UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,	) Fort Myers, Florida
	) Case 2:20-CR-114-FtM-66MRM
Plaintiff	)
	) Thursday, March 25, 2021
vs.	)
	) 9:03 a.m. to 2:59 p.m.
CASEY DAVID CROWTHER,	)
	) Courtroom 5D
Defendant	)

TRANSCRIPT OF JURY TRIAL

DAY 3 OF 4, VOLUME 3 OF 4

HELD BEFORE THE HONORABLE JOHN E. STEELE,

United States District Court Judge

Official Court Reporter:
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Fort Myers, FL 33901
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I N D E X

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DEFENSE EXHIBITS ADMITTED

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

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THE COURT: Good morning, everyone. Both sides ready for the jury?

MS. WAID: Yes, Your Honor.

MR. LEEMAN: Yes, Your Honor.

THE COURT: Have the jury step in, please.

Do you want to have your witness step in?

(At 9:05 a.m., the jury was escorted into the courtroom.)

THE COURT: Be seated, please. And good morning, ladies and gentlemen.

And I believe the government had finished their direct?

MR. LEEMAN: It had, Your Honor.

THE COURT: All right. To the defense, then, please.

MS. WAID: Thank you, Your Honor.

EVELYN PORTINARI,

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

CROSS EXAMINATION

BY MS. WAID:

Q Good morning, Miss Portinari.

A Good morning.

Q Please let me know if you can't hear me or if you don't understand a question, and I'll be happy too repeat it for you. Is that okay?
A Yes.
Q I want to just kind of refresh the jury's recollection. You are the human resources director for Target; is that correct?
A Yes.
Q And how long have you worked at Target Roofing?
A Two and a half years.
Q I want to start off with an overview of Target. What does Target do?
A We are a roofing company that primarily is in commercial roofing.
Q Okay. And is that here in Southwest Florida?
A Yes.
Q Is the building located on Ortiz Avenue?
A That is correct.
Q And would it be accurate to state that the building sits on approximately five acres of land?
A Yes.
Q And there are two buildings on that property, actually; that correct?
A That is correct.
Q Can you explain to the jury what are the two buildings

for?

A Sure. So there is the main building, where all of our clerical office staff works in. And then we have our sheet metal shop that's attached to the back of that building. And then there's a second building, which is a house, on the back of the property, that is used for inventory and storage.

Q Okay. And was it that house that you were actually discussing yesterday when you were talking about the administrative tasks being done by the hired workers?

A That's correct.

Q The main building that houses Target Roofing, would it be accurate to say that it's about 20,000 square feet?

A Yes.

Q Okay. And 8,000 square feet of that is the warehouse; correct?

A That sounds about right.

Q Okay. Or the metal fabrication shop that you discussed previously; is that right?

A Yes.

Q Okay. And there's about 12,000 square feet of office space; is that accurate?

A Yes.

MS. WAID: I'm going to show you what has been previously marked as Defense Exhibits A1 through A5. And we're just going to talk about them. I'm going to show them to you right now, and give copies to defense counsel and the Court first.

Permission to approach, Your Honor?

THE COURT: You may. Was that A1 through A5?

MS. WAID: Yes, sir.

THE COURT: Thank you.

(Counsel provides evidence to the witness.)

BY MS. WAID:

Q Let's start off with A1. Miss Portinari, what is A1?

A It's an overhead photograph of the property.

Q Okay. The property of Target Roofing?

A That's correct.

Q And is it fair and accurate depiction of the property of Target Roofing?

A Yes.

MS. WAID: Defense would move in Defendant's Exhibit A1.

THE COURT: Any objections?

MR. LEEMAN: No, Your Honor.

THE COURT: A1 will be admitted.

(Defendant's Exhibit A1 admitted.)

MS. WAID: Permission to publish?

THE COURT: You may.

MS. WAID: Thank you.

(Evidence was published via the projector.)

MS. WAID: The picture is going to show up there, Miss Portinari, and actually you're going to have it in front of you as well.

And for the record, Your Honor, I'm going to drop off a pen so she can mark on the exhibit for the jury. Is that okay?

THE COURT: That's fine.

MS. WAID: Thank you.

BY MS. WAID:

Q Okay, Miss Portinari. So this is Target Roofing, this is where you work every day?

A That's correct.

Q Well, Monday through Friday at least; correct?

A Correct.

Q And could you point out for the jury -- or put down -- point out, on this screen, kind of where your office is located?

A Currently or at the time?

Q At the time.

A It will be in this area here.

Q So, for the record, you are -- mark it -- can you please mark it on your picture? Yeah. Okay. And explain where it is to the jury so that --

THE COURT: I think there's a way of having her touch the screen and have it visible.

MS. WAID: I thought so too. That's what I was hoping would happen.

THE COURT: Let's check here. Yes.

(The witness places a mark on the projected image.)

THE WITNESS: About right here.

BY MS. WAID:

Q Okay. So that is where your office was located. And when we say at the time, we're talking about in the beginning of the pandemic, March/April 2020; is that correct?

A That's correct.

Q And did you have any windows in your office?

A Yes.

Q Okay. Can you show for the jury, on that picture, where is the warehouse you were talking about located?

(The witness marks on the exhibit.)

A Probably back in this section back here. So back here.

Q And for the record, on your picture, can you actually put W where that is located? And E for where your office is, please? And the house that we discussed, could you actually please put down -- mark and tell the jury where the house is that you were discussing?

(The witness marks on the exhibit.)

Q Okay. So -- and where do you park?

(The witness marks on the exhibit.)

A Closer up against the building.

Q So would it be accurate to say that your parking space sat least a football field away from the house that you were discussing where the administrative tasks were taking place?
A Yes.
Q Okay. Can you please put P, for park, on the record? And H for house? Okay.
And can you explain to the jury, what are all the trucks on the side of the building?
A Those are all our vehicles that are used on a daily basis.
Q Okay. And they're used for roofing.
A Correct.
Q Okay. For roofing projects and things of that nature?
A Correct.
Q And in the morning, can you show on this picture kind of where the workers and the crew members would kind of congregate to get together?
A It would be in this warehouse space back here. Back in here. They come through.
Q Okay. But are you normally there when the crew members first get there in the morning?
A No.
Q Okay. What time do the crew members normally get to work?
A About 5:30.

Q 5:30 in the morning?
A Yes.
Q And what time do you normally get to work?
A 8:00 a.m.
Q And, by the time you get to the office, are the crew members normally on their projects already?
A Yes.
Q Okay. So you wouldn't see them normally; correct?
A Correct.
Q Pre-COVID you wouldn't see them normally; correct?
A Correct.
Q All right. We're going to move on to A2, please. Don't -- just look at it first.
A Oh.
Q No, it's okay. On down by you, look at it. The one on the copy that I gave you. And can you please tell me what it is?
A It's photographs of all of our company vehicles.
Q Okay. And is that a fair and accurate depiction of your company vehicles?
A Yes.
MS. WAID: Okay. Defense would like to more in Defendant's Exhibit A2.
THE COURT: Any objections?
MR. LEEMAN: No, Your Honor.

THE COURT: A2 will be admitted.

(Defendant's Exhibit A2 admitted.)

MS. WAID: Permission to publish?

THE COURT: I'm sorry. If I admit it, you can publish it.

MS. WAID: Thank you.

(Evidence was published via the projector.)

BY MS. WAID:

Q All right. So this is actually the fleet of company cars for Target Roofing; is that correct?

A Yes.

Q Okay. And you would -- how many, at a normal time, employees does Target actually employ on the books?

A About 170, 180.

Q So 170 and 180 people at any given time; correct?

A Yes.

Q Okay. And would you be able to identify all 170 to 180 employees?

A No.

Q Would you be able to identify a hundred of those employees?

A No.

Q Would you be able to identify 50 of those employees?

A Yes.

Q Okay. And some of the 50 actually work continuously for

Target; isn't that correct?
A Yes.
Q But there are many, many other employees who kind of come and go; is that right?
A Yes.
Q I'm going to have you look at your picture A3 and tell me what that is.
A That's the hallway.
Q Okay. The hallway of Target Roofing?
A Yes.
Q And that's the inside building on Ortiz; correct?
A Correct.
Q Is that a fair and accurate depiction of what the building looks like?
A Yes.
MS. WAID: We would like to admit Defendant's Exhibit A3.
THE COURT: Any objections?
MR. LEEMAN: No, Your Honor.
THE COURT: A3 will be admitted.
(Defendant's Exhibit A3 admitted.)
(Evidence was published via the projector.)
BY MS. WAID:
Q Okay. So this is the hallway that you were discussing; is that right?

A Yes.
Q Okay. And was your office located on this hallway?
A Yes.
Q Can you point out where your office was located?
(The witness marks on the exhibit.)
Q Okay. And, for that, can you just put O for me on your piece of paper? Sorry, I know it's a lot of work.
Okay. Thank you.
And this is kind of a view down the entire length of the building that we saw in A1; is that accurate?
A Yes.
Q Okay. And, during COVID, is this pretty much what that hallway looked like?
A Yes.
Q Were you required to keep your door shut?
A Yes.
Q And were you required to stay in your office?
A Yes.
Q And were you told not to co-mingle with co-workers?
A Correct.
Q Can you please look at A4? What is it?
A It's a picture of the warehouse shop area where we do the metal fabrication.
Q Okay. And is that a fair and accurate depiction of what the warehouse looks like?

A Yes.

MS. WAID: We'd like to admit Defense Exhibit A4 at this time.

THE COURT: Any objections?

MR. LEEMAN: No, Your Honor.

THE COURT: A4 will be admitted.

(Defendant's Exhibit A4 admitted.)

(Evidence was published via the projector.)

BY MS. WAID:

Q So this is the warehouse; correct?

A Correct.

Q And this is where you were stating that the workers, in the morning, normally gather to go about their business; is that accurate?

A Correct.

Q And even though you're not there in the morning, you know that this is where they will come in and go during the day, in and out; right?

A During the morning? Yeah.

Q Okay. Do you normally go down to the warehouse?

A No. Not very often.

Q Okay. Would you have any reason to go down to the warehouse?

A Maybe if I was looking for time sheets.

Q Okay. But for the most part you stay in the main office

section of Target; is that accurate?
A Correct.
Q And that is somewhat segregated from the warehouse section.
A Correct.
Q Okay. The last one. We're looking at A5. Can you tell me what that is?
A It's an overhead picture of the building and the property.
Q When you stay building, are you talking about Target Roofing?
A That's correct.
Q And is it fair and accurate depiction of Target Roofing? The premises?
A Prior to us moving into the building, yes.
Q Okay. And why do you say prior to you moving into the building? What's changed?
A There's construction trailers out there which we were working in originally.
Q We'd like to admit Defense Exhibit A5.
THE COURT: Any objections?
MR. LEEMAN: No, Your Honor.
THE COURT: A5 will be admitted.
(Defendant's Exhibit A5 admitted.)
(Evidence was published via the projector.)

BY MS. WAID:
Q Okay. So this gives an overview of the premises of Target Roofing; is that accurate?
A Yes.
Q Okay. And, when you first moved in, you said there were trailers. Can you tell me where those trailers were?
(The witness marks on the exhibit.)
Q Okay. And those trailers were actually full of documents; is that correct?
A No.
Q What were they filled with?
A Those trailers we were working out of.
Q Oh.
A We had each division working in them. The trailer that held all the documents is actually not in this picture.
Q Okay. And when you -- why did you need a trailer with documents and things of that nature? Can you explain that to the jury?
A Sure. We needed it because we had all of them working in those construction trailers; and, as we added more staff, we started running out of space to hold people. So we got a storage container that we started moving documents into to relieve space so that we could work within those trailers.
Q Okay. And where would that storage trailer be located?
A It was right here.

Q Okay. And that's because you actually moved into this new building; correct?
A Correct.
Q So this is actually new construction that you were building at the time; is that right?
A Correct.
Q And where was target located prior to that?
A We were on Crystal Ave.
Q And so you moved from Crystal Ave to build this new construction on Ortiz Avenue; correct?
A Correct.
Q And you moved all of your materials, and documents, and everything into the Ortiz Avenue space; is that accurate?
A That's accurate.
Q Can you please, for the record, mark down on your picture H for where the house is? And show the jurors where the house is as opposed to . . . .
(The witness marks on the exhibit.)
Q And what was in that house?
A At that time, it was inventory.
Q Okay. Thank you.
All right. Now, I want to talk to you a little bit about the construction business; all right? So you work in the roofing industry; correct?
A Correct.

Q Okay. And how long have you worked in the roofing industry?
A Two and a half years.
Q Okay. So just while were you at Target; correct?
A Correct.
Q All right. And, in the roofing industrial, would it be accurate to say that there are new hires every day?
A Not every day, but often.
Q But often; okay. And some roofing projects can last two days.
A Correct.
Q And some roofing projects can last months; correct?
A Correct.
Q All right. And sometimes you need two people for a roofing project; right?
A Only if it was service work would it just be two people. Otherwise it's a crew.
Q A crew. And sometimes that crew could be as big as 70 people.
A Yes.
Q So you're the head of human resources. You're the director of that. So it's gotta be hectic when you get large groups, would that be an accurate statement?
A Yes.
Q And oftentimes the payroll is going to fluctuate; is

that accurate?
A That's correct.
Q Because you are in charge of payroll as well; is that right?
A Correct.
Q And do you agree that many of the crew members hired by Target are Hispanic immigrants?
A Yes.
Q And isn't that true for most construction companies in Southwest Florida?
A Yes.
Q Okay. And isn't it true that these crew members often jump from company to company, wherever a project may pop up?
A Yes.
Q And would it be accurate to state that many of these crew members will actually travel through a state in order to get work?
A Yes.
Q Now, do most of these crew members that you've actually employed have driver's license?
A No.
Q And can you explain to the jury kind of what the process is to gather documentation from the workers?
A So when they come in to fill out their new-hire applications, they know that they need to bring proper

documentation that will be gathered and then brought to me, and I'll make photocopies, double check all of the paperwork, and then submit to the payroll company.

Q Okay. And, for the most part, do most of the crew members speak English?

A No.

Q Do they read?

A No.

Q Often do they need assistance from wives or girlfriends to assist with fill out the paperwork?

A Yes.

Q Do they often need assistance from HR to fill out paperwork?

A Yes.

Q And you actually have employees who work for you; correct?

A Yes.

Q And how many employees work in the HR department?

A At any given time, one. Sometimes two.

Q Sorry. I didn't mean to cut you off.

A At any given time, one. Sometimes two.

Q Underneath you.

A Yes.

Q So two to three people are in the work HR department; is that correct?

A Yes.
Q And, pre-COVID, would the HR department assist with filling out paperwork and things of that nature?
A Yes.
Q And, post-COVID, after the precautions were put into place, or safeguards put into place so there was minimal contact between anybody inside, the internal staff and outside crew members?
A Yes.
Q I'm going to draw your attention to March, 2020. Can you explain to the jurors kind of what the financial situation was at Target Roofing late December?
A Yes. In late December, we were coming into a pretty slow period. We didn't have a lot of work on the books for quarter one. We knew we had some big projects coming up, but it wasn't going to start until second quarter. So, in December, we did a pretty large layoff of about . . . I don't know, 50 to 60 people.
Q Okay. And then what about January, 2020?
A January, we were slow.
Q February, 2020?
A February, 2020, we did another layoff.
Q Okay. And then COVID hit; correct?
A Yes.
Q And was the company concerned about losing some of its

largest projects?
A Yes.
Q And at that time that COVID hit in March, 2020, were construction sites being shut down?
A Yes.
Q And were inspectors -- they stopped inspecting sites for a period of time?
A That's correct.
Q And was the management team at Target concerned about the financial condition of the company?
A That's correct.
Q Did the management team have a meeting about the Paycheck Protection Program?
A Yes.
Q Okay. And can you tell the jurors what was discussed at that meeting?
A It was just discussed that the Paycheck Protection Program was going to be coming out, and that we were going to be applying for it.
Q Okay. And what was the reason that you were going to be applying for that money?
A For payroll.
Q For payroll. Okay. And it was to maintain employees; correct?
A Yes.

Q And, with that payroll monies, PPP money, would you be able to rehire employees?
A Yes.
Q Did you assist in the application process?
A Yes.
Q Did you gather documentation to actually submit to the Sanibel Captiva Bank?
A Yes.
Q And, as part of that documentation, did it include payroll records?
A Yes.
Q And was the reason that it included payroll records so that you could estimate how much payroll you would need to pay over, at first, an eight-week period?
A Yes.
Q All right. Would you state that, when -- would it be accurate to state that, when COVID hit, kind of you changed, quote unquote, your normal operations at Target?
A Yes.
Q So the crew members, who were the ones that were kind of gathering in the warehouse and things like that pre-COVID, did they come into the main office building often?
A Not really. They would, but not all the time.
Q Okay. And, post-COVID, were crew members actually allowed to come into the main office building?

A No.
Q And you took serious precautions, and implemented new policies at Target, in order to deal with the pandemic; is that accurate?
A That's accurate.
Q Okay. And masks were required?
A Yes.
Q Lots of hand sanitizer.
A Yes.
Q Everyone needed to stay six feet apart; correct?
A Yes.
Q And you were actually instructed to stay in your own office; is that accurate?
A That's correct.
Q And to the point where, even though many of you were working from the office still, you actually had Zoom meetings from your own offices; is that accurate?
A That's correct.
Q Okay. And normally, on those Zoom meetings, you were including internal staff; is that right?
A Yes.
Q Usually that would just include the management team. Is that accurate?
A Yes.
Q And is that who would normally be involved in any type

of management meeting?
A Yes.
Q Okay. Would it be fair to say that you were, as we all were, extremely concerned about COVID?
A Yes.
Q And, as was Mr. Crowther.
A That's correct.
Q All right. And so did Mr. Crowther then kind of take on certain tasks in order to minimize contact between all of the staff members?
A Yeah.
Q Okay. And some of the policies that we actually changed at Target were some people telecommuted from home; correct?
A Some people.
Q Okay. Like who?
A The sales staff did.
Q All right.
A Because we weren't able to get them their own space so that they weren't in cubicles.
Q Okay. And there were -- oh, and they worked in the cubicles, kind of at the end of the building; correct?
A Correct.
Q So, for the record, that would be down almost by the warehouse, right in front of the warehouse.
A Correct.

