doing that system check.

A They system is -- that's right. The system, there could be business rules in it. I don't know what those business rules were, but there were some validations that it had to go through.

Q So then once that 2483, which that's the only form that

needs to be submitted to the SBA -- I get the backup data, but that's the only form that needs to be submitted from the lender to the SBA to obtain the approval for the guaranty.
A I think you said 2483.
Q Yes.
A No; it's 2484.
Q Oh, that's the lender app?
A That's the lender app, yes.
Q But then, for the lender to actually get approved for each SBA application, aren't they uploading a 2483?
A No. The lender is -- for each loan application, the lender is uploading the 2484.
Q And that's a document the lender creates; right?
A The 2483 is submitted by the borrower. For each unique borrower, there's also a unique lender application for the guaranty for that one individual loan. That's the 2484.
Q 2483 the borrower is completing, giving to the bank. The bank then, whether they that that debt, or whatever it is, creates this 2484 --
A They fill it out; right.
Q And then they submit that to the SBA and get that 15 to 30-second delay before it's here is the SBA guaranty.
A That's correct.
Q And that guaranty, again, is for whether it's going to be forgiven, or whether or not the lender loses money because

the borrower doesn't pay it back.
A Well, the guaranty isn't for whether it's forgiven. The PPP, Paycheck Protection Program, allowed for the loan to be forgiven; but the guaranty is for whether or not it's paid back.
Q Okay. But part of that allocation of the funds, the 249 billion, was for the forgiveness and the guaranty if it wasn't paid back?
A The 349 billion authorized by Congress was for those -- that would be for those purposes; correct.
Q So if a borrower has never filed for forgiveness, what's the status of that loan in the SBA's eyes?
A Well, it would depend. If they haven't filed for forgiveness, then the loan is on deferment. And I can explain that if you would like.
Q Yeah, go ahead. Explain it.
A Okay. The loan is on deferment, meaning no payments are due. So no payments are due on that loan until SBA makes its forgiveness decision and either forgives the loan or not.
Now, the loan will come off of deferment status at some point even if the borrower does not submit the application for forgiveness, and then the borrower will have to begin making loan payments.
Q And isn't that ten months after the conclusion of the covered period?

A Yes.
Q So the cover period in what, December 31st?
A It depends on when the loan was disbursed.
Q So if we're talking about April it's disbursed --
A Yes.
Q -- we're going 24 weeks from that time period.
A Yes. Which is six months.
Q And then, from there, we've got a ten-week calendar as far as when that loan becomes due.
A Ten month.
Q Yeah.
A Yes; ten months after that is when the deferment period would end and the borrower would have to make loan payments unless the loan has been forgiven.
Q And if the borrower doesn't submit for forgiveness, then, after that ten-month period, then the borrower has to start paying on that promissory note; correct?
A Then the borrower has to pay on that promissory note; correct.
Q Now you said that was a temporary program. When does the guaranty end on that loan?
A The guaranty would stay with the loan for the life of the loan.
Q So, as long as the borrower is paying on that loan, there no guaranty that's going to kick in.

A That's right. The guaranty won't kick in as long -- until if the borrower defaults on the loan, that's when the guaranty would kick in. Or if the loan is called earlier. If demand is made on the borrower to repay the loan? For example, if the proceeds were used in an inappropriate manner? Then SBA can require that the loan be fully due and payable. And then, at that point in time, the borrower would have to either pay the loan, and if they didn't pay the loan, then the SBA guaranty could be requested by the lender.
Q Where is that language where the SBA can make that demand for the repayment?
A There's language in the IFRs. I think it could be the loan review. I can't recall exactly the IFR, but it does say the SBA may require repayment of the loan.
Q But you don't know in which document that's in.
A I don't have the exact one.
Q Do you know whether that language is required to be in a document with the borrower?
A I think as long as -- if it's a program requirement, it could be in the promissory note. But if it's a program requirement, I don't know that it would need to be in the document with the borrower.
Q So it doesn't matter if the lender never conveyed that to the borrower, the borrower is supposed to make sure they know all the IFRs that Treasury and SBA is publishing?

A Well, the lender -- you know, the lender would typically convey information like that to the borrower.

Q But it would be in a lender documentation, not necessarily an SBA documentation?

A It could be the IFRs. They could share that document with the borrower.

Q Well, I get share, but there's, I guess, not a form by the SBA that that's required by.

A There was no form for the note, no.

Q Is the -- have you heard of a notice of Paycheck Protection Program forgiveness document?

A I don't know that one off the top of my head. Is there a different explanation?

Q There's not a form number, that's all I'm getting at.

A It's not a form number?

Q No.

A When you say notice, does it say procedural notice?

MR. DICKERSON: Actually, can I take a step back, Your Honor?

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 Now, I don't want you to read that, John, as far as the content, out loud. I just want you to look at it, see if that document -- if you think that is an SBA document, or whether that is a lender document.

(Witness examines evidence.)

A I don't recognize this document as an SBA document.

Q So is this -- if it's not an SBA document, is this probably one of the documents where the lender is making its own documentation with regard to that promissory note?

A This appears to be lender documentation; correct.

Q And the lenders are given guidance on the program, but they're also given their own ability to make their own documentation to secure their interests in the loan that they have with the borrower; correct?

A Yes.

Q And that was an important part of this, is the lender's documentation with the borrower so that the lender has a promissory note so that the lender can protect its interest with the borrower.

A Yes. Lenders have -- may have their own formats of documentation that they use. It depends upon the state, it depends upon the lender. And the lender was free to use its own documentation as long as it did not conflict with the Paycheck Protection Plan rules. And if it did, then the PPP rules would apply.

Q And what do you mean, conflict with the PPP rules?

A Well, if any of the lender's documentation conflicted with the laws or the requirements of the program, then the -- if it was in disagreement, then the requirements of the program would apply.

Q Okay. So if a borrower goes to the lender, has the lender's documents, executes the lender's documents, you're saying that, even in that case, the borrower -- if the lender documents are wrong, the borrower still has to make sure that the borrower is complying with all of these IFRs?

A The borrower is still required to be in compliance with the Act. So, yes, if there's a mistake in the documentation, then the lender -- it may be an issue with the lender.

Q Okay. But the borrower still has to comply with the lender documentation, the promissory note and the supporting documents; correct?

A The borrower would need to -- also need to comply with the documentation with the lender.

Q Okay. So if the documentation from the lender says one thing, SBA thinks that it's not the same that -- the loan documents are not the same as the SBA requirements, the borrower has to comply with the lender and the interpretation of the SBA of the PPP program?

A Yes. And it would also depend upon the actual -- you know, what the issue is. What this particular issue is.

Q All right. Well, we'll get to that issue. First, though, I'm going to get you back to the Flash Report.

Flash Report, Small Business Administration's implementation of Paycheck Protection Program issued by the Office of Inspector General on May 8th, 2020.

Is an OIG report a public record?

A Yes, they do issue it publicly.

Q And, when they publish that on the OIG's website, that is for the public to all be able to review, kind of like those internal rules; correct?

A Correct.

Q And it's Report 20-14 for May 8th, 2020. I'm assuming that won't refresh your recollection on that, at all.

A OIG always numbers all of their reports.

MR. DICKERSON: Okay.

Your Honor, may I? Thank you.

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 Again, sir, I don't want you to read that out loud, I just want you to look at that document. I'm not expecting you to read the entire thing. It's 40 pages. I just want you to be able to look at that and see if it refreshes your recollection at all as far as what the OIG found in their report.

(Witness examines evidence.)

A Okay.

Q Does that refresh your recollection at all?

A Some -- some of it does, yes.

Q And what does that recollection -- what does it refresh?

A Well, they stated --

MR. REICHLING: Your Honor, objection. This is improper questioning. He hasn't asked him what he needs to have his memory are refreshed on.

THE COURT: You need to ask him a specific question, not just tell me what you remember.

MR. DICKERSON: First he was --

THE COURT: You don't need to argue with me, just refresh your question.

MR. DICKERSON: Thank you, Your Honor.

BY MR. DICKERSON:

Q Does reading that document right there, the little bit that you read, does that refresh any of your recollection as to what the SBA/OIG opined as far as how the SBA was interpreting the CARES Act?

A I don't see anything in here about interpretation of the CARES Act.

Q So, reading that, do you not see that it actually discusses the Act.

A It does discuss the Act.

MR. DICKERSON: Your Honor, I would move to admit this document. G18.

THE COURT: I'm sorry, the number again?

MR. DICKERSON: G18. Defendant's G18. It is a public record. The witness has stated it's a public record available on line. Federal government agency record.

THE COURT: G18. Okay.

MR. DICKERSON: I'll get you a copy, Your Honor.

THE COURT: All right. Hang on a second. It's not on my list yet. We can just add it.

Any objection?

MR. REICHLING: Judge, we'd object to relevance.

THE COURT: May I see it, please?

MR. DICKERSON: Yes.