Q Okay. And a lot of -- some of the duties that employees could perform from home would include marketing; correct?
A Um-hum.
Q Sales; correct?
A Yes.
Q Speaking to customers to allay their fears.
A Yes.
Q Talking to building inspectors to see when building inspections would be back up on site; correct?
A Yes.
Q Talking to vendors?
A Yes.
Q Okay. And trying to find materials because, at that time, isn't it true that the materials kind of dried up, and it was difficult to get roofing materials at that time?
A Yes. I remember that being mentioned.
Q Okay. Also, kind of the drafting of projects could be something that could be performed at home, as well.
A Yes.
Q Now, you state -- we had discussed earlier how the members of -- a lot of the crew members are Hispanic immigrants; is that right?
A Yes.
Q And in early March/April 2020, even into May, 2020, there was a large COVID outbreak in the Hispanic community; is

that accurate?
A That is accurate.
Q And this caused additional concern for Target employees; correct?
A Yes.
Q And it placed employees at a higher risk.
A Yes.
Q And it actually turned out to be a legitimate concern; correct?
A Yes.
Q Because Target had a COVID outbreak; is that right?
A Yes, we did.
Q And was it once or twice?
A During that timeframe, it was once. That lasted a few -- quite a few weeks. And then we had a second one recently.
Q Okay. And employees were actually hospitalized.
A They did go to the hospital.
Q Okay. And, because of that, then there were actually more stringent policies and procedures put into place; isn't that accurate?
A Yes.
Q Okay. And it's not that you weren't doing your job as human resources director, it was that you were instructed to stay in your office; correct?

A That is correct.
Q And you were instructed not to speak with workers for your own health; is that right?
A That is correct.
Q Okay. But you continued to actually . . . receive the information, the I-9 forms and the documentation; correct?
A Yes.
Q And you continued to do payroll; correct?
A Yes.
Q So you continued to do your job responsibilities; is that right?
A Yes.
Q You were just -- you were just isolated at the time.
A Correct.
Q Okay. And during that time many of us were isolated. Correct?
A Yes.
Q Okay. But the employees there at Target, specifically because of those outbreaks, there were much more stringent requirements; is that accurate?
A That's correct.
Q So, because of that, would you agree that Mr. Crowther tried to keep contact between employees down to a minimum?
A Yes.
Q And he would take on tasks that he might normally not

have handled so that internal staff had minimal contact with the outside crew members.
A Yes.
Q And you stated earlier that, often, crew members need assistance with filling out paperwork. Is that accurate?
A Yes.
Q And does Mr. Crowther speak Spanish?
A Yes, he does.
Q And all right. And was this a task that Mr. Crowther could have taken on to keep contact minimum amongst employees?
A Yes.
Q Because, as the owner of the company, it's Mr. Crowther who's responsible for the safety of his employees. Is that accurate?
A Correct.
Q Okay. And he took these precautions in order to keep his employees safe.
A Correct.
Q All right. Now, yesterday Mr. Leeman talked to you a little bit about -- and I think you -- Casey Crowther special projects; is that right?
A Yes.
Q Okay. And would it be accurate to say that, during natural disasters, Casey Crowther did take on special projects for Target?

A Yes.
Q Okay. Now, you weren't employed with Target during Hurricane Irma, were you?
A No, I was not.
Q But you were employed with Target during Hurricane Michael; is that right?
A Yes.
Q And Hurricane Michael hit the Florida panhandle in 2017; is that right?
A 2018.
Q 2018. Sorry. I can't remember what today is. In 2018. And it actually devastated the Florida panhandle; is that accurate?
A Yes.
Q And what did Mr. Crowther do when that happened?
A He took a team of people up to Panama City, and they set up . . . a camp up there, with different trailers, to roof up in that area.
Q Okay. And did they live in those trailers?
A Yes, they did.
Q For approximately how long?
A It was a while. Five or six months maybe?
Q Okay. So you would agree that this would be a special project that the owner of the business took upon himself.
A Yes.

Q All right. And, when the pandemic hit, did Mr. Crowther respond to that disaster as well?
A Yes.
Q All right. He rehired the workers.
A Yes.
Q And that was with the PPP money.
A Yes.
Q He employed new workers.
A Yes.
Q He maintained the workers that he had.
A Yes.
Q And you some of the -- he also employed some family members.
A Yes.
Q Okay. And is it unusual for a family business to employ family members?
A In my history, no.
Q Especially during a global pandemic.
A Yes.
Q Okay. And, during that time, in order to actually employ more people in the community, Target Roofing took projects on, it reduced prices. Is that accurate?
A That was discussed, yes.
Q Okay. And because the intent of getting that PPP money was for what reason?

A To employ our employees and make sure that they were paid.
Q And that's exactly what happened; correct?
A Yes.
Q And you actually handle the payroll, correct?
A Correct.
Q And so you know that those employees got paid.
A Yes.
Q I want to talk a little about these 39 workers that were discussed yesterday. So these 39 workers were hired because you were trying to bring on jobs on for workers in the community; correct?
A Yes.
Q And you stated 20 or the 39 were used for administrative functions; is that right?
A That's correct.
Q And the remaining 19 were roofers.
A Yes.
Q Okay. And you could only hire so many roofers at that time because sites were still down; is that right?
A I believe so, yes.
Q Okay. Now, you stated in your testimony yesterday that many of the workers were kind of shredding documents.
A Correct.
Q And you stated also, earlier in your testimony today,

that you had just moved into a new facility onto Ortiz; is that is correct?

A Yes.

Q And we viewed that facility in the photos that I showed you earlier; is that right?

A Yes.

Q And so when you moved from that facility, would it be accurate to say that you had documents and things that you needed to get rid of?

A Yes.

Q Okay. And, like many of us did during the pandemic, did Target decide to actually take on tasks they hadn't done before, and do some kind of spring cleaning?

A Yes.

Q All right. And were these workers hired to kind of clean out all of the old documents, and things of that nature, from those trailers at that time?

A They had already been moved from the trailers out to the house, but yes.

Q Okay. So that's an excellent point. Thank you for reminding me. So they're originally in trailers; correct?

A Yes.

Q And then they were -- the documents had been moved into the house; is that right?

A Yes.

Q So the house where we had on -- the H on, behind the . . . let's just pull that up. Can you pull up A5, please? Just so we're clear where that house was located. Can you point to where the house is located on there?

(The witness marks on the exhibit.)

Q Okay. And so the workers were hired to kind of -- the documents were located, then, in the house.

A Yes.

Q Okay. And those workers were hired to kind of clean -- shred those documents, clean that house; correct?

A Correct.

Q And then they were actually asked to do additional tasks, such as kind of renovate, and help bring that property up to code; is that accurate?

A I'm not sure on all those specifics.

Q Okay. What is . . . what is your payroll company's name?

A Work Force Business Solutions.

Q Okay. At that time, correct?

A Correct.

Q Okay. And do you know a man named Mario Curia?

A Yes.

Q Who is he?

A He handles the worker comp aspect of things. Worker's comp.

Q And so is he an investigator? What does he do for you?
A So he'll come out from time to time, and he'll go out and inspect job sites. As far as my work with him, he's worked with me whenever we've had to change people's worker's comp codes, or go over to make sure that everybody is classified in the correct codes.
Q Okay. And would Mr. Curia normally conduct inspections at Target?
A Yes.
Q Okay. How often?
A I'm not sure. Our director of operations handled that more than I did.
Q Okay. And for what reasons was he doing that?
A On behalf of the payroll company.
Q Okay. Do you recall if Mr. Curia conducted any on-site inspections of Target in May, 2020?
A Yes.
Q Okay. I'm going to show what you has been marked as Defense Exhibit K.
(Counsel provides evidence to the witness.)
MS. WAID: Permission to approach?
THE COURT: You may.
MS. WAID: And permission to approach the witness?
THE COURT: You may.
MS. WAID: Thank you.

(Counsel provides evidence to the witness.)

BY MS. WAID:

Q Miss Portinari, can you tell me what that is?

A An inspection report that was given to our director of operations.

Q And are these inspections conducted as part of Target's regular course of business? Sorry. I apologize.

Are these inspections conducted as part of Target's regular course of business?

A Yes.

Q And are these reports maintained by the company in the regular course of business?

A Scott maintains them. How they're maintained I'm not specifically sure of.

Q Can you tell me what the date of that is?

A May 19. But the audit was completed on May 18th.

Q Okay.

A Of 2020.

Q All right. And do you recall Mr. Curia coming to . . . to Target to do an inspection on May 18th, or do you recall him being there around that time?

A Yes.

Q Okay. And that was during COVID.

A Yes.

Q All right. And do you recall him stating that he was there because of the administrative title provided to some of those workers?

MR. LEEMAN: I'll object to hearsay, Your Honor.

THE COURT: Sustained.

BY MS. WAID:

Q But you saw Mr. Curia at your office; correct?

A Mr. Curia met with me.

Q Okay. In your office. In regards to an inspection of the property; is that accurate?

A In regards to the question of the description of those workers on the worker's comp code.

MS. WAID: Okay.

Momentarily, court's indulgence, Your Honor.

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

BY MS. WAID:

Q So it was your understanding at that time that Mr. Curia came to Target to discuss the administrative code; is that accurate?

MR. LEEMAN: Objection, calls for hearsay.

THE COURT: Sustained.

MS. WAID: All right.

BY MS. WAID:

Q So Mr. Curia was on the property of Target in May 18/May 19; correct? May 18, I'm sorry.

A May 18, yes.

Q And, after he was at the property on Target, was he in the building?
A Yes.
Q Okay. Did he come to see you first?
A Yes.
Q And then where did you take him?
A To Scott Ewins, our director of operations.
Q Okay. And do you know where he went after he met with Mr. Ewins?
A No.
Q But, after your conversation regarding administrative issues, did you receive any type of complaint from WSB?
A WBS?
Q WBS, sorry.
A No. They just had questions, and they said that Mario would be coming out.
Q Okay. And then Mario came out.
A Correct.
Q And, after Mario was actually in the building, he left.
A Correct.
Q And, after that, after he left the building, did you receive any complaints from WBS about administrative tasks?
A No.
Q And they didn't send you any paperwork stating that there was any issues with your administrative coding?

A No.
Q And you never heard about that administrative issue again?
A No.
Q Okay. There comes a time when Congress changed the rules from eight weeks to 24 weeks; is that accurate?
A Yes.
Q Okay. When I say they changed it from eight weeks to 24 weeks, originally Target only had eight weeks to spend the payroll; correct?
A Yes.
Q And then Congress changed it to 24 weeks to spend the payroll; is that right?
A Yes.
Q And you were closely following those rules and regulations because you were concerned about how payroll was going to be spent; is that right?
A Yes.
Q Okay. And the target number -- sorry for the pun -- the target number that you were trying to reach in payroll expenditures was 2.1 million; correct?
A Yes.
Q Because that's actually the amount of the loan from Sanibel Captiva Bank; is that accurate?
A Correct.

Q And so when Congress all of a sudden switches it up and changes the rules, you have to change your strategy as well.
A Correct.
Q Okay. Meaning you kind of -- at this point in time, prior -- during the eight weeks, you were trying to expend that money to employees; correct?
A Correct. The company was.
Q You were taking projects at lower prices.
A Yes.
Q You were spending a lot of money on overtime.
A Yes.
Q Okay. And that was in order to get those projects done.
A Yes.
Q And you had done special projects that you normally wouldn't hire people for, but you were doing it because you wanted to employ members of the community.
A Yes.
Q So, when they switched it to 24 weeks, you decide it may be time to slow down a little bit and take a look at your finances; is that accurate?
A Yes.
Q And you decided it might be better to make better decisions for the company long term, because you now had 24 weeks, and you needed to spend that payroll on your employees; is that accurate?

A Yes.
Q So you decided to cut back on overtime?
A Yes.
Q And raise the price of your projects so that Target could actually generate a little bit of profit?
A Yes.
Q All right. And these changes were actually made so that you could keep the jobs of the workers who were regularly employed at Target; is that right?
A Yes.
Q Okay. So you let go of the additional workers that you had hired during that eight-week term; correct?
A Yes.
Q Not all of them. Correct?
A Correct.
Q And you let go of the family members, as well; is that right?
A Yes.
Q Okay. And how many -- and so when all of these people actually were let go, they were let go on the same day; is that right?
A Yes.
Q And that day was chosen because it's the last date of the pay period; is that accurate?
A No. It was chosen because that was the last day that

they received a paycheck from Target.
Q Okay. Thank you for the clarification.
All right. So I want to talk a little bit about checks. Was it unusual for workers to not pick up checks?
A No.
Q All right. And approximately how many checks -- you know -- over the past two weeks have not been picked up?
A We had a container full of them. Like a file container.
Q And could you give me an approximate number as to how many those would be?
A I mean there were a good amount in there.
Q Good. Over a hundred?
A Probably, yes. Yes.
Q Okay. And what do you do with checks that aren't picked up?
A What I've been doing is just holding onto them.
Q Okay. And, most recently, did you -- you stated yesterday in your testimony that you actually submitted them to the State of Florida --
A Yes.
Q -- correct? And you stated you submitted them to the State of Florida because they are considered, quote unquote, unclaimed funds; is that right?
A Yes.
Q And does that mean that the -- so Target does not keep

that money; correct?
A No.
Q All right. The State of Florida actually takes that money in the event that somebody's going to come claim those checks; correct?
A Yes.
Q And Target, in fact, loses money on that transaction; is that right?
A Yes.
Q Okay. Let's look a little bit at the I-9 documents that you kind of -- we discussed at length yesterday. Just so the jurors remember, kind of what is an I-9?
A It's a document that you, as an employee, fill out, stating that you are eligible to work within the United States.
Q Okay. Now, I'm going to venture a guess that you are not a fingerprint expert; correct?
A No.
Q Okay. Okay. But, as the HR director, you do know the law surrounding hiring employees; is that accurate?
A Yes.
Q Okay. And the laws state that it is actually the responsibility of the employee, not the employer, Target, to accurately fill out the Form I-9; is that right?
A Correct.
Q And it is also the responsibility of the employee, not

employer, to provide proper documents for identification and work authorization; correct?

A Correct.

Q Okay. And, when the employer receives the I-9 and the documentation, it is Target's obligation to review the documents; correct?

A Yes.

Q And accept them if they reasonably appear to be genuine and relate to the individual presenting them; correct?

A Correct.

Q In other words, you are not required to be an expert in reviewing the forms that determine authenticity of those documents.

A Correct.

Q And have you rejected potential applicants before?

A Yes.

Q Okay. Can you just give -- give an example to the jury of when that might have been?

A I had an employee come to to us, that I can think of off the top of my head, with documents that I knew did not belong to him.

Q Okay. And what did you do when that happened?

A I told him he was not eligible for hire.

Q Okay. But you actually have to be careful when rejecting applicants as an employer, don't you.

A Yes.
Q Because the federal laws also -- there are laws governing I-9s that contain antidiscrimination provisions. Right?
A Yes.
Q And if Target engages in unfair documentary practices during the I-9, discrimination, Target could be investigated and civilly prosecuted for discrimination by the Department of Justice; isn't that accurate?
A Yes.
Q Okay. Once an I-9 form is completed, and the documents are gathered, what do you do with those documents?
A They're put -- the documents -- the identification documents are put in their personnel file, and the I-9s are in a separate binder that they're contained in.
Q Do you submit them to a government agency?
A No.
Q So you just hold onto them.
A Yes.
Q And they sit in the Target filing system.
A Yes.
Q In other words, completed I-9 forms remain in the personnel files of the business indefinitely, without ever being reviewed by anyone; is that accurate?
A Yes.

Q What percent of the PPP loan did Target spend on payroll?
A All of it.
Q So all 2.1 million was spent on payroll; correct?
A Yes.
Q And, in fact, during the covered time period, Target spent over a million more than 2.1 million; is that right?
A Yes.
Q Okay. Did Target Roofing apply for forgiveness of that loan?
A No; not that I'm aware of.
Q So the 3.2 million in payroll paid during the covered period is actually going to be -- is being paid by Target Roofing; correct?
A Yes.
Q Okay. And now it's going to be paid with one-percent interest pursuant to the loan; is that accurate?
A Yes. If we don't receive forgiveness.
Q Yes, if with you don't receive forgiveness, correct, which Target Roofing hasn't applied for; correct?
A Correct.
Q And the owner of Target Roofing, technically that money is being paid by Mr. Crowther, as well; correct?
A Yes.
MS. WAID: No further questions.

THE COURT: All right. Thank you.
Any redirect?
MR. LEEMAN: Yes, Your Honor.
Madam Deputy, I would like to use the ELMO. Does the ELMO allow the witness to mark on the screen as well?
COURTROOM DEPUTY: I believe it does.
MR. LEEMAN: Thank you.
May I proceed, Your Honor?
THE COURT: You may.

REDIRECT EXAMINATION

BY MR. LEEMAN:
Q Miss Portinari, I'm putting up the Defense Exhibit A1. And if you'd point on the screen to where the 39 employees that were hired in May to shred papers and do roofing are.
A That picture was taken at Christmas, so they were not employed.
Q If the picture was taken in May, you wouldn't be able to do any better, would you?
A No.
Q What about Government's -- or, excuse me, Defense Exhibit A2? There's a bunch of trucks owned by Target Roofing; is that right?
A Yes.
Q Those trucks aren't registered in Casey Crowther's personal name, are they?

A I'm unsure.
Q When you go to work, do you bring a lunch with you, or do you go out to eat?
A Both.
Q Is there a lunchroom at Target Roofing?
A There's a break area.
Q Does it have a refrigerator in it?
A Yes.
Q Employees in the office put their drinks, or snacks, or lunches in that refrigerator?
A Yes.
Q When you -- during the coronavirus time, have you been bringing your lunch in, or going out to eat, or some combination of both?
A Both.
Q Did you ever see Margaret Crowther in the lunchroom during the time that she was employed?
A No.
Q Did you ever see Donald Peters in the lunchroom during the period that he was employed?
A Which Donald?
Q Donald Peters?
A No.
Q Did you ever see Danielle Crowther in the lunchroom during the time she was employed?

A No.
Q Is there a public bathroom, or there a bathroom for employees, in the office as well?
A Yes.
Q Do you have a bathroom in your own personal office or not?
A No.
Q So the bathroom is one shared by employees?
A Yes.
Q Did you ever see any of these individuals coming in or out of the bathroom during the time they were employed?
A No.
Q How about Mr. Crowther in May of 2020? Do you believe you saw him in the office during that time period?
A Yes.
Q Mr. Ewins is somebody who works for the company?
A Yes.
Q Did you see him in the office in May of 2020?
A Yes.
Q Mr. Caudill is somebody who works for the company?
A Yes.
Q Did you see him in the office in May of 2020?
A Yes.
Q So you were . . . . You weren't cloistered in your office, not seeing anybody at all. That's not true, is it.

A I was in my office, yes.
Q You were in your office for the majority of the time, like many Americans around the country; right?
A Correct.
Q But you weren't completely isolated in a way that you didn't see other people in the office.
A No; I would see people in the hallways.
Q In fact, it's sounds like you met with somebody from WBS; right?
A That is correct.
Q Okay. Now, as best as I understood your testimony, there was a single trailer that housed a bunch of documents that the company was storing; is that right?
A That's correct.
Q What kind of a trailer was that?
A It was a long construction Conex trailer.
Q Okay. Is it a type of a trailer where it might take 20 people three weeks to empty it out?
A I'm not sure.
Q Okay. I'm asking you reasonably, ma'am. Is there some reasonable belief that you might hold that that trailer held so much material that it would take three weeks for 20 people to clear it out?
A Probably not.
Q These 20 people were paid hourly; is that right?

A They were paid piece rate.
Q Piece rate?
A Correct.
Q What does that mean?
A It means it was a flat rate for the amount of work they got done.
Q They roughly made about a thousand dollars per week, it varied per person; right?
A Sure. Yes.
Q Twenty people, three weeks, roughly a thousand dollars per week. That's approximately how much money to shred paper in a trailer?
A 60,000.
Q Were you ever asked to price alternative ways to shred paper, perhaps hiring a company that comes out and picks all this stuff up and shreds it themselves?
A No.
Q Now, you made several comments about the company using PPP money to repay employees. What's your basis for stating that they actually used the money they received pursuant to the loan to repay employees?
A Well, I knew that I -- I processed payroll, so I knew that we were paying our employees and how much it was.
Q Okay. My question is different. My question is not how much the company paid on payroll during the time the PPP

program was about, my company -- my question was, because I understood your answer to be, and maybe I'm confused, that you said PPP funds were used to pay $2.1 million of payroll during the time period. Is that accurate, or do you not know?
A Well, we spent over 2.1 million in payroll, so that's what it was used for, was to pay --
Q Let me try to be more precise, ma'am. The money that was received from the bank, the PPP funds --
A Yes.
Q -- was that used to pay payroll? Those funds.
A Yes. As my understanding, it was to be used to be paid for payroll.
Q Do you have any personal knowledge of whether Mr. Crowther actually used some of those funds to purchase a boat?
A No.
Q Okay. So, if he did, then your statement that he used all of the $2.1 million to pay payroll would be inaccurate; is that fair?
MS. WAID: Objection, Your Honor. Speculation.
THE COURT: I lost the last word you said. Miss Waid?
MS. WAID: Oh. Speculation. I'm sorry, Your Honor.
THE COURT: Okay. I just didn't hear you. I'm sorry. Overruled.

THE WITNESS: Can you repeat the question, please?

BY MR. LEEMAN:

Q If Mr. Crowther used money directly from the bank from the PPP loan to buy a boat, then it wouldn't be accurate that he spent all of the money he received from the bank on payroll, would it.

MS. WAID: Objection, Your Honor. It's actually a legal analysis as to how we're determining earmarked funds or non-earmarked funds.

THE COURT: Overruled.

THE WITNESS: Can you repeat the question again, please?

MR. LEEMAN: Yes, ma'am.

BY MR. LEEMAN:

Q If Mr. Crowther used some portion of the PPP loan directly to buy a boat, isn't it true that all of that money was not then spent on payroll?

A That would be correct.

Q All right. This special project, I guess we're calling it, for Mr. Crowther, the shredding papers in this special batch of roofers who got -- whose paychecks were turned over directly to Mr. Crowther, that ended June 5th; is that right?

A That's correct.

Q Okay. The coronavirus is still going on; isn't that right?

A That's correct.
Q Mr. Crowther hasn't kept up this special way of getting paychecks to employees by providing them to himself during -- as the coronavirus has raged for more than a year now.
A That's correct.
Q Do you still have a copy of Exhibit K in front of you? It's the defense exhibit?
A Yes.
MR. LEEMAN: Okay.
Your Honor, may I inquire -- I actually lost my place. Was that entered into evidence?
THE COURT: Let me check. No.
BY MR. LEEMAN:
Q Well, Ms. Portinari, this was presented to you, and you all discussed it as a report that was generated by this individual who worked for Work Force Business Solutions; right?
A Yes.
Q An individual who used to come out and look at things, and check up on the company; is that right?
A Yes.
Q This report actually states --
MS. WAID: Objection, Your Honor. Not in evidence.
THE COURT: Sustained.
MR. LEEMAN: Thank you, Your Honor.

BY MR. LEEMAN:
Q This is a true and accurate copy of a report that was provided to the Target Roofing; is that right? From that company?
A It was provided to Scott.
Q It was provided to Scott?
A Um-hum.
Q Well, is it a true and accurate copy of something that was done by WBS?
A It appears to be.
MR. LEEMAN: Okay.
Your Honor, at this point in time I'd ask to introduce the defendant's own exhibit, Exhibit K.
MS. WAID: Objection, Your Honor. I didn't enter it into evidence. Lack of proper foundation. It is not a business record. No foundation has been laid out.
THE COURT: Sustained.
BY MR. LEEMAN:
Q This report, ma'am, purports to relate to a site inspection of a project in Naples, doesn't it.
MS. WAID: Objection, Your Honor, not in evidence.
THE COURT: Overruled.
A Yes.
Q It has nothing do with the site inspection of the Ortiz Avenue address for Target Roofing, does it.

A No.

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

MR. LEEMAN: May I have a moment with my notes, Your Honor?

THE COURT: You may.

MR. LEEMAN: I don't have any further questions for this witness.

THE COURT: All right. Thank you.

Any recross?

MS. WAID: Just briefly, Your Honor.

RECROSS EXAMINATION

BY MS. WAID:

Q Good morning again. Just briefly, how many break rooms does Target Roofing have?

A Just one area.

Q Is there another break room in the warehouse?

A Yes.

Q Okay. So more than one area actually. And there's an office break room.

A Yes.

Q Okay. And there are multiple bathrooms within the building; correct?

A Yes.

Q Okay. And there's actually bathrooms outside; correct?

A Yes.

Q Okay. And your office, do you actually have a refrigerator in your own office?
A In the HR office next door. I have two -- we have two HR offices.
Q All right. When you were speaking earlier -- and I just want to make sure I'm accurate about the 39 workers -- you testified that you weren't sure if they were assigned other tasks; is that accurate?
A Yes.
Q And it's normally the project manager who handles what new tasks would be performed; is that right?
A That's correct.
Q And you would not normally be involved in that process; is that correct?
A That's correct.
Q And, speaking about Mr. Curia, were you his -- he was your main contact; right?
A In regards to the worker's comp codes, yes.
Q And, on that date, it was your testimony that you met with Mr. Curia in the office; correct?
A Yes.
Q And then you actually directed him to Scott Ewins; is that right?
A Yes.
Q And Mr. Ewins, what's his job?

A He's the director of operations.
Q And would it be in the normal procedure for Mr. Ewin, then, to direct Mr. Curia to an actual work site?
A Yes.
Q Okay and he would then conduct another inspection of the actual work site where the workers were located; is that right?
A Yes.
Q And a lot of that was for OSHA regulation purposes; is that accurate?
A Yes.

MS. WAID: Nothing further, Your Honor.

THE COURT: Thank you.

Any further direct?

MR. LEEMAN: No, Your Honor.

THE COURT: You may stand down. Thank you.

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

THE COURT: You may call your next witness.

MR. LEEMAN: Lee Lefkowitz, Your Honor.

COURTROOM DEPUTY: Thank you. Good morning.

THE WITNESS: Good morning.

THE COURT: 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: I do.

COURTROOM DEPUTY: Thank you very much.

If you would please have a seat in the witness box. And, once seated, if you would state your name, and spell it. Thank you.

THE WITNESS: My name is Lee Lefkowitz.

LEE LEFKOWITZ,

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 If you could spell your last name, please, sir?

A It's L E F K O W I T J.

Q Good morning, Mr. Lefkowitz. Are you employed?

A I am.

Q By who?

A The Social Security Administration.

Q How long have you worked with the Social Security Administration?

A Twelve years.

Q And what is it that you do for the Social Security Administration?

A I investigate allegations of fraud. I am a trainer. I teach new employees. I coach them . . . regulations are constantly changing, so I have to advise them on that. And I also am a liaison with our congressional offices. When they have inquiry, they generally will send it to our office.

Q Can you give a basic description to the jury of how Social Security numbers are generated and assigned to people within the United States?

A They're generated three different ways. The first way is enumeration at birth, meaning when a child is born, usually somebody goes to the hospital and takes the baby's information and the information from the birth certificate as far as the biographical information, and sends it to Social Security, and we go ahead and assign the number and record all the biographical information.

The second way is enumeration at entry. If someone is coming in from a foreign country, I believe citizenship and immigration have the ability to record the biographical information from the country that they're coming from, and contacts Social Security, and we assign that person a number.

The third way is somebody actually comes to a field office and submits an application, provides their identifying documents as far as birth certificate or immigration documents, and we can assign that person a number.

Q Okay. Is every possible combination of Social Security numbers active at this time?

A I believe so.

Q Well, are -- a better question let me ask you, sir. Are

there certain numbers that the Social Security controls which are unassigned to any individual presently?
A There are quite a few numbers that are unassigned.
Q Okay. Understood. How does the Social Security Administration keep track of who is assigned a particular Social Security number?
A We use a system called personal communication. It actually stands for PCOM. And that's our main central system that we have that houses every Social Security number that is assigned to someone. It houses their biographical information, it houses their earnings that are being reported by the employers, it houses benefit amounts, it houses applications for benefits. So it's got a wealth of information.
Q Is that system open to the public?
A No.
Q Is it secured from the public, in fact?
A Yes.
Q Okay. Does every member of the -- or employee of the Social Security Administration have access to that system, or only authorized employees?
A Authorized employees.
Q All right. What is that -- PCOM? Am I saying that right? P C O M?
A PCOM. That's correct.
Q That's the name of the database?

A Yes.
Q That system -- how does the Social Security Administration use that system? What does it use it for?
A We generally use it for applications for benefits, meaning retirement benefits, disability benefits, survivor's benefits.

We also have another program, that's outside of Social Security Administration, that's actually called supplemental security income, which is more of a welfare based program; but in order to obtain those benefits, we need to be able to -- we need to retain information on every person that's assigned a Social Security number, so that way they get credit for the earnings that they have through their lifetime, and we know how much they made, how much they earned, how much they can receive in benefits.
Q Do you have access to that system in your role at the Social Security Administration, sir?
A I do.
Q All right. And if you wanted to check the validity of a Social Security number, whether it was assigned, or whether it was assigned the same name, how would you do that when you go into the system?
A We have a number of queries that we can run on a Social Security number. One query that we have is a called enumiter, or numi for short we call it. That one actually has the

person's Social Security number, has their name, has their date of birth, has their place of birth, has their sex, has their parents' information, has the date that a card was actually issued. So that's our biographical query that we can pull.
Q Okay. Did there come a time in this case, more recently, when you were asked to review the Social Security numbers of 39 individuals against this PCOM database?
A There was.
MR. LEEMAN: May I approach the witness, Your Honor?
THE COURT: You may.
(Counsel provides evidence to the witness.)
BY MR. LEEMAN:
Q Mr. Lefkowitz, I'm handing you what's been previously entered into evidence as Government's Exhibit 150.
Miss Courtroom Deputy, I'd like to put it up on the computer, if I could.
(Evidence was published via the projector.)
MR. LEEMAN: Thank you, ma'am.
BY MR. LEEMAN:
Q Mr. Lefkowitz, do you recognize that document?
A I do.
Q Okay. What is it?
A It's a Social Security Card and a permanent resident card.
Q And speaking more generally about the entire exhibit,

was that what was provided to you to look up Social Security numbers before you came in here today?
A Yes.
Q Did you enter each of these Social Security numbers into that PCOM system to determine whether they were assigned or mismatched?
A Yes.
Q So, every Social Security Card in this exhibit, you took that number and entered it into the system and checked; is that right?
A Yes.
Q Could you tell us the results of that check?
A Out of the 39 employees, 20 of them were unassigned and 19 of them were mismatched.
Q Okay. And could you provide a little insight -- without providing anyone's actual name, could you provide a little insight into the nature of the mismatch? Were they misspellings of names, or how would you characterize it?
A Everything was mismatched, whether was the name, the place of birth, the sex. Those were the three that I was able to generate. I wasn't able to determine if the parents' names were mismatched or not, because it's not on the permanent resident card. So.
Q Okay. In your role within the Social Security Administration, are you familiar with what Social Security

Card -- what form they take? Meaning what they look like?
A I do. So basically Section 205 of the Social Security Act requires that we take measures to prevent the card from being counterfeited. So, starting in April of the 2007, we started putting the issue date on the bottom of the card, on the bottom right-hand side of the card.
Q I don't want you to -- I don't want you to state any opinion about these cards, but talk about other features that are found on a Social Security Card.
A The issue date would be one. On the outside of the card, in very, very tiny letters, it says "Social Security".
Q Okay. In one place, or --
A All around the card, where the line is, the outside line, it actually says "Social Security".
MR. LEEMAN: Okay. Let me have a moment, Mr. Lefkowitz.
Can I have a moment, Judge?
THE COURT: You may.
(Mr. Leeman and Mr. Reichling confer privately.)
MR. LEEMAN: Your Honor, I don't have any further questions for the witness.
THE COURT: All right. Thank you.
Counsel?

CROSS EXAMINATION

BY MS. WAID:

Q Good morning, Mr. Lefkowitz.

A Good morning.

Q You stated on direct that you conduct training for whom?

A For the Social Security Administration, for our new employees as well as our current employees.

Q Okay. And you stated that you conducted training because the regulations are constantly changing; is that right?

A Absolutely.

Q So that's actually a lot of training; correct?

A Correct.

Q Okay. Because when people -- when new regulations are passed, people need to understand how those work. Correct?

A Correct.

Q Okay. You also said you had access to a secure system to run Social Security numbers; is that right?

A Correct.

Q All right. And what was the name of that system?

A It's a system called PCOM.

Q PCOM. Okay. And do employers have access to that system?

A No.

Q So that's just a private system from the Social Security Administration?

A Correct.
Q Okay. And you actually review these documents for a living; right?
A Correct.
Q Okay. So you're seeing these documents on a daily basis?
A Correct.
Q Okay. But a regular citizen does not review Social Security cards on a daily basis, do they.
A I mean, all of our employees do. I mean, we issue the cards. We don't review cards. I mean, generally, we take the application, we enter the biographical information, and the system automatically generates a random number. The numbers are now randomized. I know, in the past, that wasn't the case. But as far as actually physically reviewing the cards, I don't think our claims specialists do that, because we already have the number.
Q Right. Okay. And that's people within the Social Security Administration; is that right?
A Correct.
MS. WAID: Correct. Okay.
Court's indulgence for one moment, please?
(Ms. Waid and Mr. Dickerson confer privately.)
MS. WAID: Just briefly. Sorry about that.

BY MR. DICKERSON:

Q You stated you reviewed 39 documents; correct? Did you review any other documents from Target Roofing?

A From? From Target Roofing?

Q Yes.

A No.

Q So you were provided those 39 documents; is that correct?

A Correct.

Q And you were provided those documents by the government; correct is that accurate?

A Correct.

Q But you haven't reviewed any other records held in the custody and control of Target Roofing; is that accurate?

A No.

MS. WAID: Thank you.

Nothing further, Your Honor.

THE COURT: Any redirect?

MR. LEEMAN: No, Your Honor.

THE COURT: You may stand down. Thank you.

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

THE COURT: Good time for a recess, or do you have a short witness?

MR. REICHLING: No, Judge. This is a good time for a recess.

THE COURT: Okay. Let's take a morning recess. Approximately 15 minutes. Do not discuss the case among yourselves, or allow anyone to discuss it with you or in your presence. See you in about 15 minutes.

(At 10:23 a.m., the jury was escorted from the courtroom.)

THE COURT: All right. Fifteen minutes.

MR. LEEMAN: Your Honor, may I just briefly ask a question?

THE COURT: Sure. You've been doing it all morning, but go ahead.

MR. LEEMAN: To you, Your Honor?

I just want to make sure that we're prepared for the . . . the Court has had some, I guess, concern about the jury instruction, perhaps the interplay between one and two. Just to make sure I come in and have something appropriate to say, I'm a little, I guess, unsure of exactly what the Court's concern is. I'm hoping it might say a little more about it. I just don't want to come in unprepared and waste the Court's time.

THE COURT: Now you don't want to waste my time. Yes. My concern is, in the mail fraud count -- I'm sorry, the bank fraud count, the statute can be violated in one of two ways. You've alleged both ways. The Eleventh Circuit pattern instruction deals with it as if it's just a single offense.

MR. LEEMAN: Yes, sir.

THE COURT: And it mixes elements that apply to one and not the other, according to the Supreme Court. Both of you submitted the pattern instruction. I don't see that that's right, and therein lies my concern, I guess. The Eleventh Circuit tells me to use that pattern, and you folks tell me to use that pattern, and doesn't seem . . . .

MR. LEEMAN: I believe it was one of your law clerks has provided us a copy of a court's proposed instruction?

THE COURT: That's correct.

MR. LEEMAN: It looks like that may attempt to clear up that issue. At first blush, it seems that that's acceptable to the government; but we'll confer before we meet and see if that's actually the case.

THE COURT: And that's my concern. And I would call your attention to the fact that's not pattern, and that's Steele on bank fraud. I mean, you know, I made it up. And, you know, I think I'm right, but I really do want your input.

MR. LEEMAN: Yes, sir.

THE COURT: The other one that you may want to think about is the aiding and abetting. Part of it, in terms of the cause language that may be appropriate, but I don't see aiding and abetting otherwise. I know you've got it alleged in the indictment, but that instruction may need to get shortened.

MR. LEEMAN: Yes, sir. And we also -- it may turn on exactly what the defendant puts on for a case. But certainly we will be thinking about that and prepared to address it, Your Honor.

THE COURT: All right.

MR. LEEMAN: Thank you.

THE COURT: Any other questions?

MR. LEEMAN: No, Your Honor.

THE COURT: All right. Fifteen minutes.

MS. WAID: Thank you, Your Honor.

(At 10:26 a.m., court was recessed.)

AFTER RECESS

(At 10:48 a.m., court was reconvened.)

THE COURT: Both sides ready for the jury?

MR. DICKERSON: Yes, Your Honor.

MR. LEEMAN: Yes, Your Honor. I did want to inform the Court that the next witness will be Diane Knott. She will be testifying about summary exhibits. The Court is going to hear that she's hoarse. We did not want to scare everyone. We asked, she went and got a COVID test this morning, it's negative. She also has her COVID vaccine card. She was fully vaccinated, I think it was three weeks ago.

But just, given the condition of her voice, I wanted to preview that with the Court. I don't believe the jury needs -- I'll leave it up to the Court as to whether the jury should be told that, but Miss Knott has indicated she does not mind if that's shared, if that makes everyone more comfortable.

THE COURT: Thoughts?

MR. DICKERSON: Your Honor, I don't think that needs to be shared with the jury. We're good with it.

THE COURT: Okay. If we see some reaction from the jury, we'll revisit it, but let's just start with having her called as a normal witness.

All right. Have the jury step in, please.

(At 10:49 a.m., the jury was escorted into the courtroom.)

THE COURT: You may call your next witness.

MR. REICHLING: Yes, Your Honor. The government calls Diane Knott.

COURTROOM DEPUTY: Good morning, Miss Knott.

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, I do.

COURTROOM DEPUTY: Thank you very much. If you would have the seat in the witness box and, once seated, if you would state your name and spell your name. Thank you.

THE WITNESS: My name is Diane Knott, D I A N E, K N O T T.