(The Court reviews a document provided by Mr. Dickerson.)

THE COURT: All right. Thank you.

The objection is overruled, and G18 will be admitted.

MR. DICKERSON: Thank you, Your Honor.

(Defendant's Exhibit G18 admitted.)

MR. DICKERSON: May I publish it, Your Honor?

THE COURT: You may.

(Evidence was published via the projector.)

BY MR. DICKERSON:

Q So I want to direct your attention to the first page. This is a document discussing the comparison by the SBA Office of Inspector General as to the interim rules and how they actually compare with the actual CARES Act in accuracy; correct?

A There are . . . yes. There are . . . there are comparisons between SBA's Interim Final Rule and the Act in this document.

Q And the section on what we found is talking about, "Though OIG found that the SBA's Interim Final Rules for implementing the PPP and the SBA's FAQs mostly align with the Act, we identified the following areas, however, where they do not fully align with the Act's provisions;" is that correct?

A That's what it says.

Q And one of those provisions is the loan proceed's eligibility for forgiveness.

A Yes.

Q Guidance on loan deferments.

A Yes.

Q And the first one, prioritizing underserved and rural markets; correct?

A Yes.

Q Have you been able to review the document, to actually get down to Appendix 2, the comparison between the CARES Act, the Interim Final Rule, and the related frequently asked questions?

A I'm there now.

Q Okay. So did you ever review this document in your capacity at the SBA?

A I . . . I did not review the entire document. I did review parts of the document.

Q All right. Now, looking at this entire 40-page document, does that refresh your recollection as to the concerns that SBA/OIG had with the eligibility and the applying by the SBA of their Interim Final Rules in compliance with the CARES Act?

A Yes. I see some of the items that they're raising here.

Q Did you happen to recollect those items, or do you need to review the documents?

A I can see the items right here in the text.

Q Right. Which page are you on, sir?

A I'm on Page 5.

Q And what do you understand the findings to be?

A The . . . .

MR. REICHLING: Objection, Your Honor. What's the question? I'm trying to understand. He's asking for his opinion under the guidance as contained in the exhibit. I don't think he's laid the proper predicate to ask that question.

MR. DICKERSON: I'll rephrase, Your Honor.

THE COURT: Okay.

BY MR. DICKERSON:

Q With regard to the loan proceeds eligible for forgiveness, do you have any independent memory of what that issue was by the SBA, and what the recommendation was to the SBA?

A You know, the administrator, in consultation with the secretary, determined that the minimum amount of proceeds for forgiveness should be the 75 percent. And the Office of Inspector General is saying that that was not . . . they -- well, let's see here. They point out that that was different than what was in the Act.

Q So you have the SBA Office of Inspector General pointing out that the interim rule interpretation by the SBA was not in compliance with the Act.

A I don't know that they're saying it was not in compliance with the Act, but they are saying that that was not in the Act.

Q How about it's not aligned with the Act? And I'll take you back up to the first page.

A Okay.

Q What we found.

A Yeah, it mostly aligned with the Act, but there were some areas that did not fully align.

Q Right. And the one area is the loan proceeds.
A Loan proceeds eligible for forgiveness.
Q Okay. Thank you. You can put that document down.
Can you un-publish me, please? Thank you.
So Mr. Reichling asked you the questions about the loan time period, the covered time period, extending from eight weeks to then 24 weeks on the June 5th date; correct?
A Correct.
Q That's also when the law affirmatively said that payroll was 60 percent as far as the forgiveness.
A Correct.
Q Where do you rely upon your statement that 60 percent of the money had to be used for payroll as one of the eligible purposes of the loan?
A It would be in -- well, it would be in an IFR. I'd have to look for it. But it would be in the -- likely in the IFR that was provided right after the June 5th law was passed. It may also be in the . . . in some of the forms, the 2483 if it was revised, and the forgiveness form.
Q So was the 2483 form revised? Are there different versions of it?
A There are a few different versions because of changes in the law.
Q So if somebody signed the application on April 3rd, April 13th, that would be different than an application after?

A Yes. In fact, a good example is, in January, under the Economic Aid Act, there is a second draw loan that was created, so we had to create a second draw loan application. But the loan application that was in effect at the time the application was made was the -- is the governing document. So that wouldn't change the requirements for the borrower.

MR. DICKERSON: May I get another document, Your Honor?

THE COURT: You may.

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

THE COURT: You may.

(Counsel provides evidence to the witness.)

BY MR. DICKERSON:

Q Again, Mr. Miller, if you'd just look at that. Don't read anything at this point in time. That is an IFR; correct?

A Yes, this is an IFR, Interim Final Rule.

Q And, for the record, which IFR number is this, as far as the IRN number? Or you can use the SBA document number, whichever one you prefer.

A The IRN number is 1505-AC75.

Q And that's for the Department of Treasury IRN number; correct?

A Yes.

Q And then there is an SBA IRN number as well; correct?

A Yes.
Q And what is that?
A 3245-AH65.
Q And then these IFRs are posted on the Federal Register, they're publicly available, this is a government document; correct?
A Yes, these are available, and it is a government document.

MR. DICKERSON: Your Honor, we move -- defense moves to have G16 admitted.

THE COURT: Any objection to G16?

MR. REICHLING: No, Judge.

THE COURT: G16 will be admitted.

(Defendant's Exhibit G16 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 Sir, so this is one of the IFRs that you're talking about that has the direction to follow; correct? For the public?
A That's correct.
Q If you would, go to the second page, middle column, where it says, "This rule." If you would just read that to

yourself first.

(Witness examines evidence.)

Q Okay, sir. Do you recall reviewing this IFR when it was published?

A Yes.

Q And, when you reviewed this when it was published, what was your understanding of this IFR?

A This IFR was a consolidated IFR that was issued after the passage of the -- well, it's for loan forgiveness and loan review as provided by the Economic Aid Act.

Q And we haven't talked about the Economic Aid Act yet. What is that?

A The Economic Aid Act was another of the stimulus . . . stimulus acts, or programs, that was passed by Congress and signed by the President. I believe it was signed at the end of December.

Q Okay. And so this IFR is saying anything from the Economic Aid Act overrides any conflicting past, previous guidance in the FAQs, and the SBA will be revised in the FAQs; correct?

A It does state SBA will be revising the FAQs. It overrides any conflicting guidance in the FAQs. So, if there wasn't conflicting guidance, then the other guidance would stand. And it says that the SBA will be revising the FAQs to conform.

Q Do you understand what this interim rule, as far as how it changed the forgiveness application process, or eligibility of forgiveness?
A It did -- it did make some changes; but, generally speaking, the process is very similar.
Q Did it expand what was eligible for forgiveness?
A It expanded -- I don't know that it expanded what's eligible for forgiveness, but there were some additional expenditures passed under the Act that were eligible . . . that were eligible for forgiveness.
Q And do you know what those are?
A Off the top of my head, they were expenditures for things such as accounting -- kind of an accounting software, supply chain expenditures that were for vital supplies that businesses needed. There were also some -- it would cover expenditures for worker protection equipment, like these shields; if a restaurant or something had to expand into the parking lot, or add a ventilation system. All the things we know now that we didn't know at the time the CARES Act was created, so they had to add some additional expenses.
They even added property damage from the summer of unrest that occurred in 2020 during the riots. So if businesses suffered damage, those could be forgiven.
Q And that aspect of the damage from the riots, that had nothing do with COVID, as far as the CARES Act, the original

CARES Act; correct?
A That's correct.
Q So, again, the rules, regulations, are changing.
A The rules and the regulations do change. Especially when Congress changes the laws.
Q And this retroactively applies to anybody that took out a loan even on that first available date back in April of 2020.
A For forgiveness, yes.
Q For forgiveness.
A But not for the loan application itself.
MR. DICKERSON: Okay.
Will you un-publish me, please?
One second, Your Honor?
BY MR. DICKERSON:
Q I think you said 31 IFRs?
A Yes.
Q Do you know, are all of them touching on eligible forgiveness?
A No, I don't believe all of them are. Some of them are very narrow.
Q Narrow focuses to a certain business?
A Yes, that's -- that could be certain industry, certain business type.
Q Okay.
A Certain tax filer type.

Q But all the IFRs are public documents.
A Yes.
Q What is SBA Form 1846; do you know?
A I'd have to take a look at it.
(Mr. Dickerson confers with Mr. Reichling privately.)
MR. DICKERSON: May I approach the witness, Your Honor?
THE COURT: You may.
(Counsel provides evidence to the witness.)
BY MR. DICKERSON:
Q Again, Mr. Miller, I don't want you to read out loud, I just want you to look at that document.
(Witness examines evidence.)
A I see there are several documents here.
Q Yeah. So that is loan documentation for what we're dealing with here, this case. I'm going to direct you to . . . . Look at the bottom. It says SBA Form 159. At the footer?
A I saw it before. I know it's in here.
(Witness examines evidence.)
A There it is.
Q And again, I don't want you to read it. I want you to see is that a form that's required, or is that something the lender has chosen?
A That's something the lender chose, because the form is

not required for PPP.

Q Okay. And then, after that form, there's another document. Heading is "CARES Act Disclosure." Is that a document that the SBA requires, or is that a document the lender has chosen to use?

A That is a document that the lender has chosen.

Q So again, if this documentation is not accurate, it is the lender's responsibility with the borrower; correct?

A That is correct.

Q And then, after that document, SBA Form 1846, is that a standard document that needs to be with the application, or is that a lender chosen document?

A This appears -- it's a standard document, but it was not required, and -- but the lender chose to use it.

Q I'm almost done here.

THE COURT: Do you want the record to reflect any exhibit numbers for those?

MR. DICKERSON: Yeah, that would be a good idea, Your Honor.

Let me get the right number for it.

May I go check, Your Honor?

Exhibit I, Your Honor.

THE COURT: Thank you.

BY MR. DICKERSON:

Q Looking at the remaining section of that -- those

documents, do you see anything else in here that is SBA required; or is it, in your opinion, all documents that the lender had created?
A The first document in the stack appears to be the promissory note, so that would have been required by SBA.
Q But that is a lender drafted document; correct? Or is that an SBA form?
A It does not have an SBA form number on it. It may . . . it may contain the identical language to the SBA form of promissory note, but that would not have been required. I couldn't tell you. But there's no SBA form number on it, so I can't say that it is an SBA form.
Q So there was an SBA form that actually had a form style promissory note.
A There is an SBA form number that has a form style promissory note.
Q And so the lender could have used that form; correct?
A They could have. But they were not required to.
Q And is it your understanding that that form is accurate as it applies -- that promissory note form is accurate as it applies to the CARES Act?
A Yes, it should be accurate as it applies to the CARES Act.
Q Was FICA and FUCA supposed to be included in the calculation for the payroll when you did the -- as you

described it -- the past year monthly average for payroll multiplied by 2.5?
A No. There are certain allowable expenses, and some that weren't. I don't remember, off the top of my head, if those were included. But there's a list of them on the form.
Q Okay. And you're saying there's a list of them on the form today or the form that was used on April 1st?
A I believe there is a list of those allowable expenses. It may be in the IFR or on the form.
Q I'm not talking allowable expense, I'm talking about when the lender was doing the calculation.
A Right. I think that was listed in the original IFR.
Q So you could include FICA and FUCA.
A No. The expenses are listed on the original IFR.
Q Right. What I'm asking --
A The allowable expenses, and I don't recall what they all are.
Q I'm not talking allowable expenses. I'm talking when a borrower is doing the calculation that you described to see what the number is that they're eligible for.
A Yes.
Q Was FICA and FUCA, tax, federal tax, was that allowed to be included in that calculation of average payroll?
A And that's what I would have to look at the IFR to determine. I keep saying expense. I mean what was allowable

in the calculation is listed, and I would have to look at that.
Q Okay. And you were asked by the government about economic necessity. What are the guidelines for the economic necessity for applying for the PPP program?
A It was a certification by the borrower. So it would have been a certification that the borrower had to make at the time of application.
Q So it's subjective.
A Yes. It's in the eyes of the borrower. Correct.
Q So it's in the eyes of the borrower as of the date of the application?
A As of the date of the application.
Q All right. And what SBA document states that the borrower can only use the PPP money for business-related purposes?
A Their certifications in the 2483. There is also information, I believe, in the IFR. The first IFR. In addition to others.
Q And . . . just give me a second, sir. I'll see if I have that.
A In addition, I would just add that any 7A loan proceeds would be under that Act . . . that loan proceeds for 7A would be required to be used for business purposes. They're not used for personal.
Q And was the PPP required to be -- have an isolated

account, a segregated account?
A When you segregated account.
Q So when the lender then provided the funds to the borrower, was it required to be in a segregated account?
A The Act -- I don't recall anything requiring that.
Q And so if the borrower commingled it by not having a separated account, but just went directly to the operating account, that was permissible.
A I don't know about when you say commingling, but the --
Q Well, let me define it. Commingling is I have $500,000 in my account right now. The bank then deposits the PPP money into that $500,000 account. Now I have -- let's say it's a million-dollar loan -- a $1.5 million balance.
A That would be permissible.
Q So there's no requirement to have a standalone account, and it can be commingled with the other bank account.
A If your definition of commingling, yes, is that it's deposited into an account with other funds, then yes.
Q Okay. And then, for the loan, the borrower had, at first, eight weeks to use the loan proceeds for the eligible purposes if they wanted forgiveness.
A That's correct.
Q And then it extended to 24 weeks.
A Yes. Under the Flexibility Act, it was extended.
Q So if that money from the bank is deposited in the

account, and they use all the money within the first 30 days, it's done. They don't go again. Right?
A That's correct.
Q If they hold onto that money, and they don't spend those proceeds until week 20 through 24, that's still eligible for forgiveness.
A Yes.
Q But if a company doesn't file for forgiveness, they just repay that loan; correct?
A That's correct.
Q And that's a one-percent loan.
A It is a one-percent loan. That interest rate at that low of an interest rate is highly unusual, and it was because of the emergency nature of the funds during the pandemic.
Q And part of the CARES Act was to stimulate the economy; correct?
A There were certain parts of the CARES Act that were to stimulate the economy. Paycheck Protection Plan was really to pay workers.
Q So if a recipient, a borrower of the money, ends up using more than the money they received from the PPP loan in paying payroll, that was satisfying that purpose.
A Could you rephrase the question?
Q Sure.
A I want to make sure I understand what you're saying.

Q If a borrower.
A Yes.
Q Recipient of a loan.
A Correct.
Q Receives its money from the PPP program through its lender after signing the promissory note, and it spends more in payroll over that 24 week period than it actually received, that was fulfilling the purpose of the CARES Act and the PPP program.
A That would be acceptable.
Q Yes.
A Yes, that would be acceptable, that they spend more money on payroll than they received. But they had to spend the payroll -- the money that they received on payroll, as well.
Q I thought you just said it didn't have to have like a segregated account. Are you saying it has to be earmarked?
A It has to be spent for those purposes.
Q All right. So if my lender on the PPP program gives me money, and I put it in my right pocket, then I can only use that right pocket for the payroll?
A You should be able to demonstrate to your lender that you used that money for the payroll.
Q The definition, and maybe I'll just ask you, do you know what the definition with the IFR as far as proceeds being used over the covered period?

A I'm not sure I follow.

MR. DICKERSON: All right.

If you want, Your Honor, this would be a great time for a break. Then I can get my documentation.

THE COURT: All right. I think that's a good idea.

Let's take our afternoon recess, 15 minutes or so.

Please do not discuss the case among yourselves, or allow anyone else to discuss with you or in your presence.

About 15 minutes we'll get started.

(At 3:17 p.m., the jury was escorted from the courtroom.)

THE COURT: All right. Fifteen minutes.

(At 3:17 p.m., court was recessed.)

AFTER RECESS

(At 3:35 p.m., court was reconvened.)

THE COURT: Everybody ready for the jury?

MS. WAID: Yes, Your Honor.

MR. DICKERSON: Yes, sir.

MR. REICHLING: Yes, sir.

THE COURT: Bring the jury, in please.

(At 3:35 p.m., the jury was escorted into the courtroom.)

THE COURT: Be seated, please.

And you may proceed.

MR. DICKERSON: Thank you, Your Honor.

BY MR. DICKERSON:

Q So, Mr. Miller, we took the break, we were talking about the period of 24 weeks, and using the money received from the lender to pay for payroll over that time. I'm just getting us back to where we were talking about, okay?

A Okay.

Q If you would, look at Defendant's Exhibit 16 I provided you before. That's the February interim rule?

A Got it.

Q Okay. And, as we discussed, this interim rule, retroactively applied to the complete Paycheck Protection Program; correct?

A Yes. As long as it didn't -- if there were any -- if there was any conflicting guidance, this would over . . . this would . . . this guidance would be in effect.

Q So it's safe to say, like when a new guidance comes out, if it does apply to a previous guidance, the new guidance applies?

A Generally yes. Except for situations that refer to loan -- the loan application itself, which would be governed by the time -- the rules in effect at the time the loan application was submitted.

MR. DICKERSON: Okay. If you would, look to . . . it's the fourth page.

And if I may publish again, ma'am.

And Section 4, the very top.

(Evidence was published via the projector.)

BY MR. DICKERSON:

Q That is talking about the forgiveness requirements; right?

A Yes.

Q And am I reading this right? "Borrower shall be eligible for forgiveness of their PPP loan in an amount equal to the sum of the following costs incurred and payments made during the covered period."

A That is what it says; yes.

Q And so that is the sum of total costs of the payroll and other following costs during the covered period. It says, "Shall be eligible;" correct?

A Yes, it does say, "Shall be eligible".

Q All right. Not a may, it's a shall.

A Right.