DIANE KNOTT,

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 Ms. Knott, where are you currently employed?
A I'm currently employed by Guidehouse.
Q And what's Guidehouse?
A Guidehouse is a consulting firm.
Q And before working for Guidehouse, where did you work?
A I worked as a contractor for Forfeiture Support, as a contractor for the United States Attorney's Office.
Q And that's the United States Attorney's Office in the Middle District of Florida?
A Yes, it is.
Q And, before that, where did you work?
A Before that, for 29 years I was a special agent with Internal Revenue Service Criminal Investigation.
Q And that's the IRS; correct?
A Yes.
Q Now, in this particular case, were you asked to review bank records and financial documents?
A Yes, I was.
Q And I'm going to ask that you look at the exhibits there that are before you. You should see Exhibits 31, 33, 35, and

Exhibits 67 through 131, and there should also be an Exhibit 148 and 120 that's in that one pile there that you're looking at --

A Okay.

Q -- also, that have already been entered into evidence as those government's exhibits that I indicated.

A Okay.

Q And then to your right, I believe, you should see other bank records that are not currently in evidence, but could you take a look at those and confirm that you reviewed those as part of this case?

(Witness examines evidence.)

A Okay.

Q And the records that you reviewed, how many accounts, in total, would you say that you reviewed for this case?

A Approximately ten.

Q And were they with various financial institutions?

A Yes.

Q And what were some of those financial institutions?

A Sanibel Captiva Community Bank, Bank of America, Finemark Bank, and J.P. Morgan Chase Bank.

Q And were the J.P. Morgan Chase records, were those credit card records?

A Yes.

Q Were those records voluminous?

A Yes.
Q Did you create some summary exhibit charts to make it easier for the jury and others to sort of synthesize and understand what's contained within those records?
A Yes, I did.
Q Now, would you look at Government's Exhibits 153, 154, 155, 156, 157, 158, 159, 161, 163, 164, and I think that should be it.
A Yes. These are the summary charts that I prepared.
Q Are they fair and accurate copies of the summary charts that you prepared in this case?
A Yes.
MR. REICHLING: The government would move to admit Exhibits 153, 154, 155, 156, 157, 158, 159, 161, 163, and 164 in evidence.
THE COURT: Any objections to those exhibits?
MR. DICKERSON: Just, Your Honor, if I could have a chance to go through them real quick?
THE COURT: Sure.
MR. DICKERSON: No objection, Your Honor.
THE COURT: And just so I have it right, 160 and 162 are not being offered?
MR. REICHLING: That is correct, they are not, Judge.
THE COURT: The Court will admit 153, 154, 155, 156, 157, 158, 159, 161, 163, and 164.

(Government's Exhibits 153, 154, 155, 156, 157, 158, 159, 161, 163, 164 admitted.)

BY MR. REICHLING:

Q And, Miss Knott, that middle stack of exhibits, could you take a look at those? I know you looked at them previously. That should contain Government's Exhibits 139, 66, 132, 133, 134, 135, 136, 137, and 168.

A Yes. Did you say 138?

Q I said 137. I said 168. If any of those exhibits are not there, please let me know.

A No; I believe they're all there, but there's also a 138 there.

MR. REICHLING: Let me -- if I may approach the witness again, Your Honor?

THE COURT: You may.

BY MR. REICHLING:

Q Is there also a Government's Exhibit 138 in front of you?

A Yes.

Q Now, what are Exhibits 138, 139, and 66?

(Witness examines evidence.)

A They're Bank of America documents.

Q And do those documents each contain business record certifications?

A Yes.

Q And are they fair and accurate copies of the Bank of America records that you reviewed in this case?
A Yes, they are.
MR. REICHLING: At this time, Your Honor, the government would move in what's been previously marked as Government's Exhibits 138, 139, and 66 into evidence.
MR. DICKERSON: No objection, Your Honor.
THE COURT: Exhibits 66, 138, and 139 will be admitted.
(Government's Exhibits 66, 138, 139 admitted.)
BY MR. REICHLING:
Q Can you also take a look at Government's Exhibits 132, 133, 134, 135, 136, and 137?
A Yes. These are the FineMark Bank records that I reviewed.
Q And do they all contain business record certifications?
A Yes, they do.
Q And are they fair and accurate copies of the FineMark statements that you reviewed in this case?
A Yes, they are.
MR. REICHLING: At this time, Your Honor, the government would move what's been previously marked as Government's Exhibits 132, 133, 134, 135, 136, and 137 into evidence.
MR. DICKERSON: Just give me one second to finish

reviewing them real quick, Your Honor.

THE COURT: Yes.

MR. DICKERSON: No objection, Your Honor.

THE COURT: The Court will admit Exhibits 132 through 137.

(Government's Exhibits 132 through 137 admitted.)

BY MR. REICHLING:

Q And finally, Miss Knott, could you look at Government's Exhibit 168, please?

(Witness examines evidence.)

A Yes. These are the J.P. Morgan Chase records that I reviewed.

Q And for what account?

A It is for the credit card account.

Q For Target Roofing?

A Yes.

Q And is there a business record certification attached to those documents?

A Yes, there is.

Q And is that a fair and accurate copy of the J.P. Morgan Chase credit card statements that you reviewed for this case?

A Yes.

MR. REICHLING: Your Honor, at this time the government would move what's previously been marked as Government's Exhibit 168 into evidence.

MR. DICKERSON: No objection, Your Honor.

THE COURT: 168 will be admitted.

(Government's Exhibit 168 admitted.)

BY MR. REICHLING:

Q Now, Miss Knott, what is the general timeframe of these documents that you reviewed?

A January of 2020 through September of 2020.

MR. REICHLING: And I'd like to begin by taking a look at your summary exhibit, which is, I believe, Government's Exhibit 158.

And permission to publish? I believe this has already been admitted into evidence, Your Honor?

THE COURT: You may publish anything that's been admitted.

MR. REICHLING: Thank you, Your Honor.

(Evidence was published via the projector.)

BY MR. REICHLING:

Q Could you explain to the jury what this is, Miss Knott?

A This is a summary of the Target Roofing and Sheet Metal PPP loan bank account ending in 6781.

Q And you've reviewed the signature cards for this account; correct?

A Correct.

Q And who was the authorized signer on this account?

A Casey Crowther.

Q And was this account opened in April of 2020?
A Yes.
Q Now, your chart here has various columns. Could you just briefly tell the jury what each column means?
A Well, the first column, under date, would be the date of the transaction. The second column, for deposit, would be the amount of the deposit deposited to the account. The source column would be the source of the deposit item. The withdrawal account -- or the withdrawal column would be the amount that was withdrawn from the account. The payee would be the destination of the money being withdrawn. And the balance would be the balances at the end of the day of the transaction.
Q What was the balance of the account on April 10, 2020?
A On April 10th, the balance was zero.
Q And when did that change?
A On April 14th of 2020.
Q Now, you indicate here that the source is SBA PPP loan funding SBA. Is that taken from the actual bank statement that you reviewed?
A Yes.
Q And what's the amount that was deposited into the account?
A $2,098,700.
Q What's the first transaction following that deposit?
A Two days later, on April 16th, there's a withdrawal for

$126,000.
Q And do you recall where that money goes to?
A That money is transferred to the Target Roofing operating account.
Q And the . . . payee states: "Loan from Casey." Is that located -- is that contained on the bank statement that you reviewed?
A Yes, it is.
Q Now I'm going to show Government's Exhibit 153. Could you just briefly tell the jury what Government's Exhibit 153 is?
A 153 is a summary of the Target Roofing and Sheet Metal, Inc. operating account ending in 1791.
Q And, as part of your review of these financial records pertaining to this account, did you look at signature cards that belong to that account?
A I did.
Q And who was the authorized signer on this account?
A Casey Crowther was one of the signers on the account.
Q Now, I'm going to go to, I believe it's going to be Page 24 of this exhibit. And before I do that, Diane -- excuse me, Miss Knott -- could you just tell the jury again, are these the same columns that you had previously had in Government's Exhibit 158?
A They are. There's only one other column added, and it's

just a check number column.

Q And does that check number correspond with a check that was issued from the account?

A Yes.

Q Now, on Page 24 of the document, towards the bottom of your exhibit on Government's Exhibit 153, I'm going to Zoom in here, is that a record of the money being put into the Target Roofing operating account, Account 1791?

A Yes, it is.

Q Now, after that's done, is there a similar corresponding withdrawal in an amount that's close to $126,000?

A Yes. The following day, there is a payment to the Chase credit card for $125,145.30.

Q And is that what I am showing here on Page 25 of Government's Exhibit 153?

A Yes.

Q And you stated that you have actually reviewed the Chase credit card statements for that period of time; correct?

A Correct.

Q And did you confirm that those funds did, in fact, go to pay down that Chase credit card balance?

A I did.

Q Now I'm going to publish what's been previously admitted as Government's Exhibit 161. Is this a summary of credit card related payment withdrawals that have been made from the Target

Roofing operating account?
A Yes.
Q And could you just tell me -- of course, these may be self-explanatory -- but what each one of these three columns means?
A Well, the date column is the date of the withdrawal. The withdrawal column is the amount of the withdrawal. And the payee shows that the payment was made to Chase credit card ePay.
Q Before April 17th of 2020, had there been any payments made to the Chase credit card that came anywhere near $125,000?
A No. They were all approximately ten to 20,000.
Q Now, of course, we talked about your review of these Chase credit card statements, which, let me get the exhibit number correct here, should be Government's Exhibit 168. If you could take a look at them.
A Okay.
Q What were the previous month balances owed on the credit card for this J.P. Morgan Chase credit card for the months of January, February, and March?
A Well, in January the credit card balance was $119,214.55. And the February balance was $123,279.26. And the March balance was $122,498.28.
Q Now I'd like you to tell the jury, based on your looking at that -- those credit card statements, what is the max of the

credit card, what's the maximum credit limit?
A The maximum credit card limit? Let me look for it.
(Witness examines evidence.)
Q And, if I may, I can zoom in on it here in Government's Exhibit . . . I think it's 168. Stated there revolving credit amount?
A The revolving credit amount is $150,000.
Q Now I'd like you to take a look at Bates Stamp Number 035, for Page 35 with a Bates number.
A Okay.
Q Towards the top of that exhibit -- towards the top of Bates Exhibit 168, Page Number 35, could you tell the jury if there is a transaction to a Sara Bay Marina?
A Yes. On April 20th, there is a $5,000 charge to Sara Bay Marine in Sarasota, Florida.
Q And this transaction was made after the $125,000 payment was made on the credit card to pay the balance down?
A That's correct.
Q If you could just tell the grand -- tell the jury, what kind of transactions are on this credit card?
A Well, there are some business transactions, but there are also personal transactions involving restaurants, main building payments, many equestrian related payments to feed stores and ranches.
Q And does it appear that Casey Crowther, of course, is an

authorized user of that credit card?
A Yes, he is.
Q And are there other authorized users of the credit card as well?
A Yes, there are.
Q And does the credit card statement segregate each authorized user's use of the credit card?
A Yes, it does.
Q And the $5,000 marina transaction on April 20th, 2020, was that from Casey Crowther's use of the credit card?
A Yes, it was.
Q Now I want to go back to Government's Exhibit 158, which is, I believe, your summary chart of the PPP account that you mentioned. Following the loan from Casey entry on April 16, 2020, what is the next transaction?
A On April 20 -- excuse me, April 21st, there's an outgoing wire transfer to Steven Adkins for $100,000.
Q And can you take a look at Government's Exhibit 31 that's already in evidence?
A Okay.
Q And what was the purpose of that wire transfer?
A It states that the purpose of the wire is a payroll transfer.
Q Now, after that transaction on April 21st, 2020, what is the next transaction?

A Next transaction is the following day, on April 22nd, for $3,300, and it's a transfer to the personal account ending in 3439.
Q And when you say a personal account, who were the account holders?
A Casey Crowther and Margaret Crowther.
Q And you created a chart summarizing that particular account; correct?
A I did.
Q And I believe that is Government's Exhibit 157.
(Evidence was published via the projector.)
Q Is that the summary exhibit you created for account 3439?
A Yes, it is.
Q And does it show the money, the $3,300 being deposited into this account?
A Yes. On April 22nd.
Q And is that shown here?
A Yes.
Q And is there a subsequent corresponding transaction in a similar amount that involves a withdrawal from the account?
A Yes. There's a $3,330 Venmo payment made the following day.
Q Now I'm going to go back to Exhibit 158, which is the summary of the PPP account. What is the balance on the account

at this point with the funds that are in the PPP account?
A After the $3,300 withdrawal there, the balance is $1,869,400.
Q What is the next transaction, then, after that $3,300 Venmo transfer that went to the personal account?
A The next transaction is on April 24th of 2020. It's an outgoing wire transfer to Sara Bay Marina for $689,417.
Q Can you take a look at Government's Exhibit 33? It should be in that stack there of exhibits. And is that the wire transfer ticket for that transaction?
A Yes, it is.
Q And what was the purpose of that wire?
A The purpose of the wire states equipment purchase.
Q Now, going back to Government's Exhibit 158, it appears there's a $20 outgoing wire fee that is applied towards that wire transfer?
A That's correct.
Q And, at that point, how much money is left in that PPP account?
A The balance is $1,179,163.
Q And what happens with that money after April 24th, 2020?
A On May 7th, the balance of the account is transferred to the Target Roofing and Sheet Metal operating account ending in 1791.
Q I'm going to go back to Government's Exhibit 153, which

I believe is the summary of the operating account. And I'd like to direct your attention to Page 30 of that document.
A Okay.
Q And I'm going to zoom in on it here, on the projector. But is this the transfer in of the funds into the operating account on 5/7/2020?
A Yes, it is.
Q And that's where I have the little mouse thing up there; right?
A That's correct.
Q All right. What's the next financial transaction in the main operating account for Target Roofing after that money is deposited?
A On the same day, there's an $800,000 online transfer to a loan number ending in 0854, which is a line of credit.
Q And have you reviewed documents concerning this particular line of credit?
A Yes.
Q And who is this a line of credit for?
A It's a line of credit for Target Roofing.
Q Now I would like you to take a look at Government's Exhibit 120. It's going to be in that large stack of documents that's already been admitted into evidence. I hope it is, at least.
A Okay.

Q I'm going to direct your attention to Page Number 6 of that document.

(Evidence was published via the projector.)

Q Is this the . . . statement for this line of credit?

A Yes, it is.

Q And on the date that these funds were transferred over to pay down the balance of the line of credit, which I believe is going to be reflected in the bottom of Page 6 of Government's Exhibit 120, did you know what the maximum available line of credit was for this? For this particular line of credit loan?

A I'd have to look at it. I'd have to guess. But I want to look at it to make sure I say the right thing.

Q Okay. And I believe there's a government's exhibit there, Government's Exhibit 148, that you can take a look at. Tell me if you recognize it after you take a look at it.

A Yes. The credit line is for 1.5 million.

Q And is that document you have before you, what's its title?

A What is it titled you say?

Q Yeah.

A It's titled "Amended Restated Increased and Renewal Revolving Line of Credit Promissory Note."

Q And was that a document that was executed when the line of credit amount was increased to $1.5 million?

A Yes.
Q Now, on the date that the funds were transferred into paying down this line of credit, what was the balance on the line of credit? Was it $800,000 approximately?
A Yes.
Q So, once this line of credit was made, the balance in the line of credit was zero?
A That's correct.
Q And you mentioned, I believe it was, Government's Exhibit 148, which I want to get to here momentarily. Is there a provision contained within Government's Exhibit 148 concerning the use of the line of credit proceeds?
A Yes, there is.
Q And is that contained on Page 2 of Government's Exhibit 148?
A Yes.
Q And what does it say? Could you read it for me?
A It says, "Use of proceeds. Proceeds of this note shall be used solely as a working line of credit to assist with processing work orders and purchasing supplies to complete jobs."
Q Now, in your review of the main operating account for Target Roofing and Sheet Metal, were you able to determine how rent was paid by the business for, I would assume it's commercial property?

A Yes. It was transferred into a separate account, and then the payment was made from there.
Q And do you recall -- and I could put it up here. I will put it up here on the projector. What account that was?
A It was transferred into an account -- a Laredo account. I believe it's 8115.
Q Now I'm going to show you Government's Exhibit 163, and I believe it's a summary of all the rent payments that were made out of that Target Roofing main operating account? If you can confirm that after you take a look at it, that would be helpful.
A Yes, that's correct.
Q Before the date of May 21st, 2020, what was the amount of money that was being transferred to this Laredo account that you referenced every month?
A $13,130.33.
Q And did that increase at some point in time?
A Yes. The next month, on May 21st, it increased to $22,000.
Q Now, you have done a summary exhibit of the corresponding account breaking down deposit and withdrawals for this account ending in 8115, which is the Laredo account?
A Yes, I have.
Q I think that's Government's Exhibit 159.
A Yes. This is a summary that I created.

Q Now I'll have you look at just the first page of your exhibit here. Typically, and I'll look at the transaction on 1/24/2020, could you just generally break down what happens in this account? And I believe the column second to the left is the incoming deposit amount?
A Yes, that's correct.
Q And the account next to it is the entry of what it is?
A Yes.
Q And is that the money being transferred over to this Laredo account?
A Yes.
Q And then, after that happens, when it's transferred over from the main operating account of Target Roofing, what is the next transaction?
A Are you talking about the rent payments?
Q Following the rent payment on 1/24 of $13,130.33, what's the next transaction?
A Yes. A payment is made out to the commercial real estate loan for $14,550.60.
Q And does that $14,550.60 mortgage payment change in the months of May and June, if you know?
A I don't believe so. It remains the same.
Q And let me ask you this: There's another transaction here, of $1,500, it looks like it happens on January 24th, 2020, in the amount of $1,500 on July 31st, 2020, for 15,000,

and then once again on February 13th, and so on and so forth. Where is that money going to?
A Yes; it's a weekly deposit for $1,500, and then it's -- the next day, that same $1,500 is transferred into Casey and Margaret Crowther's personal account.
Q Now, just going back to what I was talking about, about the rent and, also, these corresponding mortgage payments, I'm gonna zoom in on . . . . I'm going to have you take a look at the bottom of the first page of that exhibit. At the last . . . transaction on that particular exhibit, for May 21st, 2020. What's the amount of money being deposited into the account?
A $22,000.
Q And that was an increase from the prior deposits that were made into the account?
A Yes.
Q And then the corresponding payment made for mortgage, does that -- well, I'm not good at zooming in here. Is that it there?
A Yes. That's the $14,550.60 payment to the commercial real estate loan.
Q Now, you've reviewed the signature cards and other account related documents for that Laredo account?
A Yes.
Q And who is the authorized signer on that account?