Q And, in the SBA world, what does the word "shall" mean?

A That is probably -- there's probably a legal interpretation there.

Q I'm not asking for a legal interpretation. I'm saying, in the SBA world, what does "shall" mean?

A I believe it means will.

Q Okay.

A A subject -- it does say subject to several important limitations though. I want to point that out. Right before that.

Q And where does it say the limitations?

A That same sentence. "Section 7A of the Small Business Act provides that, subject to several important limitations, borrower shall be eligible for forgiveness."

Q Right but this was an add-on to the 7A; correct?

A That's correct.

Q And correct me if I'm wrong, 7A SBA loans are directly from the SBA to the actual borrower?

A No, they are not. They are guaranteed loans, as well.

Q Okay. So, when is the SBA proceeds ever come into play with regard to a 7A loan, is it only during either the guaranty when there's a default, or with a Paycheck Protection Program when there's actually forgiveness?

A Yes. The government funds would only come into play for a 7A loan in the event of a guaranty purchase, as you suggest -- or when a guaranty is honored. Or in the case of the Paycheck Protection Program forgiveness. Some of the funds, though, are also issued to lenders for processing loans. They are paid a fee in the PPP loan. I just want to point that out.

Q But, with a borrower who has not defaulted on the loan, and a borrower who has not applied for forgiveness, there's no SBA proceeds applied to that loan.

A Not to the loan; correct. There would have been proceeds applied to the lender for making that loan.
Q That goes to the lender.
A That goes to the lender. Correct.
Q But no SBA proceeds going to the borrower.
A No SBA proceeds going to the borrower; correct.
Q And do you have any direct knowledge or information about the Target Roofing PPP application?
A None. No.
Q And none about the forgiveness eligibility, nothing; right?
A No. I don't know if a forgiveness application was submitted.
Q You don't even know if a forgiveness application was submitted.
A That's correct, I do not know.
Q Okay. And you made a comment about if the SBA . . . I think -- I don't want to paraphrase it, so correct me if I'm wrong. If an applicant uses the proceeds knowingly wrong, the SBA will ask them for repayment?
A Actually, if the SBA -- I'm not sure that that's what I said.
Q All right. Well, tell me. I want your words.
A Okay. If -- if the SBA -- if a borrower knowingly uses the proceeds for an unauthorized purpose, the borrower could be

held legally liable. Could be prosecuted. Such as for charges of fraud.
Q Okay.
A Are you getting to when payment in full could be required? Is that what you want to be --
Q Yeah, sure.
A That would occur if the SBA finds that a borrower is ineligible, which could also stem from a knowing misuse of funds.
Q So knowing misuse of funds would qualify as ineligible for the SBA to be able to demand the money back from the borrower.
A It would depend upon the facts and circumstances of the case, but if there's an inadequate basis for the borrower to make the certifications that the borrower attested to in the PPP loan application, then SBA could declare the borrower to be ineligible for the loan.
Q Is that a could or will standard for the SBA?
A That's a could.
Q What's the difference between could and will?
A Well, again, it depends upon the facts and circumstances of the case. The loan review would look at the case, and they would make the determination based upon weighing all of the facts and circumstances of that issue.
Q And are you aware that the SBA has not requested or

demanded any repayment from Target Roofing or Casey Crowther?

A I am not aware of that.

MR. DICKERSON: Nothing further, Your Honor.

THE COURT: All right. Thank you.

Any redirect from the government?

MR. REICHLING: One moment, Judge.

I have a few questions, Your Honor. I'm going to go the old fashioned way and use ELMO.

THE COURT: Go ahead.

MR. REICHLING: It's a good thing I trimmed my nails before coming to court today. So I'll put it up on the projector if I need to use it.

REDIRECT EXAMINATION

BY MR. REICHLING:

Q I just have one or two, maybe three, four questions for you. Could be more, I guess. Famous last words, right?

Mr. Dickerson commented on the February, 2021, IFR concerning the expansion of costs that were eligible for forgiveness. Could you explain why the SBA expanded the costs eligible for forgiveness in February of 2021? Specifically, the topics that you discussed previously. I believe it had to do with various things because of the pandemic and stuff like that.

A Yes. Well, I don't think I explained, but I may have.

Q Could you explain now then?

A Well, the Act. The Act specified those additional costs. So the Economic Aid Act, which was signed by the President, I believe, December 27th, 2020, added additional authorized expenditures that could be covered with the PPP loan proceeds because they were, again, proceeds tied to the emergency . . . the emergency of the pandemic.
Q Okay. I'm going to project Defense Exhibit G16 on the ELMO here, and I'd like you to take a look at it. I think this is the original copy. So if you don't mind looking at it on the screen, perhaps --
A Okay.
Q -- in front of you. Could you read off some of these covered operations expenditures that you were referring to that have changed between the beginning of the PPP and now, in February of 2021 -- I guess we're in March, now, of 2021.
A Yes. Covered operations expenditures is a payment for any business software, cloud computing service that facilitates business operations, products, or service deliver. The processing payment or tracking of payroll expenses, human resources, sales and billing functions, or accounting and/or tracking supplies, inventories, records and expenses.
Q What about, I think it's Sub 6 there?
A Covered property damage costs. A covered property damage cost is a cost related to the property damage in vandalism or looting due to public disturbances that occurred

in 2020 that was not covered by insurance or other compensation.

Q And could you read Sub 7?

A Covered supplier cost. A covered supplier cost means an expenditure made by a borrower to a supplier of goods for the supply of goods that, A, are essential to the operations of the borrower at the time at which the expenditure is made; or B, is made pursuant to a contract, order, or purchase order; 1, in effect at the time before the covered period with respect to the applicable covered loan; or 2, with respect to perishable goods in effect before or at the time during the covered period with respect to the applicable covered loan.

Q And then I'm just going to want you to read this last covered portion here about covered worker protection expenditures; and, if you want, you can just briefly explain what this section's about. You don't have to go into detail and read the entire section.

A Okay. Well, this is what I mentioned earlier, things like these shields. And it goes on -- actually, if you want to flip the page, it gives some better examples.

Q Okay. Let me show you that right now.

A Yeah. So modifications that businesses had to make in order to survive. Essentially, the purchase, maintenance, renovation, they could have added a drive-through window facility; indoor, outdoor, or combined air pressure ventilation system or filtration system, physical barriers like sneeze guards, expansion of an indoor/outdoor combined business space.

I don't know about in Florida, but in Maryland, where I'm from, restaurants, if they couldn't expand to the outside, they really would have gone out of business. So this covered that.

Q Generally what are these expenses for?

A Well, these expenses are for . . . to operate a business that's struggling during the pandemic and protect employees and workers.

Q Did this expansion of eligible uses of PPP money for certain business expenses expand to include personal property like a boat?

A No.

MR. REICHLING: No further questions, Judge.

THE COURT: Any recross?

MR. DICKERSON: No, Your Honor.

THE COURT: You may stand down. Thank you.

THE WITNESS: Thank you.

(The witness left the witness stand and left the courtroom.)

THE COURT: And the government may call its next witness.

MR. REICHLING: Yes, Your Honor. At this time, the government would call Lana Hollier. And, Judge, if I may just have a few moments, there's a large volume of exhibits we're going to be --

THE COURT: You may.

MR. REICHLING: Thank you.

COURTROOM DEPUTY: Good afternoon. Please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give during this case now before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

COURTROOM DEPUTY: Thank you very much. If you would have a seat in the box; and once you're seated, would you please give us your name, and spell it.

THE WITNESS: My name is Lana Hollier. L A N A, H O L L I E R.

THE COURT: I can see right now you need to move that microphone down a little bit. And, if you're comfortable, you may remove your mask.

MR. REICHLING: My apologies, Judge. There's quite a few more exhibits; and I believe the additional exhibits have been previously stipulated to as them coming in as government's exhibits, but for now I'm just going to focus on those exhibits that have not been stipulated on. So my apologies for gathering documents back and forth. I know it's going to take some time.

THE COURT: Whatever way it works.

MR. REICHLING: Thanks, Judge.

May I proceed, Your Honor?

THE COURT: You may.

LANA HOLLIER,

called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REICHLING:

Q Ma'am, could you tell me where you're employed?

A Sanibel Captiva Community Bank.

Q And how long have you worked there?

A Seventeen years.

Q And I hate do this to you, but can you come a little bit closer to that mike? I have a little bit of a hard time hearing you.

What's your title with Sanibel Captiva Bank?

A Senior vice-president, director of private operations.

Q As director of operations, are you familiar with the record keeping practices of Sanibel Captiva Bank?

A Yes, I am.

Q Okay. And how are bank records typically kept and stored by Sanibel Captiva Bank?

A They're electronically stored.

Q Okay. Is that on a server that's only accessible to

Sanibel Captiva employees?
A Yes.
Q And what about bank statements? Are those stored by Sanibel Captiva Bank?
A They're stored by our core processor, which is then directed down to our server, and then they are stored electronically.
Q Okay. What about other account records? Does that cover the whole gamut of various bank records?
A Yes, it would.
Q And what about records of wire transfers? How are those kept and stored?
A Those are stored the same way, on our electronic database.
Q What about records concerning a commercial or individual -- an individual's line of credit with the bank?
A Those are stored the same way.
(Counsel provides evidence to the witness.)
BY MR. REICHLING:
Q I've placed before you what's been previously marked as Government's Exhibit 31 through 36. Could you look through those for me, please?
(Witness examines evidence.)
Q I'm sorry. I was waiting for a verbal response. My apologies. And I didn't even ask for one, so.

Do you recognize these documents, ma'am?
A Yes, I do.
Q What are they?
A These are wire transfers. Copies of wire transfers.
Q And could you tell me what Exhibits 31 and 33 are? Just generally.
A This is an outgoing wire transfer.
Q Okay. And what are Exhibits 32 and 34? And 36, I believe.
A Those are requests for one-way transfers.
Q And I forgot to ask you, what's 35?
A That's an outgoing wire transfer.
Q Could you explain how those documents figure into the wire process at San bank, wire request process?
A Exhibit Number 32 is where the wire transfer was put on and requested. And the other exhibit, I'm sorry?
Q My apologies. I'll ask you what -- let me ask you, specifically, how do 32 and 31 interplay with one another with regards to a wire transfer request?
A Number 32 is the request for the wire transfer, where it was put on the system and verified by a branch employee. And Number -- Exhibit Number 31 is the completed wire transfer, which would include the Fed. reference numbers. The Fed. reference number that we receive when the transfer is complete.
Q And can you explain that, also, for -- does that also

pertain to Exhibits 34 and 33?
A Yes, it does.
Q And what about Government's Exhibits 35 and 36?
A Yes, it does.
Q And are those records kept and maintained by Sanibel Captiva Community Bank in the ordinary course of business?
A Yes, they are.
Q And are these documents created at or near the time of the wire transfer request?
A Yes.

MR. REICHLING: At this time, Your Honor, the government would move what's previously been marked for identification as Government's Exhibits 31, 32, 33, 34, 35, and 36 into evidence.

THE COURT: Any objections?

MS. WAID: Yes, Your Honor. We would object to 35 and 36 based upon previous arguments made to the Court. And we can have a sidebar, if Your Honor wishes.

We would also object -- there's writing on these exhibits that we would argue would also be hearsay, Your Honor, and not part of a business record. At least not one that's been established yet.

MR. REICHLING: I can further clarify, Judge, if you'd like, with regards to the handwriting.

THE COURT: Doesn't matter to me. I'm going to rule.

But you may want to clarify.

MR. REICHLING: Thank you, Your Honor.

BY MR. REICHLING:

Q Can you explain the handwriting that's contained on 32, 34, and 36? What's the significance of it? Why is handwriting on that form?

A When the branch office receives a request for wire transfer, it's put on by one person, it's verified by a second person, the customer is called back for verification of that wire. So that's all stipulated on this Exhibit 36. And it goes back to the wire transfer department, which would be Exhibit 35.

Someone from the wire transfer department would then call over to the branch location to confirm the dollar amount of the outgoing wire, and then that would be released. And then once it's released is when you would get, for example, Exhibit Number 35, which would then contain the Fed. reference.

Q And would that also apply, the handwriting, to Exhibits 32 and 34, as well as the records that are created thereafter?

A Yes, it would.

Q Now, does Sanibel Captiva -- why does Sanibel Captiva Bank retain a copy of these handwritten -- these handwritten notes that are contained on that form?

A That's our authorization from our account holder to release the wire.

Q And are the individuals who receive that wire required to handwrite what the wire request is on those forms?

A Yes, they are.

Q And does Sanibel Captiva Bank retain a copy of those records?

A Yes, they do.

Q And are they kept in the ordinary course of business?

A Yes, they are.

MR. REICHLING: At this time, Your Honor, the government would move what's been previously marked for identification as Government's Exhibits 31, 32, 33, 34, 35, and 36 into evidence.

THE COURT: Any objections?

MS. WAID: Yes, Your Honor; we continue to object pursuant to the hearsay, but especially to 35 and 36 at this time.

THE COURT: Is there handwriting on 35 and 36 that's different than the others?

MS. WAID: No, Your Honor. If we could have -- it goes to a previous discussion with the Court.

THE COURT: All right. Let's see if we can get these things to work again.

AT SIDEBAR

THE COURT: All right. Can everybody hear me? Yes?

Yes?

All right. Ms. Waid, can you refresh my memory as to 35 and 36 and the basis for the objection?

MS. WAID: Yes, Your Honor. 35 and 36 have to with the 404(b) horse wire. It's not relevant as of yet because nothing has been entered into evidence, and the Judge has -- nothing has been entered into evidence, thus far, to make it relevant for 404(b).

MR. REICHLING: And, Your Honor, if I may, you've already issued a ruling pretrial that this was intrinsic evidence regarding the horse wire. I don't intend to portray any of these exhibits at this time. And, in addition, Your Honor, the documents that have handwriting on them, the witness has testified that this is done in the ordinary course of business with a wire request, as well as the government has the witness who wrote those handwritten records coming to testify in the next few witnesses as well.

MS. WAID: And we would object, Your Honor, still, that a proper foundation has yet to be laid.

THE COURT: All right. So Mr. Reichling's point, I'm not sure that my ruling that something that is not inadmissible makes it something that is admissible. So I don't think I've ruled on it. Anyway, I do recognize that it may take some additional witnesses to make all of these relevant; but, assuming the government can do that, the Court will overrule the objections, and I'll put them on the record in a minute but admit 31 through 36. And we can go off of the sidebar.

IN OPEN COURT

THE COURT: All right. The Court will admit Government's Exhibits 31 through 36.

(Government's Exhibits 31 through 36 admitted.)

(Mr. Reichling confers with Ms. Waid privately.)

(Counsel provides evidence to the witness.)

BY MR. REICHLING:

Q Miss Hollier, I've handed you what's previously been marked for identification as Government's Exhibits 44, 46, 48, 50, 110, 111, 112, 113, 114, 115, 116, 117, 118, and 119. Probably could have just said 110 through 119, but I wanted to be precise.

Could you look at these records; and, after you're done looking at them, could you just give me a look.

A I'm missing 110 through 113.

Q Oh.

(Mr. Reichling confers with Ms. Waid privately.

(Counsel provides evidence to the witness.)

BY MR. REICHLING:

Q I believe I've handed you Exhibits 110 through 113, as well. My apologies.

A Yes.

Q Are you done reviewing them, ma'am?

A Sorry?
Q Are you done reviewing them?
THE COURT: While she's looking at those, if you'd run down the exhibit numbers again for me, please?
MR. REICHLING: Yes, Your Honor. It's going to be Exhibits 44, 46, 48, 50, 110, 111, 112, 113, 114, 115, 116, 117, 118, and 119.
THE COURT: Thank you.
THE WITNESS: Okay.
BY MR. REICHLING:
Q Okay. Let me ask you, what are Exhibits 44, 46, 48, 50, 114, 115, 116, 117, and 118?
(Witness examines evidence.)
A These are all bank statements for the account ending in 8841.
Q And are those account statements between the months of January and September of 2020?
A Can you ask that question again?
Q Are they bank statements for the months of January through September of 2020 for bank account ending in 8841?
A Yes, they are.
Q You already stated this before, but how are those records kept and maintained again?
A Those are electronically stored on our server.
Q And are those records kept in the ordinary course of

Sanibel Captiva Bank's business?
A Yes, they are.
Q And are they fair and accurate copies of the same bank statements that are kept and maintained by Sanibel Captiva Bank for bank account ending in 8841 for the months of January to August of 2020?
A They appear to be.
MR. REICHLING: At this time, Your Honor, the government would move these exhibits, Exhibits 44, 46, 48, 50, 114, 115, 116, 117, and 118, into evidence.
THE COURT: Any objections?
MS. WAID: Your Honor, we don't object to the authentication as a business record by the witness. We maintain our objection to relevance as long as it's tied in, and that's going to go -- to quicken the process up, if it helps the Court, for all of the bank records that come in, we don't object to authentication via business record, we just object to the relevance portion that needs to be tied in through foundation of a witness.
THE COURT: All right. The Court at this point overrules the objection with regard to relevance, recognizing that I think the government still has more do in that area, but have to take it one witness at a time. So we'll see. If the government does not do that in your view, you may renew your objection to the exhibits, and we'll take it from there.

MS. WAID: Yes, Your Honor.

MR. REICHLING: And, Your Honor, if you don't mind, may I just briefly confer with defense counsel on the remaining exhibits that I was going to intend to introduce with this witness --

THE COURT: Sure.

MR. REICHLING: To verify if they have no objection to the authenticity of the bank record, that it can be entered into evidence as such, but subject to relevance, of course, later?

THE COURT: Don't talk to me. Talk to her.