A May I look at the signature card?
Q Yes. I'll try and get you the exhibit number as quick as I can. It should be -- well, there's two signature cards. I believe it's for 8841; correct? Is that the account we're talking about?
A The Laredo is 8115.
Q I'm sorry. It should be . . . Government's Exhibit 121. My apologies.
A Yes. There's two signatures on this account: Steve Adkins and Casey Crowther.
Q Okay. Now I want to talk about these other -- some of these other financial institutions that you looked at, of course besides the J.P. Morgan Chase account. I want to talk about the Bank of America account that you looked at.
A Okay.
Q Whose account was that?
A Casey Crowther and Margaret Crowther's.
Q And from what -- from your looking at those particular records, was this a personal account?
A Yes.
Q And is this also the account that Mr. Crowther and Mrs. Crowther would receive direct deposits in regarding employment?
A Yes.
Q And did you create a summary exhibit of that

particular -- for that particular account?
A I did.
Q See if I can get the right exhibit number here. I believe it's Exhibit 156.
A Yes, that's correct, that's the exhibit that I created. Or the summary chart that I created.
Q Now I want to direct your attention to May of 2020 on your chart. Is there incoming direct deposits that are made from a Workforce Business DES, specifically on May 1st of 2020?
A Yes; there is a deposit for Casey Crowther.
Q And does there come a time, in your review of these transactions -- and in looking at this . . . sorry. It's not up there. My apologies. And I'm just -- just to show you again, so that the jury can see it, that's the May 1st transaction, it's the Workforce Business Direct deposit; correct?
A That's correct.
Q Now, does there come a time in which this same entry for a direct deposit is not only for Mr. Crowther, Casey Crowther, but it's also for a Margaret Crowther?
A Yes; on May 22nd.
Q And is that shown there, on your exhibit that I have projected up above you?
A Yes.
Q And what's the direct deposit amount for Margaret

Crowther?
A $1,591.48.
Q And what's the direct deposit amount for Casey Crowther, the owner of Target Roofing?
A $1,567.11.
Q Now, you've reviewed deposits, of course, associated with this account, other than the direct deposits that are put into this bank account weekly or every month; is that correct?
A That's correct.
Q And have you also reviewed checks that have been deposited into the account?
A Yes.
Q I'd like to direct your attention to August 20th of 2020.
A Okay.
Q Should be on Page 5 of your exhibit.
A Yes.
Q Could you read that deposit on August 20, 2020, that is in an amount of around $900?
A It's a deposit for $942.90. And the source is WBS, and the check is made payable to Agustin Castillo.
Q Now, have you actually taken a look at this check that was deposited into that account?
A Yes, I have.
Q And I'm getting the exhibit number for you now, because

it is in front of you. It should be Government's Exhibit 66.
A Yes. This is the check that was deposited.
Q And that was the check that was deposited on August 20 of 2020; correct?
A Correct.
Q And I'm going to publish it here. And, of course, the first page is the business record certification?
A Yes, it is.
Q Could you read from Government's Exhibit 66, Page 2, and tell me who the person who was paid, the payee for this check?
A The check says pay to the order of Agustin Castillo.
Q And is there a memo section to this check?
A There is a memo section that indicates pay period dates of May 18th of 2020 to May 24th of 2020.
Q And what is the date on the check that the check was issued?
A May 29th of 2020.
Q And who appears to be the issuer of this check?
A WBS, which is a payroll company.
Q And have you looked at the back of the check?
A Yes.
Q And it's obviously up and down, but could you read -- that's the purpose of the back of a check?
A Well, the back of the check would be signed by the person that is seeking to cash or deposit the check.

Q And what does the top line say? And you've got the exhibit before you, too, so if it's hard for you to read off that, you could read off the physical exhibit.
A The top line says: "Pay to Casey Crowther."
Q And then, three lines down, could you make out what that is?
A It appears to be the signature of Agustin Castillo.
Q And then, below that, what's that, just another signature?
A It appears to be Casey Crowther's signature.
Q Now, you've conducted a review of quite a few different bank accounts, as we've discussed, and specifically with the Target banking accounts and other accounts. Did you review records concerning another account, called Jade Avenue?
A Yes.
Q And was Mr. Crowther the authorized signer on that account?
A Yes.
Q And you also, of course, looked at FineMark records?
A I did.
Q And these Bank of America records that we've talked about.
A That's correct.
Q Now, you have created an exhibit, I believe it summarizes deposits that were made in account 1791, and I

believe that's Government's Exhibit 154. And this is the main operating account again?

A Yes.

Q And there are different row labels. Could you explain, for the sum of deposit column, what those row labels mean? What are they?

A Well, this is a summary of all of the deposits added together. So, for instance, the top line would say 7-Eleven. So 7-Eleven would be all of the . . . would be all of the deposits made from 7-Eleven for that particular year. So in May there was a penny made from 7-Eleven, in July there was $3,445.20, and in August there was $1,174.56.

Q And does this sum of deposits -- I've got general categories here. I see non-cash business receipts. What's that?

A That was -- the deposits to the Target Roofing account included numerous checks every month from people who were having their roof done, so the check amount -- the checks were very voluminous. So we lumped them together as non-cash business receipts, which would mean they were all in check form, there was no cash within those deposits.

Q Now, I notice that the amount for September is $38,000. Is that because you only looked at a few days in the month of September?

A Yes, that's correct.

Q And that would have been up to September 2nd of 2020?
A Yes.
Q Now, I don't see anything here indicating that there were any cash deposits that were made in the account over the course of these months. Would you have entered an entry for cash deposits?
A I would have had there been some cash deposits during that timeframe.
Q And did you see any cash deposits made into the main operating account between the months of January and September, at least any that would have caught your eye?
A There were no cash deposits up through September 2nd.
Q Now, what about the other records regarding Target Roofing? Of course, we talked about the PPP account. Were there any cash deposits in that account?
A No.
Q What about that Laredo account, if you recall, if there were any cash deposits inside of that.
A No.
Q And the Jade Avenue account, were there any cash deposits into that account?
A No.
Q And the personal account that's at Sanibel Captiva Bank with Margaret Crowther and Casey Crowther, were there any cash deposits that you recall?

A No.

Q Now I want to show what's been introduced into evidence already as Government's Exhibit 165.

(Evidence was published via the projector.)

Q Have you got it in front of you?

A Yes.

Q Could you just briefly explain this -- what each column means in this particular chart?

A Well, the first column, under the date column, is the date of the transaction.

The second column indicates what happened on that date.

The third column is the amount of the transaction.

The next column, where it says balance of 6781, which is the PPP account, would be the ending balance after the transaction.

The next column, it says balance of account 1791, Target operating account, is the actual balance at the end of that day.

And then the next column, after the dark black line, says balance of 1791 if account is reimbursed by utilities, payroll, and rent expenses. That particular amount in that column is . . . is the balance of the 1791 account in the previous column.

And then I would add in any payments that were made for utilities, payroll, and rent, to give . . . to give Target

Roofing the benefit of having those expenses reimbursed.

And then there are three other columns that are the balances of the Crowther personal account, the balance of the Jade Avenue account, and the balance of the Laredo account.

And then the final column is the total of the previous four accounts.

Q Now, on the date of the 4/24/2020 wire to Sara Bay Marina, I'd like you to tell the jury what the account balance is in the 1791 operating account if you did not apply credit for the utilities, rent, and . . . payroll expenses that you saw in that account.

A That amount would be in the fifth column, on the date 4/24/2020, and the balance would have been $131,768.58.

Q And what was the balance . . . . What was the balance in the personal account at Target Roofing for Casey and Margaret Crowther, the account ending in 2439 on that date?

A May 24th of 2020 balance in the personal account was $5,286.60.

Q And what about the Jade Avenue account?

A The balance was $418.10.

Q And what about the Laredo Avenue account?

A The balance was $27,603.04.

Q On the date that the money was wired to Sara Bay Marina, were there sufficient funds in other accounts outside of the PPP account to pay for the 689,000 wire transfer?

A No.
Q And, up until this point in time, you saw no record of any cash deposits; correct?
A Correct.
Q Now, I'd like to go down to this credit section that you gave credit for for various payments that were made between the date of 4/14, which is the day Target Roofing received its PPP account, and the date that the wire transfer was sent to Sara Bay Marina. Could you break down what payroll had been paid towards -- what withdrawals were made to WBS on -- from the 1791 account on the dates of 4/20, 2020, and 4/24, 2020?
A On April 20th of 2020, there was a payment to the payroll, the payroll company WBS, for $96,624.31. And then there was another payment, on April 24th of 2020, the same purpose, for $127,775.99.
Q Now, from your review of the account records concerning the PPP account and the main operating account, was there any transfer of funds -- and we already sort of talked about this -- from the PPP account to the main operating account between these dates to cover any of these payroll expenses?
A No.
Q And what were the two utility payments that you had identified there? And it says FPL. We're probably all familiar, but what is FPL?
A Florida Power & Light electric bill.

Q And what were the bills?
A One was for $45.88, and one was for $1,074.34.
Q And then what about rent? What was the rent payment between the dates of 4/14 and 4/24?
A There was a rent payment transferred to the Laredo account for $13,130.33.
Q Were any of the funds from the PPP account transferred to the Target Roofing main operating account to pay for any of these expenses that we just talked about?
A No.
Q Had Mr. Crowther applied -- or sort of repaid himself for paying for these expenses, what would the balance have been in the main operating account on the day of the wire for the boat? And I'm going to zoom in on it here.
A The balance would have been $370,419.43.
Q And would that have -- would that, along with the balances in the personal account, 3439, the account balance in the Jade Avenue account, and the account balance in the Laredo Avenue account, covered the cost of the wire transfer on April 24th, 2020?
A No.
Q And is this red box here the sum of the credit applied for those particular expenses, the various accounts we just talked about, as well as the main operating account?
A Yes.

Q Now I want you to just briefly explain here, because I see there's an entry of 3/24, says 2021, but I believe you meant 2020; is that correct?

A Yes, that's correct.

Q And why did you create this particular column, or row?

A Just to show what the account balances were like in the previous month.

Q And was there any difference in the account balance back in March than in April with the main operating account?

A Just slightly. They were similar balances though. Well, I mean, actually, the balance -- yes, the balance in the previous month was actually more than double. $287,849.37.

Q And is that what I've got the little mouse over?

A Yes, correct.

Q And then this was -- the bottom here, is that the balance that was actually in the account on the day of the wire transfer for the boat?

A Yes.

MR. REICHLING: One moment, Your Honor, if I may just confer with co-counsel.

THE COURT: You may.

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

MR. REICHLING: Your Honor, I have no further questions at this time.

THE COURT: Okay. Let me check an exhibit number here. You made reference to an Exhibit 165?

MR. REICHLING: Yes, Judge, I did.

THE COURT: Did you want that to be admitted?

MR. REICHLING: I thought I admitted it into evidence, but I will do it now.

THE COURT: I don't have it on my list, nor does the Courtroom Deputy.

MR. DICKERSON: It's all right, Your Honor. I don't have it on my list, either, but we have no problem with it being admitted.

THE COURT: We'll admit 165 then.

(Government's Exhibit 165 admitted.)

THE COURT: Mr. Dickerson, would you like to have lunch or start your cross?

MR. DICKERSON: I think it would be best to have lunch, Your Honor, because this is going to be a lengthy cross.

THE COURT: Okay. Let's take an hour for lunch. Did that work all right yesterday, an hour? All right. About 1:00 o'clock we'll get started. Don't discuss the case among yourselves or allow anyone to discuss it with you or in your presence. See you at 1:00.

(At 11:54 a.m., the jury was escorted from the courtroom.)

THE COURT: All right. 1:00 o'clock.

(At 11:55 a.m., court was recessed.)

AFTER RECESS

(At 1:01 p.m., court was reconvened.)

THE COURT: Both sides ready for the jury?

MR. LEEMAN: Yes, Your Honor.

May I ask, briefly, before they come in, the government believes it's close to resting its case. One thing the government would ask the Court to do, if the Court is inclined to do this, is take judicial notice of its docket, and just state to the jury that, on September 2nd, Mr. Crowther was informed of the charges in this case.

That's the date of his initial appearance, that's the date through which Miss Knott's financial analysis goes through, and so it may be relevant to the government's -- well, we do believe it's relevant, and anything after that in his bank accounts would be done with knowledge that he's being pursued for criminal charges.

THE COURT: We'll see how the rest of the case, including cross, goes.

All right. Have the jury step in, please.

(At 1:02 p.m., the jury was escorted into the courtroom.)

THE COURT: Mr. Dickerson, you may proceed.

MR. DICKERSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. DICKERSON:

Q Good afternoon, Mrs. Knott.

A Good afternoon.

Q My name is Brian Dickerson. I'm counsel for Mr. Crowther. I'll be asking you some questions based on the government's questions.

I believe you testified that you were formally employed by this U.S. Attorney's Office; correct?

A That's correct.

Q And when --

A Well, as a contractor. Yes.

Q You were hired as a contractor by the U.S. Attorney's Office in what time period?

A I was hired by Forager Support Associates as a contractor position for the United States Attorney's Office. And that timeframe was March of 2017 through September of 2020.

Q Okay. Thank you very much.

I didn't catch the -- I guess the base of your testimony here. You're not here as a fact witness; correct?

A No.

Q And you're not here to provide any opinion, at all; correct?

A That's correct.

Q You're just here to summarize documents.

A That's correct.
Q And if you need to take a drink of water, or take a break, just let me know.
A That's okay. I apologize for my voice.
Q You don't have to apologize.
So the purpose here for you, you were told to come here and summarize documents.
A Yes.
Q And you made reports, the summary reports, based upon you summarizing these documents.
A Correct.
Q Who told you to create these reports?
A I was asked by the United States Attorney's Office.
Q Okay. And, when we look at these reports, do they give you the precise instruction as to what they wanted you to specifically look at in the reports?
A No. They just asked me to summarize the bank documents.
Q All right. So, when we are looking at these various columns on your various summaries, you're the one that independently selected the date, the withdrawal, the payee, you're the one that made that determination that that's what you wanted on your summary document?
A I've been creating summary documents like that for 35 years, so that's what, usually, my summary document looks like.

Q So you have your own basis for what you're going to choose to summarize in these documents.
A Well, I make it reflect what was on the bank statements.
Q All right. So was there any limitations on what you complete in your summary?
A As with respect to what?
Q Were there any limitations as to the request we want you to summarize these documents from the U.S. Attorney's Office, was there any limitation on what you were to summarize?
A No. Other than, you know, just summarize January through September 2nd.
Q All right. So you were limited to that January, 2020, time period.
A Well, the bank records started on January 1st, so that's -- I didn't have any records prior to that.
Q Thus you were limited to start January, 2020.
A Correct.
Q And you just reviewed bank records; correct?
A Correct.
Q And you didn't review all the financial information for Target Roofing in this analysis.
A As far as records from Target Roofing? You mean like journals, or things like that?
Q Correct.
A No; I didn't have access to anything like that.

Q So you weren't provided any QuickBooks or financial documents of Target Roofing to complete this analysis.
A No.
Q In one of Mr. Reichling's questions, he asked you what the sum of a specific record was. I believe it's 164. What did you mean by sum? And I'm not going to go to that. I'm just trying to figure out what you meant by sum. Asking you what you think it was.
A I would need to see the records to see what context it was used in.
Q No problem. 165. Are you --
A And he asked me the sum of what?
Q He asked you what the sum of the total for Document 165, and you came up with the answer of 403,000.
A Correct. That was the sum of the previous four accounts.
Q Okay. And I'm just asking what is your definition of sum?
A It's an addition.
Q Of all of the previous figures, expenses? That's what I'm just asking.
A It's the sum of certain accounts.
Q So your answer to that was basically you summed up the previous numbers to get that total number.
A Correct.

Q Okay. If you would look at Government's Exhibit 153. And go to Page 26.
A Okay.
Q I'm looking at 4/23/2020. That is a -- what you would define as a non-cash business receipt?
A Okay.
Q Is that correct?
A Yes.
Q Because that's your description of them; correct?
A Yes.
Q And that's for 101,000; correct?
A Correct.
Q And then, 4/24, you have a deposit of $1,242.08; correct?
A Correct.
Q 4/24, deposit of 49,177; correct?
A Correct.
Q And 4/24, there's a second deposit; correct?
A Correct.
Q And that's for $82,349.16?
A Correct.
Q 4/27, a deposit for $55,362.05? Correct?
A Yup. Yes.
Q And I just want to look at two more. 4/29, 192,621.63. Correct?

A Correct.
Q April 30th, another $90,757.03.
A Yes.
Q And that's where we're finished. On May 1st, there's a deposit for $6,928.50, and then a second deposit that day of $179,312.71; correct?
A Correct.
Q You didn't total up those specific dollar amounts to figure any analysis; correct? In your report. Your summary.
A I didn't total them where?
Q You didn't make a summary of the sums of those deposits.
A There is a summary of deposits. There is a summary of deposits.
Q Right. But the ones that I just discussed, from April 23rd to May 1st, you don't have a report specifically with the sum of those deposits.
A No, I don't.
Q Right. And you would agree with me those deposits are all made within seven days of April 24th, 2020; correct?
A Correct.
Q Now, when you're conducting your analysis -- I'm sorry, you're creating your summary sheets, that's not on a cash or an accrual type basis; correct?
A No; it's just a . . . it's a summary of the transactions on the bank statements and the balance in the account is as of

that day.
Q So it is just that is the balance in that account on that given day demonstrated by the bank statement.
A Correct.
Q And a bank statement, I think you testified, won't show cash on hand; correct?
A You mean, if you have cash somewhere else, would a bank statement show that you have cash sitting at home?
Q Well, how about petty cash is pretty common with a business; is that right?
A Right.
Q And it doesn't show petty cash, does it.
A Not a bank statement, no.
Q And it doesn't show cash that somebody personally has; is that correct?
A Correct.
Q So you would agree with me that these summaries are just limited to these bank statements, and not subject to any financial transactions.
A That's correct.
Q And you would agree with me that the deposits show actually when the checks cleared, or was your analysis when they actually deposit it in the bank?
A It is when they clear, which is what is in the bank statement.

Q And, when monies are cleared, is that the same day as they're deposited?
A It could be, but it's usually when the bank in which it was drawn on received notice that the bank -- that the cash has been declared. Or has been cashed.
Q So then these bank statements are just showing when they were actually cleared, not when they were actually -- I mean the deposits were physically deposited at the bank.
A Correct. Let me go back. Are you talking about withdrawals, or are you talking about deposits?
Q I didn't mention anything about withdrawals.
A Okay. If we're talking about deposits, we're talking about the day -- the bank statement is going to reflect the day that that particular check was deposited into the bank.
Q Okay. So your reflection on these summary reports, 5/1 is the day that that $86,928.90 was deposited, not when it cleared.
A Correct. It's the day it's deposited. When you bring in money into a bank, you bring it in on May 1st, then it's gonna reflect the deposit on May 1st. Now, I mean the check may take a couple of days to clear the person who wrote the check into their bank account. It may not reflect the same day on the person who wrote the check, but the deposit is going to be the day that you actually brought the check in and deposited it into the bank.

Q That's all I'm trying to ask. I'm trying to get your definition of what you used to do your summary.
A Yes; which is what the bank statement would reflect.
Q And I believe you also did a summary of payroll; correct?
A Yes.
Q I believe that's Exhibit 164. I apologize if I take time trying to find it.
A Okay.
Q And that's Exhibit 164. And what -- and again, is this exhibit --
A What is the exhibit? The exhibit is a . . . just a reflection of the withdrawals to Workforce Business Services and the date that the transaction was made.
Q And Workforce Business Services is the payroll; correct?
A Correct.
Q So this is -- I'm just trying to clear the -- if we look at 4/20, that is the day that the payroll was paid, or processed? Do you know? For your summary?
A Since that has a column with check numbers in it, that means that they wrote a check to Workforce Business Services. So you'd have to look at the actual check to see the date they wrote the check. That would be the date that the check actually cleared the bank.
Q So the date is just the date of the check; correct?