MR. REICHLING: Thank you. May speed up the process.

(Mr. Reichling confers with Ms. Waid privately.)

MR. REICHLING: Your Honor, at this time the government would admit the remaining exhibits that are there before Miss Hollier, and let me get the numbers down. I believe they are going to be Exhibits 110, 111, 112, and 113. The government would be moving those into evidence now, I believe by stipulation, as business records.

THE COURT: How about 119?

MR. REICHLING: And 119, as well, Your Honor. My apologies. Thank you.

THE COURT: Miss Waid, same position as before, no objection to the authenticity or a business record, but is there an objection to relevancy at this point?

MS. WAID: Same position, Your Honor.

THE COURT: All right. The Court will, at least tentatively, overrule the relevancy objection. The Court will admit the following exhibits: 44, 46, 48, 50, and 110 through 119.

(Government's Exhibits 44, 46, 48, 50, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 admitted.)

MR. REICHLING: And, Your Honor, I believe the same is going to be the case with Government's Exhibits -- I think it's 99 through 103.

MS. WAID: No objection, Your Honor, to those, but the same standing objection that we've had in the past towards relevance.

THE COURT: That's fine. The Court will again tentatively overrule the objection with regard to relevance, the Court will admit Government's Exhibits 99 through 103.

(Government's Exhibits 99, 100, 101, 102, 103 admitted.)

MR. REICHLING: And I believe the same will be for Government's Exhibit 120, Judge.

MS. WAID: No objection to authentication, objection to relevancy.

THE COURT: All right. Same ruling. The Court will admit Government's Exhibit 120.

(Government's Exhibit 120 admitted.)

MR. REICHLING: And the last one, I believe, Your Honor, and I'll just verify, I'm sorry it's taking me a while, is Exhibit 148.

MS. WAID: Same objection, Your Honor.

THE COURT: All right. The Court's ruling to 148 will be the same. The Court will admit that.

(Government's Exhibit 148 admitted.)

MR. REICHLING: And, if Your Honor would like, I think we can do this later, these are all just documents that have been agreed to to be stipulated into evidence without any objections. And I can state them all for the record, if Your Honor would like, now. It's quite a few.

THE COURT: Are you going to use them with the witness at the moment?

MR. REICHLING: No, Judge, I'm not. But they're bank records. That's why I ask.

THE COURT: Your pleasure?

MS. WAID: Your Honor, we don't need to do that in front of the jury. We can actually do that later, and get them into the record so they can be utilized with the witness.

THE COURT: All right.

Let me explain to the jury that we have admitted and are going to admit a number of exhibits. They are not showing them to you now. Don't worry about that. At the end of the trial, all the exhibits that I have admitted will go back to you so you have a chance to take a look at them if you want. The lawyers may publish some of them as they go along, but the fact that they're physically not being given to you at the moment, don't let that bother you. All right?

Go ahead.

BY MR. REICHLING:

Q I just have two to three more questions.

Could you just explain what a signature card is?

A The signature card allows the bank to identify the signers on the account as well as certifying the tax identification number.

Q Okay. And could you explain what a score card is, or business score card is?

A A business score card is filled out at the time of account opening so we can establish a record of activity for the customer.

Q And what about a certificate of beneficial owners.

A It's a regulation that the bank identify anybody that owns 25 percent or more of an entity, as well as a control person.

Q Are these documents -- outside of the signature card, are these other documents typically executed with business account orders?

A Yes.

MR. REICHLING: Your Honor, I do not believe I have any further questions. If I can just have one moment.

THE COURT: You may.

(Mr. Reichling confers with Mr. Leeman privately.)

MR. REICHLING: The government is done, Your Honor.

THE COURT: All right.

Miss Waid?

MS. WAID: I can just ask from the podium.

THE COURT: Sure.

MS. WAID: I just have one question.

Okay.

CROSS EXAMINATION

Q Good afternoon, Miss Hollier.

A Good afternoon.

Q Did you have anything to do with the bank giving a loan to Target Roofing?

A No, I did not.

MS. WAID: Nothing further.

THE COURT: Any redirect?

MR. REICHLING: No, Judge.

THE COURT: You may stand down. Thank you.

(The witness left the witness stand and left the courtroom.)

THE COURT: You will may call your next witness.

MR. LEEMAN: Your Honor, I'm happy to. It will be a lengthy witness for the prosecution as well as for, probably, the defense. If are the Court wants to.

THE COURT: Well, it's only 4:30. I kept you a little bit long last night. My thought is we'll go until 5:00, and get this witness started.

Anyone that wants to knock off earlier?

All right. Let's start.

MR. LEEMAN: The United States calls Kyle DeCicco, Your Honor.

COURTROOM DEPUTY: Good afternoon.

THE WITNESS: Hello.

COURTROOM DEPUTY: Please raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give in the case now before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

COURTROOM DEPUTY: Thank you, sir.

If you would have a seat in the witness box, and, once seated, would you please state your name and spell that for the record?

THE WITNESS: Mask on or off?

THE COURT: Off if you feel comfortable.

THE WITNESS: Thank you.

My name is Kyle DeCicco. K Y L E, D E C I C C O.

MR. LEEMAN: May I inquire, Your Honor?

THE COURT: You may.

KYLE DECICCO,

called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q Mr. DeCicco, how are you employed?

A I am senior vice-president and senior loan officer of Sanibel Captiva Community Bank.

Q What does someone in your position do at that bank?

A I am part of the executive management team. I oversee lending for the institution among other management responsibilities at the bank.

Q How long have you been in that position as a senior vice-president?

A In that position specifically, about a year and a half.

Q All right. How about before that, what -- did you work for Sanibel Captiva Bank before that?

A For six years, in a commercial lending -- a senior commercial lending capacity.

Q How about other experience in banking before you got to Sanibel Captiva?

A I have been in banking since graduating school in '07.

Q All right. So you have a college degree, I'm assuming?

A Yes.

Q Okay. In what?

A Finance and management.
Q All right. Is it a bachelor's degree, master's degree, both?
A I have a double major, bachelor's in finance and management, from Florida Atlantic University.
Q All right. Can you tell the jury a little bit about SanCap as an entity? How big is it?
A Currently, we're a little over 700 million in assets. We have eight branch locations in Lee County. We serve our community here in Southwest Florida.
Q Okay. All the branches in Lee County?
A They are all here in Lee County; two on the Island of Sanibel, six off island. We employ about just over a hundred people.
Q What type of banking services does it provide, just on a high level?
A All consumer lending types, commercial lending opportunities as well. We do very minimal consumer car loans and loans like that, but mainly real estate derived lending here in Southwest Florida.
Q Are you familiar with something called the Federal Deposit Insurance Corporation?
A The FDIC? Yes.
Q Yes. You call it the FDIC?
A Yes.

Q Many people do. Is SanCap Bank insured by the FDIC?
A Yes, we are.

MR. LEEMAN: Your Honor, at this point in time I would like to introduce what I believe is a stipulation. I'll show it to Miss Waid.

THE COURT: You may.

(Mr. Leeman confers with Miss Waid privately.)

MR. LEEMAN: Your Honor, I'd ask the Court -- we have here a stipulation between the parties regarding the status of Sanibel Captiva Community Bank. It's marked as Government's Exhibit 171. I'd ask for it to be admitted, and permission to publish and read it to the jury.

THE COURT: I assume there's no objection?

MR. DICKERSON: No objection, Your Honor.

THE COURT: All right. 171 will be admitted and may be published.

(Government's Exhibit 171 admitted.)

MR. LEEMAN: Members of the jury, I'm going to read from you this document. It's titled, "A Stipulation regarding status of Sanibel Captiva Community Bank," and it states, "The United States of America and the defendant, Casey David Crowther, agree that the following matters are proven for all purposes in the trial and all further proceedings in the case of the United States versus Casey David Crowther, Case Number 2:20-CR-114-JES-MRM, and that no evidence need be offered or presented by the United States at trial or any further proceeding to prove the following:

"Sanibel Captiva Community Bank, referred to as, 'The Lender,' in the second superseding indictment, was, at all times material to the charges alleged in that filing, a financial institution with accounts federally insured by the Federal Deposit Insurance Corporation.

"So stipulated this 18th day of March, 2021," and signed by Miss Waid, Mr. Crowther, And myself.

I didn't publish it, I just read it to them. Your Honor. I'll put it up for ten seconds so you can read it yourself, how about that? I apologize.

Not working.

(There was pause in the proceedings while counsel for the government attempted to publish evidence.)

MR. LEEMAN: It's not working. I wouldn't harp on it except we're about to get into a bunch more exhibits.

Maybe we can move it to the table, Trent.

(Evidence was published via the projector.)

MR. LEEMAN: Thank you. We're just going to work it from the table. Mr. Reichling, if you'll work it for me.

Zoom in a little on the text, Mr. Reichling, if you would.

Okay. Thank you, sir.