A No. The date is the date that it cleared the bank.
Q All right. So, on your report here, summary, the date is when it cleared, the check number, but you don't have the date of the check.
A I could look at the actual check and look at the date of the check.
Q Okay. So you could make a review and make that determination.
A Sure.
Q Can you do this? Do you have the ability to total up any numbers on your summary report? I doubt you have a calculator or anything; correct?
A No, I don't.
Q Okay. What if you were to take from April 24th, 2020, the top of the chart, down to 8/13/2020, what would be -- and I know you can't do it in your head. Do you know what the sum of those payroll expenses would be?
A Can I have a calculator?
Q I can give you my iPhone if you would like to use it.
MR. REICHLING: I'm going to object. This is a waste of time. To use it to do calculations? What point is the defense trying to make here? I'm trying to figure it out.
THE COURT: Well, the objection is overruled.
To the extent you've got a calculator and want to give it to her, or an iPhone with a calculator, you may do so.

MR. DICKERSON: Thank you, Your Honor.

(Mr. Dickerson provided an iPhone to the Courtroom Deputy, who cleaned it and provided it to the witness, who uses the iPhone to make mathematical calculations.)

THE WITNESS: Okay. It's a rough calculation. I didn't put in the pennies.

MR. DICKERSON: I accept that.

THE WITNESS: It's, I come up with $3,001,287.

MR. DICKERSON: Okay. And keep that open because then we'll go back to those deposits.

BY MR. DICKERSON:

Q If you could, the sum of the deposits from 4/23, do you want me to read them off for you, or I can just enlarge it for you?

A Yes, please.

Q Okay. 63,352.

A Okay.

Q I'm going to the next one, ma'am.

A Oh.

Q 192,621.

A Okay.

Q 90,757.

A Okay.

Q 86,928.

A Okay.

Q 179,312.
A Okay.
Q And what is that sum?
A 602,980.
Q Thank you. Hopefully, we won't have to use the calculator again. You can put it aside.
If you could look at Exhibit 159, please, ma'am.
A Okay.
Q And which document is this?
A This is a summary of the Laredo, LLC account ending in 8115.
Q And I believe the government asked you about various rent payments on this document; correct?
A Correct.
Q What about March? There's several rent deposits on March that are over just that $13,130; correct? I'm looking at . . . the first one starts on 3/5/2020.
A 3/5/2020, there's a deposit for $1,500.
Q And going down to 3/26, there's more than just that one monthly rent payment; correct?
A Yes. There's a monthly rent payment, and then there's a loan payment. Correct.
Q And what is this $5,069.67?
A It's a loan payment. It says principal is 1,681.78, and interest is $3,387.89.

Q Okay. Thank you. You also discussed a payment of 3300 that went into the personal account and then went to Venmo; correct?
A Correct.
Q And what is Venmo?
A Venmo is just an app that is used to pay someone else money.
Q And that's the ability to -- if you have that app, you can transfer money back and forth?
A Correct.
Q Do you know what that transfer was for from Venmo?
A No. You can't tell from the statement.
Q Do you know, does Target Roofing have a Venmo account?
A I would not know.
Q All right. So you didn't have any Venmo account statements in your review; correct?
A Correct.
Q You were also asked about a Bank of America deposit.
A Yes.
Q Were you asked to specifically look that the deposit, or did you look at all deposits made at Bank of America?
A I looked at all the deposits.
Q All right. So that one deposit in the Bank of America bank record was not pointed out to you for you to review?
A I mean, it was -- it was discussed, but I -- I reviewed

the entire account, but it was discussed. I mean, when I make a deposit like that, I'll look at all the deposit items and indicate what's reflected on the records.
Q Other than that one deposit of $942.90 -- and it's Exhibit 156 if you need to look at it.
A 156. Is it -- are you talking about the deposit item?
Q I'm talking it's the Bank of America, Government's Exhibit 156, it looks like a summary that you created --
A Oh, I'm sorry. I thought you were talking about the actual deposit item. Yes, I have it.
Q Okay. With regard to this Bank of America account, is it your understanding that this account was opened on 3/13/2020?
A No.
Q So I guess I'm asking why does this account analysis start on 3/13/20 and the other analyses for the other accounts start on January 1st, 2020?
A Probably because I actually was running out of time. I just -- I have another job that I was doing, and I just didn't have the time; and the deposits before that timeframe just did not appear relevant to the case, so I started it with 3/13, because that's when the bank statements for March started.
Q How much time did you have to perform this summer?
A To perform this particular summary?
Q All of the summaries.

A A couple of months. But I'm working another job that I work 50 hours a week.
Q Okay. So this is like a side job, then?
A Yes.
Q And so, for this document, did you have the statements starting in January, 2020?
A Yes.
Q All right. So this is just an example you chose to make your summary to start at 3/13/2020.
A Correct.
MR. DICKERSON: Could I publish, Your Honor? Thank you.
BY MR. DICKERSON:
Q And this is the account that the $942.90 was deposited in; correct?
A Correct.
Q Do you recall the date?
A I believe it was August 20th, I want to say. August 20th, yes. On Page 5.
Q If you need to, please do, but is there anywhere else in your summaries where there's any other deposit by Mr. Casey Crowther of employee checks other than this one for $942.90?
A Not that I'm aware of. There were a few -- if you'll notice, like in March, there were a few deposits that just say, "Mobile Deposit," and the deposit item was not available from

the bank.
Q And that was in March of 2020?
A Yes. On the first page.
Q 3/25, there's two of them?
A Yes.
Q So you can't say, at all, what those deposits are for.
A No. Because the bank didn't provide the deposit item.
Q Okay. And then I'm going to go to Exhibit 165. And this is the exhibit that you were asked as far as the sum; correct?
A Correct.
Q Now, I want to go down to utilities, payroll, and rent, payment to WBS, payment for monthly rent. Did you select the utilities, payroll, and rent categories for this calculation?
A I did.
Q You did?
A Yes.
Q And so that 238,650 is the sum of those expenses?
A Correct.
Q And is there any reason why you didn't pick rent for equipment?
A Rent for equipment?
Q Yes.
A I wasn't aware of any rent for equipment. And I'm not sure that the rent for equipment is covered under PP. PPP.

Q Well, I guess that's my issue. Those topic areas right there, you're including that because your belief that they're covered by PPP? Is that why that's on that summary?

A Yes. Because I believe that that's what's covered, that's what the PPP money was authorized to be used for.

MR. DICKERSON: Give me one second, Your Honor?

THE COURT: Sure.

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

MR. DICKERSON: May we have a sidebar, Your Honor?

THE COURT: We can try.

MR. DICKERSON: Thank you.

AT SIDEBAR

THE COURT: All right. Can the defense hear me?

MR. DICKERSON: Yes, Your Honor.

MR. REICHLING: Yes, Your Honor.

THE COURT: How about the prosecutor? Good now? All right. Mr. Dickerson?

MR. DICKERSON: Your Honor, the witness is a summary witness. She is just supposed to be taking summarized information from an admitted document. A voluminous document.

What she just stated there is that she is performing an analysis and her opinion as to what is an allowable expense under the Paycheck Protection Program. That goes beyond a summary witness in every form and fashion, because they're not supposed to be doing an analysis, they're supposed to be taking data, and doing summaries, and calculating sums. But she's giving opinions on what is or is not an allowable expense.

THE COURT: Can the attorneys hear me? All right. I understand your point, but she responded to the question you asked, so my thought is don't ask that kind of question again.

MR. DICKERSON: Your Honor, it doesn't matter what question I ask. The information she has on there is analysis. It's not a summary.

THE COURT: No, that's not true. I don't believe so. You can ask her, but that's the . . . figures that she's drawn for those categories. Now, why she chose those categories, as she pointed out, may relate to --

(The sidebar system malfunctioned.)

THE COURT: All right. I guess my point, Mr. Dickerson, you asked a question and got the answer. And to your point that it shouldn't be on the chart, it's properly on the chart. Presumably, the numbers are right. And you certainly can ask where she gets the numbers and, if you want, you know, why she chose those numbers or those categories as opposed to others.

MR. DICKERSON: And then I'm going to be eliciting opinion testimony.

THE COURT: You may not want do that, but that's your call.

MR. DICKERSON: Your Honor --

IN OPEN COURT

THE COURT REPORTER: We can't do this. I'm sorry. I'm getting feedback.

THE COURT: All right. Mr. Dickerson, you may proceed. Your last motion, which I did hear despite the feedback from the mikes, will be denied.

MR. DICKERSON: Thank you, Your Honor.

BY MR. DICKERSON:

Q Ma'am, you were making the determination to select utilities, payroll, and rent. Correct?

A Correct.

Q You were not just writing down and creating a summary. You were actually making a determination as to what to include on Exhibit 165.

A I was trying to give Mr. Crowther the benefit of certain expenses that could be reimbursed by the PPP funds.

Q And so did you actually analyze all of the expenses that could be utilized in PPP funds?

A I looked at the expenses during that timeframe for those ten days.

Q Are there any supplier costs included in your analysis?

A No. Because I didn't believe those were covered under the PPP reimbursement.

Q And have you read the interim rule from February 25th, 2021?

A There's many, many rules, so I can't say I've read them all, no.
Q I'm just specifically asking -- that was a month ago. Did you read the interim rule from February 25th, 2021?
A No.
Q So you're unaware that, if you are going to do an analysis on allowable -- reimbursable PPP expenses, that supplier cost are included?
A I'm not aware of what was -- what was included as of February 5th.
Q Have you read and reviewed every interim rule regarding application of forgiveness?
A No. Not every one, no.
Q Did you include any covered worker protection in your analysis?
A I mean, what I included was right there.
Q All right. So you didn't include it.
A It's not on there. If there was one, then I guess I didn't list it because it's not on that sheet.
Q So you don't know whether that is --
A I don't know if there was an expense of that date, and I don't know whether it's -- I don't know that it's reimbursable by PPP funds.
Q Because you haven't read the February 5th, 2021 IFR.
A No. February 5th of 2021?

Q Yes.
A No.
Q What about group healthcare? Did you include that with win your summary?
A No. It's not on there. I just included those items.
Q And group healthcare is a forgivable expense; correct?
A I'm not here to be an expert on the PPP forgiveness.
Q All right. So then we go back to the numbers you did select. Those aren't necessarily accurate as to what is permissible, allowable, forgivable; that's just what you thought you should include in that summary.
A At that time, yes.
Q Okay. And, doing a summary analysis just based upon the bank records, you're unaware if any expenses have been paid with cash; correct?
A I wouldn't have any knowledge of any cash payments. I haven't reviewed anything -- I've only reviewed bank statements, so I don't know of any cash payments.
Q Kindly answer the question, but answering the question directly. You're unaware, then, since you just did a bank statement analysis -- I mean summary, of whether any cash was used to pay any expenses.
A That's correct. I'm unaware of that.
Q Showing Exhibit 161. This is your analysis as to the Target Roofing and Sheet Metal operating account; correct?

A Correct.
Q And this is where you're stating that the operating account was making payments to Chase credit card; correct?
A Correct.
Q And you noted that the 0417. I believe, from your testimony, you thought that stuck out because it seemed like a lot for that month; correct?
A I didn't say anything stuck out. I just am making the summary of the payments to Chase credit cards.
Q And that summary was 125,145 on 4/17.
A Yes.
Q But you agree would with me, when you look at February's, if you were to do a sum of February's payments starting 2/3 to 2/28, significant payments are being made to that credit card payment through this operating account; correct?
A Correct. Yes.
Q Same in January; correct?
A Correct.
Q So, if you actually look at the entire picture, there's significant amount of sums being paid each month in January, February, and March; correct?
A Correct.
Q Going back to your 165, is there any specific reason why you only selected the balance of Target operating account 1791,

the balance of the Crowther personal account 1439, the balance in the Jade account 8841, and the balance in the Laredo account 8115?
A Those were the accounts that had balances at Sanibel Captiva Bank.
Q So you were not provided with the bank statements from FineMark account? FineMark Bank?
A I was. But this was just about -- this was just a picture of the balances at Sanibel Captiva Bank.
Q Oh. So it's not actually a summary picture of all the accounts available on 4/24/20.
A No.
Q So it excludes the FineMark account 4732.
A Well, the reason for that was because the reason for this particular spreadsheet was to show the financial picture at Sanibel Captiva Bank, because that's where the funds were -- for the boat were wired out of. They were wired out of Sanibel Captiva Bank, so someone at Sanibel Captiva Bank could not know what the financial picture was at FineMark Bank or Bank of America.
Q All right. So that helps, because there's no title on this Document 165 that says this is just limited to Sanibel Captiva Bank. Correct?
A No, there's no title on this.
Q So there are other bank accounts that would show, with

regard to those balances on that day, a different number, a different sum than your $403,727; correct?

A Correct, yes. This wasn't -- this wasn't meant to be a picture of Casey Crowther's entire financial picture.

Q That makes a lot more sense. And this also isn't including cash either; correct?

A No, there's no cash on this statement. Or summary chart.

Q So, if there is cash, that number would be different as far as the financial picture; correct?

A If we were looking at his entire financial picture, it would be a different -- completely different chart.

Q And were you provided from the government any information with regard to Casey Crowther having cash, a significant amount of cash, from March, 2020?

A No.

Q Because it was just limited, this summary, to bank statement only.

A Correct.

MR. DICKERSON: One second, Your Honor?

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

MR. DICKERSON: Thank you very much, ma'am.

THE WITNESS: You're welcome.

THE COURT: Any redirect from the government?

MR. REICHLING: Very briefly, Judge.

THE COURT: You may.

REDIRECT EXAMINATION

BY MR. REICHLING:

Q Miss Knott, I'm not even going to project anything on the screen, because I don't think it's necessary. If you'd go to Government's Exhibit 165 in front of you, the paper exhibit?

A Yes.

Q Let me ask you, defense counsel asked about these FineMark accounts; right? These FineMark accounts? These were accounts for Margaret Crowther, correct?

A Correct.

Q And they are also business accounts. I think one was for a rodeo?

A That's correct.

Q And some other Crowther horsing related business?

A Correct.

Q Was any of that money transferred over to these Target Roofing accounts to wire Sara Bay Marina?

A No.

Q And counsel -- defense counsel asked about this February 2021, interim rule. These records are from April, 2020; right?

A Yes.

Q And you talked about giving the defendant the benefit here. What is his real account balance in the account 1791 on

4/24, when the wire from his PPP account was sent to Sara Bay Marina to buy a $689,417 boat?

A The actual balance in that account was $1,311,768.

MR. REICHLING: No further questions.

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.)

THE COURT: You may call your next witness.

MR. LEEMAN: Your Honor, may we have a moment to confer?

THE COURT: You may.

MR. LEEMAN: May we speak with the Courtroom Deputy to check the exhibit list to make sure the appropriate exhibits are in?

THE COURT: You may.

(Counsel for the government confer with the Courtroom Deputy privately.)

MR. DICKERSON: I want to get my phone back.

COURTROOM DEPUTY: No, you can't have it back.

THE COURT: We'll mark it as an exhibit.

MR. LEEMAN: Your Honor, I'd ask if the Court would consider taking judicial notice of the matter we discussed moments before?

THE COURT: I'll deal with that momentarily.

MR. LEEMAN: Well, Your Honor, we have no further witnesses to call, so . . . . Yes, sir. I would just like to have a ruling on the evidence before I ask to rest, Your Honor.

THE COURT: I understand.

Ladies and gentlemen, there's a matter that the lawyers and I have to talk about, and it's pretty clear it's going to be just easer to excuse you rather than try to use the system here. I'll say 15 minutes, but I don't know.

Again, please do not allow anyone to discuss the case among yourselves, or allow anyone to discuss it with you or in your presence. We'll get you back here just as soon as we can.

(At 1:52 p.m., the jury was escorted from the courtroom.)

THE COURT: Be seated, please.

All right. First of all, with regard to the judicial notice, let's see if this is going to be simple.

Is there any objection from the defense?

MR. DICKERSON: No. No objection that he was arrested on September 2nd. If that's what the judicial is he's asking for.

THE COURT: I think the judicial notice was that he was . . . let me have the government state how you want me to say it.

MR. LEEMAN: Frankly, for the record, Your Honor, I'd rather it not be said he was arrested, which might be viewed as a little more inflammatory. We'd just ask that he had his initial appearance, and was informed of the charge, on September 2nd.

THE COURT: September 2nd of 2020?

MR. LEEMAN: Yes, Your Honor.

THE COURT: And, of course, the charges were --

MR. LEEMAN: At that time, it was a complaint, Your Honor, and it was bank fraud. No. I'm sorry.

MR. REICHLING: My apologies.

MR. LEEMAN: It was a false statement to a financial institution. But it involved the same conduct, Your Honor.

THE COURT: So you want me to tell them that, on September 20th of 2020, the defendant had his initial court appearance on a complaint charging . . . false statement to a bank?

MR. LEEMAN: False statement to a financial institution in connection with his obtaining the PPP loan. And the date was September 2nd, Your Honor.

THE COURT: All right. Mr. Dickerson?

MR. DICKERSON: Your Honor, I think, if the government is going to be asking for this, we should be accurate. And it should be accurate that he was arrested, and had his first appearance, whatever they want as far as the court appearance. But it's not like he just walked down and agreed to go to the court.

THE COURT: If you want the arrest part in, I'll put it. I wouldn't otherwise, but if you want it.

MR. DICKERSON: Yes.

THE COURT: So be it. So you want me to say he was arrested, and had his initial appearance, etcetera.

MR. DICKERSON: Correct. But . . . but I don't know why we have to go into the charge, because then the question is going to be is that charge a different charge than this case, and I think, we go into that, there's going to be questions in the jurors' minds that shouldn't be there, and it would be prejudicial.

THE COURT: How about if I say something like on September 20th, 2020, the defendant was arrested and had his initial appearance in this case.

MR. DICKERSON: That would be great.

THE COURT: Does that work for the government?

MR. LEEMAN: Acceptable, Your Honor. Thank you.

THE COURT: All right. I'll do that once we get the jury back, and then I'll call upon the government to rest.

Let's assume for the moment that the government has rested. Any motions from the defendant?

MS. WAID: Yes, Your Honor. We move for -- motion for judgment of acquittal pursuant to Rule 29A. And, Your Honor, we actually have a written motion. We're also more than happy to argue it orally, as well. We have a 22-page written motion.

THE COURT: Well, we're going to do it this way. You're going to proceed with your testimony. I'll be happy to read the motion, or read the memo, and take it under advisement; but I'm not going to read 22 pages on the jury's time.

MS. WAID: Right. Of course, Your Honor.

THE COURT: All right. We can do that. If you haven't filed it, go ahead and do that, and I'll basically take the motion under advisement. At least until I've had a chance to read it.

MS. WAID: Okay, Your Honor.

THE COURT: And then, if I grant it, obviously, we're done.

MS. WAID: Right.

THE COURT: And let me just check with the government. May I presume the government, whatever is stated in the motion, opposes it?

MR. REICHLING: Of course, Your Honor; yes.

THE COURT: All right.

Do you have a copy ready for me?

MS. WAID: Your Honor, I do. I just need to -- there's a typo on Page 8, but I'm just gonna -- when I file it, I will fix the typos; but I will give them to the Court and to the government now, so everybody has a copy.

THE COURT: Okay.

So the government will rest. Does the defense anticipate calling any witnesses?

MS. WAID: Your Honor, can we just briefly speak with the client?

THE COURT: Sure.

MS. WAID: Thank you.

(Counsel for the defendant confer with the defendant privately.)

MS. WAID: Your Honor, the defense is not going to present any witness testimony.

THE COURT: All right.

Are you folks ready for a charge conference?

MR. LEEMAN: I do believe we are, Your Honor. We've had a chance to look at the jury instructions, the verdict form, and I've made some notes. I think I have a grasp on the Court's issue with the proposed jury instruction that we submitted originally.

THE COURT: Before we get into -- well, I am sorry. Let me hear from the defense. Are you all set?

MS. WAID: Yes, Your Honor.

THE COURT: Okay. And what is the pleasure with regard to the forfeiture? I assume the house is moot because of the other case and the plea, so we have the . . . boat, I guess?

MR. LEEMAN: Yes, Your Honor. I don't think a jury determination is due on the guilty plea as it relates to the house. My understanding, though I haven't spoken with her in a couple days about it, is that they won't be requesting a jury determination on the boat upon a guilty verdict. If it's not guilty, obviously, it really doesn't matter. So I'll let her speak. But we're prepared to move forward either way.

THE COURT: All right.

MS. WAID: That's correct, Your Honor.

THE COURT: Which part of it? That, if there's a guilty verdict, the forfeiture will be decided by the Court?

MS. WAID: Yes, Your Honor. If there is a guilty verdict, we would prefer that it be decided by the Court and not go to the jury.

THE COURT: Okay. Now, with regard to the jury instructions, how about if -- let me have The Court Security Officer tell the jurors we're going to be more than 15minutes, just so that they don't get antsy, but I guess, as I see how this plays out, I'll do the charge conference, closing arguments, and jury instruction, I think, all yet this afternoon. Unless you plan on taking a real long time with closings.

MR. LEEMAN: I would tell the Court our preference would be to close in the morning.

THE COURT: Really.

MR. LEEMAN: Yes, Your Honor. I think, first, we have the Rule 29 issue to respond to. It sounds like that will be filed. We would be able to get our response ready for that, give it to the Court, and then close in the morning. Of course, you know, we're at the mercy of the Court; but that would be our preference.

THE COURT: I like the way you phrase it, at the mercy of the Court. We'll see how merciful we get.

What says the defense in terms of the scheduling?

MS. WAID: Your Honor, we can close today, if that's what the Court prefers. We'll leave it to the discretion of the Court.

THE COURT: Well, my guess is, if we close today, the jury is going to be coming back tomorrow in any event. If we do this starting at 9:00 o'clock, how long do you anticipate for closing.

MR. LEEMAN: I wouldn't anticipate much more than 30 minutes, Your Honor.

THE COURT: And for the defense?

MR. LEEMAN: Without rebuttal.

MR. DICKERSON: 30 to 45 minutes, Your Honor.

THE COURT: So we're talking, at most, two hours for both sides, maybe 30 minutes for jury instructions. That actually would work. I think.

Well, if we're's going to do that, we might as well send the jury home. I might, we'll call them back so you can rest, and I'll give them the judicial notice part. But we can send them home, if that's the way we're going to do it.

MR. DICKERSON: Acceptable.

THE COURT: All right. Let's see if we can get the jury back up. I don't think they're out there, so you can be seated. Unless you'd like to stand.

All set? All right. Have the jury step in, please.

(At 2:05 p.m., the jury was escorted into the courtroom.)

THE COURT: Be seated, please.

Ladies and gentlemen, the Court has taken judicial notice of a fact, and all that means is that what I'm about to tell you you can assume to be correct, and neither side needs to present any additional evidence to establish this fact.

The Court will take judicial notice that, on September the 2nd of 2020, Mr. Crowther was arrested and had his initial appearance in court in this case.

The government may proceed.

MR. REICHLING: At this time, Your Honor the United States of America rests.

THE COURT: All right.

Counsel, anything from the defense?

MS. WAID: Nothing from the defense, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, both sides have rested their case now, and we've discussed the next step in the procedure. And what I'm going do is send you home, because we have some things that the lawyers and I need to do before closing arguments.

We're going to have you come back in the morning, we'll have closing arguments, the jury instructions, and then you'll begin your deliberations. Between now and then, it's no secret what we're going to be doing. We'll be going over the charge, the instructions that I'm going to give you in the morning so both sides will know what it is I'm going to tell you the law is before they make their closing arguments to you. The alternative was to make you wait while we do that, and then do it, and we kind of run into too close to 5:00 o'clock.

Bottom line, I'm going to send you home early, have you come back fresh at 9:00 o'clock, and then we'll finish up tomorrow, or however long it takes.

What it means, again, is you cannot discuss the case among yourselves, or allow anyone to discuss it with you or in your presence. You can't do any independent researching, or any media searches, or watch news, or read newspapers, or any kind of media, with regard to this case. You still have the best seat in the house. See you in the morning, 9:00 o'clock.

(At 2:08 p.m., the jury was escorted from the courtroom.)

THE COURT: All right. Be seated, please.

All right. The way I usually do this is the Court has given you -- my law clerk has given you, this morning, the Court's draft jury instructions. I'll just go through page by page, and take any comments or objections as we go. At least the beginning part of this is mostly Eleventh Circuit pattern. And the end turns out to be the Eleventh Circuit pattern.

Page 1, it's actually unnumbered, but the first page, any objections or comments there?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor.

THE COURT: Page 2. And this is the version of the Eleventh Circuit pattern that references the defendant's not testifying.

And, Mr. Crowther, I gather from what's happened that it is your decision not to testify in the case; is that correct?

THE DEFENDANT: That is correct, Your Honor.

THE COURT: All right. Any objections or comments with regard to Page 2 of the proposed instructions from the attorneys?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor.

THE COURT: Page 3, burden of proof, reasonable doubt, any objections or comments there?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor.

THE COURT: Page 4, talking about evidence, direct and circumstantial, that goes over to Page 5., any objections or comments there?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor.

THE COURT: Page 6 is the credibility instruction. Any comments or objections there?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor.

THE COURT: Page 7, again, relates to credibility. I was thinking about this one. I guess my thought is to keep it in there based upon Mr. . . . I think his name was DeCicco?

MS. WAID: Yes, sir.

THE COURT: Any thoughts or objections to this instruction?

MR. LEEMAN: The government doesn't have an objection to the instruction, Your Honor.

MS. WAID: No objection from the defense.

THE COURT: All right. Number 8, actually, I'm not sure we need anymore. This was the expert, and I don't think we had an expert. Unless someone --

MR. LEEMAN: The government objects to it, Your Honor.

MS. WAID: We don't need it, Your Honor.

THE COURT: Strike that.

Number 9 is a note-taking instruction. Any objections or comments there?

MR. LEEMAN: No, Your Honor.

MS. WAID: What Page are we on? I'm sorry, Your Honor. Mine didn't have an expert in ours.

THE COURT: Oh, yours didn't have a Page 8?

MS. WAID: Okay. No. Sorry. I got ahead.

THE COURT: I'm at Page 9.

MS. WAID: Okay. Thank you. I don't have any problem with Page 9.

THE COURT: All right. In beginning of Page 10, we start getting the instructions. Any objections or comments with regard to Page 10?

MR. LEEMAN: No, Your Honor.

MS. WAID: None to 10, Your Honor.

THE COURT: Page 11, 12, 13, 14, to the top of 15, all relate to Count 1. You can do that either by page, or in total, whatever your preference is.

Let's start with Page 11, I guess. Any objections or comments?

MR. LEEMAN: Not to Page 11, Your Honor.

MS. WAID: None to Page 11, Your Honor.

THE COURT: All right. Let's look at Page 12 then.

MR. LEEMAN: Your Honor, I guess we -- we do have a comment. I don't think it's an objection because there's not really any of the material that the government finds objectionable. We would have a suggestion as to the order of some things. There are definitional sections, I guess. The first one is a scheme to defraud. And then there's and intent to defraud, and then the Court has moved -- goes through those definitions, indicates that the parties have stipulated to financial institution, and then it moves on to the second alternative method.

The government's suggestion, Your Honor, would be to move all the definitions until after the alternatives are stated. It thinks that might be a little simpler to read. It would also, I think, more importantly, there are definitions that are listed after the second alternative, and vice versa, that relate to the other count.

For instance, the definition of the word "false or fraudulent," which occurs after the second alternative method, is actually relevant to the first alternative because, in a scheme to defraud, the word "false" is used.

And the same applies to the word "material." Material is defined after the second alternative, but material is also, obviously, a fact needed to prove a scheme to defraud.

So I don't think anything is lost by moving all of the definitions to after the two alternatives are stated, and that would be our first suggestion, Your Honor.

And I think, for the same reason, we could just have a single reference to Sanibel Captiva Bank being an insured financial institution.

THE COURT: So essentially start out with the elements for both alternatives, and then get into the definitions?

MR. LEEMAN: Yes, Your Honor.

THE COURT: All right. I think, as I recall, that's the way the pattern is.

MR. LEEMAN: It is, Your Honor.

THE COURT: Any thoughts?

MS. WAID: Yeah. We were going to suggest, Your Honor, that . . . . That the intent to -- that just the intent to defraud, Part B, defined again after the second alternative because it is not in there, and it . . . so we have two sets of definitions was what we were going to suggest one way to write it, but including intent to defraud after the second.

THE COURT: So putting it after both basically does what you want?

MS. WAID: Yes.

THE COURT: Okay. All right. I'm not opposed to moving all those definitions until after the elements and deleting the one that would be redundant. So I would take, on Page 12, the definition of scheme to defraud, intent to defraud, the last paragraph about the government does not need to, and then the stipulation, and literally move that until after the three elements. And I think I'd move it in front of what is now the paragraph that says, "Statement or representation is false," etcetera.

MS. WAID: Yes. We'd agree with moving it into the front, Your Honor.

THE COURT: And then, on Page 14, I would delete where I say, again, "The parties have stipulated," because we will have moved the other paragraph there, so I will have said that once.

Is there anything else that's redundant, or the order needs to get rearranged?

MR. LEEMAN: Your Honor, the government would suggest -- sort of following that definitional section, we have a section that talks about the statute specifying multiple alternative ways in which an offense may be committed. It's sort of the standard conjunction language that I think is usually in the jury instructions.

I was wondering if the Court might consider moving that, because the Court has added this sort of language to the jury instruction earlier which talks about alternative methods of proving bank fraud, and we wondered if it might make sense to move what begins on Page 14, sort of earlier into the instruction, where the Court is discussing that bank fraud may be committed in alternative ways.

THE COURT: Well, I wasn't really sure where I was going to put that, so that's . . . it kind of got stuck in the end. So I'm not necessarily opposed, but where is that you think it might more properly belong?

MR. LEEMAN: So if we take the paragraph beginning, "Where a statute specifies," and we place it immediately before the sentence that begins, "As to the first alternative method."

THE COURT: All right. Let me take a look.

MS. WAID: That makes sense to us. We have no objection, Your Honor.

THE COURT: I like that. Not that it matters much, but.

MR. LEEMAN: It matters to me, Your Honor.

THE COURT: And when I say I like it, I mean I'll do it.

MR. LEEMAN: Okay.

THE COURT: All right. What's next?

MR. LEEMAN: The only other suggestion the government has for this instruction is at the paragraph we were just talking about, which sounds like it will be moved earlier in the instruction.

There is some worry the government has about alternatives being sort of viewed as one or the other, and not potentially both. We would like a sentence -- and I think most logically is at the end of that paragraph -- you may find the defendant not guilty of both alternatives, guilty of both alternatives, or guilty of one of the alternatives and not the other.

I just do worry the use of the word will "alternative" suggesting that they're mutually exclusive, Your Honor.

THE COURT: I understand the concern. I'm not as enthused about the verbiage as I was about moving the paragraph, I guess.

MS. WAID: Your Honor, I think the verdict form covers that.

THE COURT: Well, you know, I was reading the sentence that says the verdict form given to you will address both alternative methods, and then the verdict form . . . . I guess, when I'm explaining the verdict form, I can verbally tell them it's alternative one, alternative two, or both. Or neither.

MS. WAID: We'd say neither first.

MR. LEEMAN: We can put neither first, Your Honor. That's not an issue with the government.

THE COURT: I've got the not guilty first as it is, so.

MR. LEEMAN: I saw that.

THE COURT: But if I do that, does that take care of your concern, or do you still want something?

MR. LEEMAN: I think it does, Your Honor. We just don't want anyone operating under the assumption that they have to pick one or the other. So something just sort of clearly stating that, if neither alternative applies, he's not guilty of both; if both apply, he's guilty of both.

THE COURT: All right. I think, obviously, that's a correct statement of the law, and I'll do it with the verdict explanation.

Anything else with regard to the Count 1 charge?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor. Well, just a technical on Page 13. It's your second paragraph. It says Sanibel Captive Community Bank, instead of Captiva.

THE COURT: Captive Community Bank? Yeah. Thank you. All right. Let's go to Count 2, then, on Page 15, over to 16. Any objections or comments with regard to that?

MR. LEEMAN: No, Your Honor.

MS. WAID: Not from the defense, Your Honor.

THE COURT: All right. Page 17 and 18 and 19 relate to the illegal money -- monetary transaction. Any objections or comments there?

MR. LEEMAN: We have one comment, Your Honor. I did not see an indication that the parties had stipulated that the transfers had affected interstate commerce.

THE COURT: I did not put that in. You're right.

MR. LEEMAN: I think, logically, Your Honor, if the Court is inclined to put it in, it could go on Page 18, "As you know, the parties have stipulated that Sanibel," it says "Captive" again, I hadn't seen that, "was a financial institution at all material times." And then, perhaps, language that says . . . .

THE COURT: "The parties have also stipulated"?

MR. LEEMAN: "The parties have also stipulated that the transfers at issue in Counts 3 and 4 affected interstate or foreign commerce."

MS. WAID: No objection to that, Your Honor.

THE COURT: Okay. I'll add that there.

Okay. Anything else as to Pages 17, 18, or 19?

MR. LEEMAN: No, Your Honor.

THE COURT: I don't know who said the no.

MR. LEEMAN: I did, Your Honor.

MS. WAID: None, Your Honor.

THE COURT: All right. Page 20 is the aiding and abetting that I was suggesting before. Not all of it seems to apply. Maybe none of it. I don't know.

MR. LEEMAN: I agree, Your Honor, that all of it doesn't apply. My understanding of the aiding and abetting statute is it does hold an aider and abettor liable as a principal, but it also allowed a person who directs the actions of others which may further the scheme to be held liable for that scheme. Sort of the agency theory.

So what the government suggests, Your Honor, is deleting all of the language beginning with, "A defendant aids and abets a person if the defendant," down through the end of the page. The only instruction would relate to the agency portion of 18 United States Code 2, which says it's possible to prove the defendant guilty of a crime even without evidence that the defendant personally performed every act charged.

I think that -- I think this is an appropriate instruction in this case because some of the evidence which has been elicited and mentioned in the opening statement about the possibility that Mr. Crowther's signatures were added to documents by others within his company, and that they were all working together to get this loan.

THE COURT: I would also propose to leave the first two paragraphs as is, and delete the rest of the paragraphs on that page, which I think is what Mr. Leeman just said I should do.

What says the defense?

MS. WAID: So you just want to keep the first two paragraphs. Is that my understanding?

THE COURT: I am. I think that goes to the cause portion. For example, he doesn't have to do the wire fraud, the bank can do it; but if he caused them to do it, he has liability.

MS. WAID: That's fine.

THE COURT: Number 21 is a good-faith instruction. I believe this came from the defense. Any objections or comments to that?

MS. WAID: Not from us, Your Honor.

MR. LEEMAN: Just thinking about something for a minute, Your Honor, if I might.

THE COURT: You may.

MR. LEEMAN: No objection, Your Honor.

THE COURT: Page 22, again I believe this is from the defense, on Interim Final Rules. Any objection or comments?

MR. LEEMAN: The government doesn't object, Your Honor.

MS. WAID: No objection from the defense.

THE COURT: Page 23, we get back into the Eleventh Circuit patterns, on or about, knowingly, separate counts, etcetera. Any objection or comments to 23?

MR. LEEMAN: No, Your Honor, not from the government.

MS. WAID: No, Your Honor, not from the defense.

THE COURT: Twenty-four. Again, I believe most of this is Eleventh Circuit pattern. Any objection or comments?

MR. LEEMAN: Not from the government, Your Honor.

MS. WAID: None from the defense, Your Honor.

THE COURT: Twenty-five is yet another caution about electronic media and whatnot. Any objection or comments from 25 to 26?

MR. LEEMAN: No objection from the government, Your Honor.

MS. WAID: No objection from the defense, Your Honor.

THE COURT: And, finally, Page 27 talked about an explanation of the verdict, etcetera. Any objections or comments there?

MS. WAID: None, Your Honor.

MR. LEEMAN: No, Your Honor; not from the government.

THE COURT: All right.

Now that the testimony is over, is there any instruction that I haven't given that anyone thinks I should?

MS. WAID: Your Honor, we had requested an ambiguity instruction pursuant to Harra in our original submission.

THE COURT: Yeah. I remember that. I remember rejecting it.

MS. WAID: I noticed that.

THE COURT: But tell me again, or tell me why, and where you think it's appropriate.

MS. WAID: So we would argue it's appropriate because the regulations are so ambiguous. Even to the statute. They completely contradict the statute. So you have the CARES Act, and then the Interim Final Rules, which are actually supposed to interpret the CARES Act, and they, in fact, conflict with each other.

Even the Interim Final Rule admits, in its February 5th, 2021, publication, that the rules are conflicting; and they still haven't figured out what the rules, in fact, should be, and they're trying to fix misinterpretations in guidance.

There's people . . . . We believe that it should be in there -- the ambiguity instruction should be in there because it's any reasonable interpretation; and the government's own witnesses interpreted it almost the same way that Mr. Crowther did --

THE COURT: Well, tell me where in the instructions. I mean, all that may be true, but the bank fraud statute isn't ambiguous, and the 1014 offense isn't ambiguous. So where do you put that in connection with the charged offenses?

MS. WAID: Well, I believe, because the PPP program, Paycheck Protection Program, was named so many times within the indictment the two actually go hand in hand. You can't have a bank fraud, there wouldn't have been a submission, unless it was through the PPP program. So it's those regulations that everybody was following, including the bank itself, in order to figure out how the program was going to be administered and how the loan proceeds could be administered. So I don't think you can separate the two.