BY MR. LEEMAN:

Q Mr. DeCicco, are you familiar with an individual named Casey Crowther?

A Yes, I am.

Q How do you know him?

A He's been a client of the bank since 2017, and I've known him personally, in town, since Fort Myers is a small town. He's approximately my age.

Q All right. And how long have you known him then?

A College years.

Q All right. And you're approximately how old?

A Thirty-six.

Q All right, sir. How would you characterize your relationship with Mr. Crowther?

A Strictly business relationship.

Q You two don't socialize?

A No.

Q During the week or on the weekends?

A No.

Q Are you familiar with his company?

A Yes.

Q What's the company called?

A Target Roofing and Sheet Metal.

Q And you're familiar with that company how?

A In 2017, that company came to my institution and we began a full banking relationship, with deposits and lending opportunities as well.

Q Okay. Does Mr. Crowther personally bank at your bank, as well?

A I believe he may have some personal accounts, or has had some at some time. I don't monitor -- in my position I don't monitor those level of accounts on a daily basis.

Q Are you familiar with any of his family members?

A Yes.

Q Do you know if any of his family members also bank at your bank?

A Yes.

Q Okay. Who are those?

A His father's company banks at my bank.

Q What's that company?

A CFS Roofing.

Q And any others?

A No.

Q All right. I want to get some type of a general relative size. Is Mr. Crowther, Casey Crowther, the defendant here, and his company, how would you characterize the size of their business relationship with the bank as a relative matter to others?

A Medium to large. His relationship requires . . . what we call in my -- at my bank, executive lending authority, so I can't personally sign a loan for a loan request for something like that for him. It has to be a decision by executive loan committee.

Q And that's a product of what?

A That's a product of lending size. Based on the relationship.

Q Is it because he's an important enough client to the bank because of the size of business he does with the bank?

A All customers are important, but once it gets over a certain dollar amount, it has to go to multiple lending -- or multiple signature authorities.

Q You're familiar with something called the PPP program?

A Yes.

Q How did you become familiar with that?

A Because of the CARES Act. In late March/early April of 2020, when it rolled out, it was my responsibility at the bank and my position to roll out and facilitate that program at the institution.

Q All right. That was a program that your bank elected to participate in?

A Yes.

Q Is the election to participate in that program voluntary, or were you required to do it by the government?

A I do not believe we were required to do it, but being an SBA eligible institution, it was worth our while to take part and do that for our institution itself and for the community. And for our customers.

Q Setting aside the community and the customers, what made it worth the bank's while to participate in PPP program?

A Financially, banks were incentivized by it being obviously a loan; and secondly, there is fee income associated with those loans.

Q Okay. Maybe explain a little bit what fee income means associated with the loans.

A The PPP program had a very low interest rate return in normal and general terms of a commercial loan -- lending opportunity. The interest rate was one percent, which is very low. So what the SBA PPP program did was the bank received a very large fee for originating those loans and for keeping those loans on their books during the time of -- until maturity or until the time of forgiveness.

Q So is it the fee that predominantly allowed the bank to earn money in the PPP program?

A Predominantly.

Q All right. From SanCap's perspective, how did the PPP funding of loans work?

Let me ask a better question.

Whose money was lent?

A The bank's money.

Q Okay. And what role did the SBA have vis-a-vis the bank

lending its money?
A The bank -- excuse me. The SBA gave the bank guidance based on the program.
Q All right. Let me ask you this. Did the SBA guarantee the loan?
A Yes. These were guaranteed loans by the SBA.
Q Fully guaranteed?
A Yes.
Q All right. In your role at the bank, it sounds senior. Is that fair to say?
A Yes.
Q How many people above you on the totem pole as it were?
A One.
Q All right. That being said, in your position, being that high, do you have contact Mr. Crowther about his banking activities directly?
A Yes. I would say that I'm his relationship manager. I oversee commercial lending, so, every commercial client at the bank, I have something do with the relationship.
Q All right. How do you speak with Mr. Crowther when you do talk to him business?
A Cell phone calls, text messages, e-mails. Combination of all three.
Q Is it fair to assume that that has happened on many occasions over the course of your relationship with

Mr. Crowther?
A Yes.
Q You're familiar with what his e-mail address is?
A Yes.
Q You're familiar with what his phone number is?
A It's in my phone.
Q It's in your phone?
Do you see Mr. Crowther in court here today?
A Yes.
Q Okay. Could you point to him and identify him by a piece of clothing?
A Blue suit, blue tie, blue shirt.
MR. LEEMAN: May the record reflect, Your Honor, that the witness has identified the defendant?
THE COURT: Any objections?
MR. DICKERSON: No, Your Honor.
THE COURT: It may so reflect.
MR. LEEMAN: Mr. DeCicco, was there ever a time when Mr. Crowther personally contacted you about applying for a PPP loan?
A Yes.
Q I want you -- in front of you there's a stack of exhibits. We have already gone through the first one, but if you'd pick up Government's Exhibit Number 19 and take a look at it.

A Yes, sir.
Q Do you recognize that?
A Yes.
Q Okay. Briefly describe what it is without stating its contents.
A Text message chain between myself and Mr. Crowther, April 1st. He is asking a question if we're going to participate in the program.
Q Okay. Just before you get into the specifics of what it says, is it a text message regarding the PPP program in some way?
A I'm assuming that's what he was talking about. That was the only program of its kind going on at the time.
Q Does it appear to be a fair and accurate copy of that text chain between you and Mr. Crowther?
A Yes.

MR. LEEMAN: Your Honor, I'm sorry, I didn't show it to defense counsel. Give me a moment.

MS. WAID: It's fine.

MR. LEEMAN: Your Honor, I would at this time ask that Government's Exhibit 19 be entered into evidence.

THE COURT: Any objection?

MR. DICKERSON: No, Your Honor.

THE COURT: Nineteen will be admitted.

(Government's Exhibit 19 admitted.)?-

MR. LEEMAN: May I publish it, Your Honor?

THE COURT: Yes.

(Evidence was published via the projector.)

MR. LEEMAN: Let's zoom in on the contents. And, Mr. DeCicco, I'd ask you if you could first let the jury know what was the date of this conversation?

A Wednesday, April 1st.

Q Okay. And there are blue text bubbles and gray text bubbles. Who is who?

A Mr. Crowther is blue, I'm gray.

Q And, just beginning at the top, we're going to read our way down. If you'd start from, "For this payroll".

A "For this payroll loan/grant, it says I need to apply through SBA approved lenders. Are you guys approved? If not, who should I do it through?"

My response: "Yes. I'll call you later. Get your average 12-month trailing payroll information in order."

He responds: "Okay."

"Lean on your payroll company if you use one," was my reply.

His reply was, "Will do."

Q Okay. Can you tell the jury what's going on when you're suggesting, "get your average 12-month trailing payroll info in order"?

A On that date, April 1st, that was very early in the PPP program being unleashed at that time. We were learning more information by the hour. I was mobilizing 30 to 40 employees at my bank to deal with it. I was taking phone calls from hundreds of employees who were all in the same type situation, asking if we were going to be prepared to -- if SanCap was going to be included to be able to apply at SanCap. So that was my focus.

What we did know at that time is that the loan amount was going to be based on payroll. So, essentially, get your payroll records in order meant that's how the calculations were going to work, that's how everything was going to work down the line. So that was a pretty important piece of it.

Q What did you do to sort of familiarize yourself with the program?

A I was reading the Interim Final Rules as they were coming out, I was reading the guidance provided by the SBA. Our correspondence at the SBA, everybody was sending us updates hourly, daily, as they came, so I was trying to read as much literature as it was being provided to us.

Q All right. Did Target Roofing ever submit an application for a PPP loan?

A Yes.

Q In front of you, you have Government's Exhibit Number 6. I'd ask you to pick it up, take a look at it, and tell me if you recognize it.

A I do.
Q What does it appear to be?
A This was the first application that was submitted to our institution for Target Roofing and Sheet Metal for the PPP loan.
Q Does it appear to be a true and accurate copy of that application?
A Yes.
MR. LEEMAN: Your Honor, at this point we'd ask that Government's Exhibit Number 6 be entered into evidence.
THE COURT: Any objections?
A No objection, Your Honor.
THE COURT: Number 6 will be admitted.
(Government's Exhibit 6 admitted.)
MR. LEEMAN: May I publish it, Your Honor?
THE COURT: You may.
(Evidence was published via the projector.)
MR. LEEMAN: If we could zoom in on the top of the document, maybe the top third. A little bit lower. Okay.
BY MR. LEEMAN:
Q All right. Mr. DeCicco, we've zoomed in on about the top third of that document. What is the business name who has applied for this loan?
A Target Roofing and Sheet Metal, Inc.
Q Okay. Does the application indicate an amount of loan

that is sought?
A Yes.
Q What is that amount?
A $1,480,722.
Q All right. And below that we see some radio buttons, or radio boxes I guess you could call them, with payroll, rent, utilities, and other. Could you explain what the purpose of those boxes are?
A That application was being completed by our borrowers, so they were the ones checking those boxes. It goes on in the application to discuss what the loan proceeds were for.
Q But those radio boxes are selected by the borrower?
A Yes.
Q And they refer to the purpose of the loan; is that right?
A Yes.
Q Actually, I'm going to zoom out of this application. I'd ask to focus on the bottom left-hand corner, the extreme bottom left-hand corner, of the document.
Mr. DeCicco, do you see where it says SBA Form 2483?
A Yes.
Q Do you have some general idea what that form is?
A The loan application form.
Q Is that something that's created by your bank or is that something that's created by another entity?

A That was created by another entity.
Q And this other entity is?
A I'm assuming the SBA.
Q Is this a form that you required borrowers in the Paycheck Protection Program to fill out?
A Absolutely.
Q And, by, "You," I don't mean you personally, but by SanCap Bank?
A Yes. That was the first step in the process.
Q I want to zoom back in to the top, just very quickly, on the second group of boxes there. And is an owner of the company listed, sir?
A Yes.
Q Who is that?
A Casey Crowther.
Q And what is his percentage ownership in the company?
A One hundred percent.
Q All right. I'd like to go to the second page of this document. And I'd zoom in at the top . . . dots. Those have a name. They're escaping me right now. Bullet points.
All right. Mr. DeCicco, I'd like -- you see where it says, "I represent that"?
A Yes.
Q Would you read the third bullet point down, please?
A "I represent that all SBA loan proceeds will be used

only for business related purposes as specified in the loan application."

Q All right. And then we're going to zoom out of that. We're going to go down to certifications and highlight maybe the first three. Do you see the sentence that begins, "The business in each 20 percent or greater owner must certify in good faith to all of the following below by initialing next to each one? Do you see that sentence, sir?

A Yes.

Q All right. If you might read into the record the first certification with the initials C.C. next to it.

A "Current economic uncertainty makes this loan request necessary to support ongoing operations of the applicant."

Q All right. And then second there, if you'd read the second certification with the C.C. next to it.

A "The funds will be used to retain workers and maintain payroll, or make mortgage payments, lease payments, and utility payments. I understand that if the funds are used for unauthorized purposes, the Federal Government may pursue criminal fraud charges."

Q Okay. And let's just go down to the bottom briefly. No, I'm sorry, the very bottom, just where the signatures are.

And there are the initials C -- well I don't know exactly what they stand for, but some type of an initials above the printed name beginning with a C; is that right, Mr. DeCicco?

A That's what I see.

Q And above the name Casey D. Crowther.

A Yes.

Q The date of this application is 4/1/2020, according to the document; is that right?

A Yes.

Q All right. Was that application ever approved?

A It was approved.

Q All right. I want you to pick up Government's Exhibit Number 15, if you will. Take a look at it and tell me if you recognize it.

A I do.

Q Okay. Without reading the contents, could you tell me what it is?

A E-mail correspondence between Casey -- Mr. Crowther and myself.

Q All right. Does it relate generally to the approval of a loan?

A Yes.

Q All right. Does it appear to be a true and accurate copy of an e-mail exchange that you had with Mr. Crowther?

A Yes.

MR. LEEMAN: All right.

Your Honor, at this time I'd ask that Government's

Exhibit Number 15 be entered into evidence.

THE COURT: Any objections?

MR. DICKERSON: No, Your Honor.

THE COURT: Number 15 will be admitted, and may be published.

(Government's Exhibit 15 admitted.)

(Evidence was published via the projector.)

BY MR. LEEMAN:

Q I want to start at the bottom of the e-mail. Mr. DeCicco. These e-mails sort of chronologically read from the bottom to the top; right?

A Yes.

Q All right. So let's start at the bottom of the page. Zoom in on the text there. What's the date on this e-mail, Mr. DeCicco?

A April 8th.

Q All right. And who is the sender?

A Mr. Crowther.

Q And are you one of the many recipients?

A Yes.

Q All right. Read the subject and the text into the record, if would you, please.

A "Subject, Target Roofing -- payroll loan." The body of the e-mail: "How is this coming around? Do you guys still need my operating agreement? Did we submit all this info to

Trump?"

Q And what's Mr. Crowther inquiring about there?

A He's, I assume, how is this coming around, at that time, with the timeframe, if we approved the loan on April 1st, we had ten days to fund the loan. So we were probably looking at . . . I'm assuming he wanted to know when the loan would be funded.

Q Okay. Let's look at the top e-mail and see if that refreshes your recollection of what's going on here. If you'd note the date of that?

A April 8th.

Q All right. And you are the sender?

A Yes.

Q Mr. Crowther is one of a few different recipients; is that right?

A Yes.

Q All right. Could you read the body of the e-mail?

A "Casey. You are approved by the SBA, sir. Please wait patiently while we finalize closing procedure, and our team will reach back out to you when we are ready."

Q Is that e-mail you notifying Mr. Crowther that the application we had just reviewed here in court had been approved, and the loan -- the loan would be approved?

A Yes.

Q Did Target Roofing ever submit a revised application for

a PPP loan?
A Yes.
Q All right. I want you to pick up Government's Exhibit Number 20, if you would. Take a look at it, and tell me if you recognize it.
A I do.
Q All right. Without revealing its contents, could you describe, generally, what it is?
A Conversation between Mr. Crowther and I.
Q Okay. Are you all discussing something about a PPP application?
A Yes.
Q All right. Does it appear to be a true and accurate representation of a text message chain between you two?
A Yes, it does.
MR. LEEMAN: All right.
Your Honor, at this point in time, I'd ask that Government's Exhibit Number 20 be entered into evidence.
MR. DICKERSON: No objection, Your Honor.
THE COURT: Number 20 will be admitted and may be published.
(Government's Exhibit 20 admitted.)
MR. LEEMAN: Let's zoom in on the top third of it.
BY MR. LEEMAN:
Q All right. Mr. DeCicco, the date, at least at the

beginning of this text chain, is what?

A April 13th.

Q All right. And we see blue and gray text bubbles. Could you identify the speaker in -- for each respective color?

A Mr. Crowther is blue. I am gray.

Q All right. Let's start at the top. We're just going to read our way down.

A "I think your PPP calculator is wrong. We are resubmitting ours now. Sorry man."

Q Okay. Let me just stop there. PPP calculator. What's your understanding of what Mr. Crowther was referring to there?

A Sanibel Captiva Community Bank had several different financial tools that we provided and systems that we provided to our borrowers and our clients to help them facilitate coming up with the correct amount to submit to the bank for the payroll protection program.

Q Okay. Go ahead and keep reading, if you would, from the gray text bubbles.

A "Okay. Submit to Kristin and I."

Q Who is Kristin?

A Kristin DiIorio is the branch manager at the downtown branch for Sanibel Captiva Community Bank. She was one of ten relationship managers that I used for this program to be . . . exactly that. The relationship manager, in this case, for Target Roofing. Because, in my position, for the PPP, I was too busy to handle all of the influx of customers.

Q Let's zoom in on the next -- I think the rest of it we can zoom in on, Mr. Reichling. All right. We're going to start with the text, "There is nothing." Go ahead and start reading into the record, please, sir.

A "There is nothing in here at all that says that we should deduct employee withholdings from the total. I don't even know how that would make sense." And then, later on, at 5:40: "Just resent mine."

My response: "You owe me. LOL."

His response: "Whatever you want. I'm team SanCap all the way."

My response: "I know. That's all I need. Keep up the good work."

His response: "Thank you. Appreciate dealing with us."

And, looks like the next day, I gave a thumbs up symbol.

MR. LEEMAN: Okay. Your Honor, I'm going to keep going until you ask me to stop.

THE COURT: Well, I've been trying to get your attention to see when you're going to stop.

(There was laughter in the courtroom.)

MR. LEEMAN: It's a good stopping point, Your Honor, for me.

THE COURT: All right.

Ladies and gentlemen, I think we'll break for the evening. 9:00 o'clock in the morning work for everyone? All right.

Again, my instructions, I'm going to repeat myself, do not discuss the case among yourselves, or allow anyone to discuss it with you or in your presence. Do not read anything or listen, to anything, or try and do any research on your own.

And finally, have a good evening.

(At 5:01 p.m., the jury was escorted from the courtroom.)

THE COURT: You may be excused.

(The witness left the witness stand.)

THE COURT: All right. Counsel, one thing I noticed on your Exhibit 6 for the government, and I believe, although it's not been admitted yet, Number 8, you have a number appears to be Mr. Crowther's Social Security number on there. And I would direct, if that is the case, you redact everything except the last four numbers.

MR. LEEMAN: We will, Your Honor.

THE COURT: All right. We'll be in recess until 9:00 o'clock.

-- -- -- -- -- -- -- --

(At 5:03 p.m., court was recessed, to be reconvened at 9:00 a.m. on Wednesday, March 24, 2021.)

-- -- -- -- -- -- -- --