THE COURT: Well, isn't that covered by your good-faith instruction that I'm actually giving?

MS. WAID: I don't think it is actually covered by a good-faith instruction because I think that, where the law is so obviously conflicting, like it was in Harra, that our argument is such that the government would need to prove that, beyond a reasonable doubt, any reasonable interpretation -- and, as we saw before the Court, there were many reasonable interpretations of this statute. I completely disagree with the government's interpretation of the CARES Act.

THE COURT: Well, is there any evidence of any reasonable interpretation that would authorize the purchase of an in excess of half a million dollar boat?

MS. WAID: Yes, there is.

THE COURT: What is that?

MS. WAID: The sum of the loan proceeds needed to be used for forgivable expenses, and that's exactly what happened. I mean, that's what the law states, the sum of the loan proceeds need to be used on -- in order to be forgiven, the sum of the loan proceeds need to be used on forgivable expenses. And forgiveness -- we haven't even applied for forgiveness here, Your Honor; so it's just a loan, and that's it.

And I think what's happening -- it's hard to argue when I'm sitting down. I think what's happening is there is a distinct confusion, which is exactly why I would like an ambiguity, because there's a -- the government keeps confusing kind of the CARES Act disclosures in those loan documents which don't come into play until forgiveness has in fact been applied for, and Target has never applied for forgiveness.

So, really, it's the loan documents that we should be looking at, and nowhere within those loan documents is it discussing anything regarding what . . . what may, or if, or need, the loan documents conflict themselves. Half the time they say you may use these, half the time they say you will use these. That's exactly what the statute says.

The CARES Act says you may use these, the Interim Final Rule says you will use these. It's completely conflicting. And we actually argue this is Rule 29, so it might shed a little light for the Judge as well; but, in our determination, there is so much ambiguity in those regulations, or even -- I think it actually is violating Mr. Crowther's due process rights.

Furthermore, the government is requiring additional regulations. So the government's theory is that those funds are specifically earmarked proceeds; but there's no regulation that states that. And John Miller, who is the SBA witness, stated there is no regulation that says they can't be commingled; there is no regulation that says anything about bank accounts; there is no regulation that says that this is --

these are specifically earmarked proceeds.

So the government's theory is I give you ten dollars, and -- you know, and someone else gives another ten dollars, you put this ten dollars in your right pocket, you put this other ten dollars in your left pocket, you go down to the store, the government is saying you must use this money out of your right pocket, and not out of your left. But money is fungible, and nowhere in the regulations, and nowhere in the CARES Act does it say otherwise. There is just no regulation.

They rushed it through, and they might not even like that, but you can't make more stringent requirements on a person. They think the intent of the law is this. It's so ambiguous, conflicting with unto itself, from the statute to the regulations, to the loan documents, to the Cares Disclosure Act, and the testimony of the witnesses as well, all of them, that I think everyone is thoroughly confused.

You can see exactly where an ambiguity jury instruction would make the jurors think and have to hold the government to the standard upon which it should be, that any reasonable interpretation they have to prove beyond a reasonable doubt; and that's not an unreasonable interpretation of the CARES Act. We know that through the testimony of the witnesses because everybody said the same thing, it's a loan.

THE COURT: I'm not sure . . . if you said it, I'm not sure I appreciate it. Where do you want that instruction?

MS. WAID: Oh. I'm sorry if I didn't say that. We would like that instruction -- we had put it right before the Interim Final Rules instruction that we had. So I assume it would be Page 22.

THE COURT: Do you want it either before or after?

MS. WAID: I'd prefer it before, but.

THE COURT: Before, okay. So basically after your good-faith instruction.

MS. WAID: Yes, Your Honor.

THE COURT: All right.

What says the government?

MR. LEEMAN: Thank you, Your Honor. I guess, without getting -- I don't feel confused about the CARES Act or the evidence in this case, Your Honor, and I don't feel like we've been confusing the issues. This is a straightforward case of, when Mr. Crowther applied to a bank, whether he said something which was false. He promised to use these things in particular ways, and he did not. The fact that the CARES Act and the IFRs have changed a number of times is indisputable; but not a single witness has come up and suggested that any change to any of those IFRs has ever allowed someone like Mr. Crowther to purchase a boat in his own name, which he has done. So I think this focus and repeated pointing to the program as somehow, itself, is confusing is missing the point.

One very narrow portion of this program never changed, not once, and it's what -- it's whether a person can use funds like this to buy personal property in their own name. So I think -- if I could point out a few reasons why this ambiguity instruction actually conflicts with the standard instructions that are used countless times, over, and over, and over, in this district.

In the fraud -- bank fraud instructions, Your Honor, there are a couple of things, and it talks about . . . a . . . the falsity. It defines what false is. And I'm reading from the standard instruction. "A statement or representation is false or fraudulent if it's about a material fact that the speaker knows is untrue, or makes with reckless indifference as to the truth, and makes with an intent to defraud. A statement or representation may be false or fraudulent when it's a half truth, or effectively conceals a material fact, and is made with an intent to defraud."

So under a fraud case, Your Honor, the government is not under a burden to prove that something is absolutely false. It can be half true under the standard jury instruction.

It's also possible that the statement's made and the person doesn't even know if it's true or not, it's just made with reckless indifference; which certainly is a possibility with Mr. Crowther, considering he's suggested, multiple times, or at least the arguments flowing from the evidence have suggested that he hadn't signed these documents. At a minimum, it appears through there is evidence that he was recklessly indifferent to what he was stating in these things if he didn't sign them.

So when we have this definition, which they call an ambiguity definition, but what it's really doing is changing the definition of what falls is under the very standard bank fraud definitions, that is . . . problematic, I think, Your Honor. It's raising the government's burden. We certainly have a high burden, it's always our burden; but we're not required to meet some super burden simply because the defendants believe we're confused. This instruction -- fraud instruction is perfectly adequate.

I would say what the defendant is also attempting to do here, this appears to not only relate to the fraud count, but any evidence. They -- the way this -- the way the jury instruction is written, it says to prove that any statement was false.

Well, there are a lot of statements in this case that are false, or at least the government believes they were false: Statements about payroll, statements about equipment, statements about employees and whether they existed or not. You know, to the extent this is some overarching definition of what false is, and then it refers to loan documents, and interim rules, and things like that, that appears to be: A, incorrect; B, also confusing to the jury. Why would this be in a stand alone instruction?

As it relates to the false statement case, Your Honor, I think the reason -- the reason an instruction like this, again, doesn't make -- doesn't pass muster, if you look at the instructions for false statement, a statement or report -- false is defined again. A statement or report is false if it's untrue when made. When made, Your Honor.

So these references -- Mr. Dickerson, today, got up and referenced an IFR that was created in February of 2021, many, many months after the time that Mr. Crowther bought the boat. To the extent that they bear on -- it's impossible that these IFRs bear on the truthfulness of a statement when made.

The question would be what did he mean when he said it, and what was the law then? And the facts actually show there wasn't even an IFR until April 15th, the day after Mr. Crowther got the loan.

So again, Your Honor, I raise these things . . . the government appreciates the sentiment, it understands the defendant's argument in this case, but putting this instruction in I think absolutely risks confusing the jury about multiple different issues. It changes the pattern instructions in a way that I don't think are anticipated or correct; and so, for that reason, we object to it being placed anywhere in the instructions.

THE COURT: Ms. Waid, how would your proposed instruction work? I'm looking at it now, and you want an instruction saying the government has to prove beyond a reasonable doubt that the statement was not true under any reasonable interpretation of the loan documents provided by the lender and the Interim Final Rules pursuant to the PPP. The testimony is there's a number of different Interim Final Rules, most of which, maybe all of which, postdate the application. So how could they be possibly relevant to whether or not Mr. Crowther has made a false statement on day one when the regulations don't come in until day four, five, six, whatever?

MS. WAID: Well, first, Your Honor, I would actually -- we could include the CARES Act in that, because that actually predated the IFRs, they're just an interpretation of the CARES Act. And, second of all, the IFRs actually do come into play because Mr. Crowther hasn't applied for forgiveness yet, so he's still following those changes in the IFRs.

But I did just briefly want to --

THE COURT: Well, wait a second.

MS. WAID: Okay.

THE COURT: I don't understand that at all. The fact that he hasn't yet applied for forgiveness, and may never, I mean, I don't know, how does that impact whether he lied on the application?

MS. WAID: The Court's indulgence.

THE COURT: Mr. Dickerson, I know I have a one attorney rule, but if you want to -- might be easier if you just want to argue.

MR. DICKERSON: All right, Your Honor. The SBA time, Exhibits 6 and 8, specifically say it is applying to SBA loan proceeds, Your Honor. We have Mr. Miller specifically stating there are two times in these loans that the SBA loan proceeds apply. That is when, A, the loan is applied for forgiveness to the bank, the bank approves, submits it to SBA, and then SBA approves and then pays out the forgiveness, so it goes back to the bank. The second time is when there's a default. That's Mr. Miller's testimony and Mr. DeCicco's testimony agree. Mr. DeCicco saying these are loan proceeds from the bank, it is not SBA loan proceeds.

That application, their bullet point on Page 2 of six and eight, exhibits, say SBA loan proceeds to be used. It does not say anything about just general bank loan proceeds. If there were that case, then the bank's own documents, being the promissory note, which off the top of my head I believe is Exhibit 9, and either 11 or 14 is the note -- I mean the actual agreement -- would have the use of proceeds provision in it just like the line of credit. But it doesn't.

And, in fact, Your Honor, the promissory note, Exhibit 9, says you may apply for forgiveness if you use the proceeds for, and it gives those same lists of proceeds that the government keeps harping on that is limited to an SBA loan proceed which kicks in when there is a forgiveness or there is a default.

So, no . . . . The complication that we're having this discussion alone shows the ambiguity, because the application specifically says SBA loan proceeds. Mr. Miller testified there are no SBA loan proceeds in this loan, so did Kyle DeCicco. So I don't understand why ambiguity wouldn't be there because the two witnesses said there are no SBA loan proceeds in these actual loans.

THE COURT: So the applicant can lie without penalty?

MR. DICKERSON: No, it's not the applicant can lie. The applicant agrees that, if there are SBA loan proceeds in the loan, that the use of those funds have to be for that limited purpose. And when you look at the CARES Act, Your Honor, it says the sum of all expenses under the forgiveness provision for these items matters.

It does not say, anywhere in the CARES Act, or any of the IFRs, that the dollar coming out of the SBA loan proceed application that is then the actual bank approving, and the bank issuing their own documents, and the bank's own documents, Your Honor, say you may use the proceeds for those purposes. So when the bank's own document says you may use the proceeds for those purposes, that's controlling until there is that filing of forgiveness.

Now, if Mr. Crowther didn't use any of the bank's money for any forgivable expense, and then he filed for forgiveness, and he did not have any sum of forgivable expenses in that application, then, once the government, SBA, approves the loan and pays the reimbursement for that loan for expenses that are not forgivable, or were false, fictitious, then yes, Your Honor, that's when it comes full circle. But that SBA document specifically limits itself to SBA loan proceeds, not the bank.

Mr. Miller even said, no, that's the bank's money. Even the government, in their indictment, says it's the bank's money. It's not SBA money.

THE COURT: All right. I'm not inclined to give the ambiguity instruction as requested in Docket -- Document Number 93. I think it's covered by the definition of a false statement and the other aspect of the fraud that we set out. I'll take a look at it again. But that's my -- at least my initial inclination.

I think I have asked, and I'm not sure I finished, is there any other instructions that I have not included that you think should be included? I think, Miss Waid, I'm still with you.

MS. WAID: No, Your Honor.

THE COURT: From the government?

MR. LEEMAN: No, Your Honor.

THE COURT: The verdict form. Let's discuss that. Obviously, it's shorter. Any either objections or comments from any portion of the verdict form?

MR. LEEMAN: No, Your Honor. I believe any concerns we may have had, I think is going to be remedied by what the Court explained it would intend do to indicate these things are either, neither, or both.

THE COURT: Okay.

MS. WAID: We're okay, Your Honor.

THE COURT: I do have one question. This and in the instructions for the Counts 3 and 4, we're kind of interchangeably using the terms "illegal monetary transaction" and "money laundering". Apparently, nobody has an issue with that; so, if you're comfortable with it, I am too.

MR. LEEMAN: We are, Your Honor.

THE COURT: Miss Waid?

MS. WAID: I'd actually prefer to track the jury instruction.

THE COURT: Well, the offense, and I believe the jury instruction, the offense is an illegal monetary transaction.

MS. WAID: Okay.

THE COURT: Everybody calls it money laundering, but --

MS. WAID: Right. Then we're fine with that, Your Honor.

THE COURT: All right. We'll leave that as it is then.

All right. If you want to hang around, hopefully we'll get the changes within half an hour or so, and you can see the Court's version tonight. If not, obviously, it will be ready in the morning.

Anything else we can do?

MR. REICHLING: I don't believe so, Your Honor. Thank you.

MS. WAID: Thank you, Your Honor.

THE COURT: All right. We'll be in recess until --

MR. DICKERSON: Your Honor, we just -- with regard to closing arguments and the opening arguments from the government calling our client a liar, we're just asking for the Court not allow the government to call our client a liar in closing. There's plenty of case law as far as calling people --

THE COURT: You're concerned with the literal term "liar," as opposed to accusing him of making false statements.

MR. DICKERSON: Correct. Calling him a liar, "He's a liar," that's the problem. They can talk they think the case has false statements, that's different; but calling someone a liar cannot be done in closing.

THE COURT: Do you see it differently?

MR. LEEMAN: I'm not sure that I agree with that, Your Honor. I don't have case law off the top of my head. I don't believe we did call him a liar in opening. I believe we said he has a lying problem, which I think we've proven. I would intend do it again. If I've run afoul of some case law I'm not aware of it, but lying would seem to be making a false statement. That's exactly what we're doing here. We're trying to speak to a jury of the community. I don't understand why I can't use common parlance to describe what Mr. Crowther has done.

Obviously, if that's inappropriate under the law, I'd be happy to not do it; but if the Court's asking me on the spot whether I'd commit to it, I would prefer some time to look into the case law.

THE COURT: I'd suspect that Mr. Dickerson -- let me see if he and I are on the same page here -- that there's a difference between saying a defendant is a liar and saying a defendant lied.

MR. DICKERSON: If there is a lie, yes. But saying that they're a liar is completely different. Calling them out as a liar, yes; but if they're saying he didn't tell the truth on a document, as represented, that's one thing. But calling him a liar is the issue.

THE COURT: So they take Exhibit 6, for example, and point to a portion of it and say the defendant lied here, that's permissible; but calling the defendant, generally, a liar, is not?

MR. DICKERSON: Correct.

THE COURT: I think we're on the same page. And I can't give you case law off the top of my head either, but the cobwebs of my mind I think you're going to find . . . .

MS. WAID: Your Honor, we can e-mail it. We've got the case law. I've done it. So I can e-mail to the government and the Court.

MR. LEEMAN: We'll take a look at it Your Honor.

THE COURT: Okay. That's fine. Anything else?

MR. DICKERSON: Just one other issue, Your Honor. With regard to Exhibit 167 for the government, that's the e-mail from Brad Smith that doesn't have the attachments. We have all the attachments, so that he can have all the attachments. And we've made that objection previously, that he needs to have all the exhibits.

THE COURT: I do remember the objection. So you just want to attach those to 167?

MR. DICKERSON: Correct.

THE COURT: Any objections?

MR. LEEMAN: Yes, Your Honor. We introduced what we believed was relevant while the case was open. There are any number -- I don't believe every e-mail is required to contain everything it ever had. If there's an argument that somehow what's been submitted is misleading, of course we could be required to complete that; but that's not what's being made.

That e-mail was introduced for a limited purpose, to show that an application was made at a particular time. Those other attachments are substantive, has lots to relate to what I think the defendant would want to say, but they were not attached, they're not relevant to the government's case; and, after the case is closed, we would view it as improper. We also don't think we're under a duty to have included them in the first place, but what I said before, the document was what we purported it to be, which was an e-mail that contained one of the attachments that was sent at the time.

THE COURT: Refresh my memory as to what the attachments are.

MR. LEEMAN: The e-mail, Your Honor, was the Target Roofing submitting to the bank its application -- one of its applications for the loan. Also attached with it is voluminous paperwork -- I can't say voluminous off the top of my head, Your Honor -- paperwork supporting payroll numbers. Payroll numbers of the bank. And to the extent payroll is a big part of their defense here, sort of back-dooring this in after the case is closed, is . . . . We don't believe it's proper.

And so what the government introduced was the e-mail to prove the time the application was submitted, that Mr. Crowther was copied on it, that he was aware of it, and that the application did, in fact, come to the bank as the bank received it. And that's what's in evidence right now, Your Honor.

These other things, about payroll, they're not in, I don't believe there's anything misleading about having left the payroll numbers out, so we'd object to it being added after the fact, Your Honor.

THE COURT: Would I be correct that you had the attachments all along?

MR. LEEMAN: Yes. I would highly assume that we've had those documents, Your Honor. I can't -- without having our discovery file in front of us, but yes, we have, generally speaking, all of the e-mails. And we made decisions to leave things out because they don't pertain to our case, we don't want to bury the jury with irrelevant documents that aren't ours; so they were left out, they were omitted, and it's not misleading in any way. I haven't heard any argument that it's misleading. They are just wanting to move in evidence that helps them.

THE COURT: That's a surprise from the defense.

The Court will allow that exhibit to be . . . hang on a second here.

(The Court confers with the Courtroom Deputy privately.)

THE COURT: The Court will allow the attachments that were not included with the exhibit to be admitted and attached to, I think you said, 167?

MR. DICKERSON: Correct, Your Honor.

THE COURT: Mr. Leeman, do you want that separately marked, so you can distinguish between what you presented and what the exhibit looks like now?

MR. LEEMAN: I'm not sure -- I've yet to -- I'm trying to think of different ways this may play out where . . . . I think the only reason to keep it separate would be in order to ensure that we have a clean record in case anyone ever makes anything of this issue. So I would prefer that it be made separate somehow, at least for sort of record notification purposes. I'm certainly open to ideas on how to do that. I don't have one at the moment.

THE COURT: Well, someone can put in the record the number of pages of your exhibit; and then, when we have 40 pages more, we'll know the last 35 are the defendant's.

MR. LEEMAN: We could do that.

THE COURT: Or something like that.

MR. LEEMAN: We do could do that, Your Honor, if I could retrieve the exhibit.

THE COURT: Sure. We don't need to be on the record, I don't think, to do this. You two can work it out, and if you can't, you can tell me in the morning, and I'll fix it.

MR. LEEMAN: Yes, sir.

THE COURT: Anything else?

MR. LEEMAN: No, Your Honor.

MR. DICKERSON: Not from the defense, Your Honor.

THE COURT: All right. I'll see you at 9:00 o'clock.

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(At 2:59 p.m., court was recessed, to be reconvened at 9:00 a.m., on Friday, March 26, 2021.)

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