UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA, Plaintiff vs. CASEY DAVID CROWTHER, Defendant	Fort Myers, Florida Case 2:20-CR-114-FtM-66MRM Friday, March 26, 2021 8:58 a.m. to 2:36 p.m. Courtroom 5D

TRANSCRIPT OF JURY TRIAL

DAY 4 OF 4, VOLUME 4 OF 4

HELD BEFORE THE HONORABLE JOHN E. STEELE,

United States District Court Judge

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I N D E X

March 26, 2021	Vol.	Page
Jury Charge Conference	4	4
Initial Jury Instructions	4	7
Closing Argument by Mr. Reichling	4	8
Closing Argument by Mr. Dickerson	4	31
Final Argument by Mr. Leeman	4	59
Jury Charge	4	64
Verdict Published	4	84
Polling of the Jury	4	84
Jurors Excused	4	85
Defendant Adjudicated	4	86
Certificate of Court Reporter	4	88

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THE COURT: Good morning. You may be seated.

All right. A couple things. I was told by my Courtroom Deputy that the government has detected an error in the jury instructions, on Page 14, with regard to Count 2. As I understand it, the indictment only alleges the revised loan application, and not the original and the revised.

MR. LEEMAN: Yes, sir; that's correct.

THE COURT: And so it seems like we should strike the three words, "Loan application and," from that instruction, and then just leave it as, "The PPP revised loan application."

MR. LEEMAN: That's acceptable to the government, Your Honor.

THE COURT: All right. Miss Waid or Mr. Dickerson, what's your thoughts?

MS. WAID: No objection, Your Honor.

THE COURT: Okay. I'll do that. And I've got a revised page in the works.

Any other deviations from what we talked about yesterday in terms of the most recent version of the Court's instructions?

MR. LEEMAN: No, Your Honor.

MS. WAID: No, Your Honor.

THE COURT: The final version that I've submitted does not include the defendant's request for what they've called the ambiguity instruction. I assume you wish to preserve your objection?

MS. WAID: Yes, Your Honor.

THE COURT: All right. You may do so, of course.

And with regard to the pending motion under Rule 29A, the final version -- actually, I have two of them, but the final version, I think, is Docket 123 in the computer system here. The Court has reviewed it. I agree that it accurately states the standard; that is, the Court has to view the evidence in the light most favorable to the government, and draw all reasonable inferences in favor of the government. Doing that, the Court finds that the government has established sufficient evidence, and a reasonable jury could find the defendant guilty of each of the counts. Therefore, the Rule 29A motion will be denied.

The final thing, at least on my list, before we get to the jury, is . . . and I guess I'm not sure exactly how to characterize this. The arguments with regard to whether the government may use the term "liar" in closing argument. I've reviewed, I think I was five, cases submitted by the defense over the evening. None of them are Eleventh Circuit. The Ninth Circuit cases that specifically addressed that certainly state general principles that I don't think can be disputed. However, the cases don't talk about the situation we're in now.

So I guess my view is the government will use it at their peril, as they do always, in closing argument. And to the extent that the defense thinks they have said something inappropriate, they may, of course, object; but I am not going to give any blanket order that, in a case that charges a defendant with lying, the government cannot use the term "lie," or "lied." "Liar" may get closer, depending on how it's used by the government. We'll wait and see.

So to the extent the defendant wants more than that, that will be denied.

All right. Any other matters before we see if the jury's here?

MR. LEEMAN: Yes, Your Honor. The government just wanted to ensure that the Court's ruling that the defendant may not make arguments that loss is an element of fraud are still -- is still in place, Your Honor.

THE COURT: It is. They may argue, of course, that there is no loss, but they can't say that -- but they can't argue that loss is an element of the offense.

All right. Anything else?

Do we have all jurors present, do we know? Hang on, let me get to where I need to be.

All right. Have the jury step in, please.

(At 9:04 a.m., the jury was escorted into the courtroom.)

THE COURT: Good morning, ladies and gentlemen.

At this stage of the case, the attorneys will be making their final arguments to you. Counsel for the government will have the opening argument, counsel for the defendant will then have the opportunity to argue; and then, in conclusion, counsel for the government will have the opportunity to reply in rebuttal to the arguments of counsel for the defendant. This is proper under our rules because the government has the burden of proving the case beyond a reasonable doubt.

Counsel, in making these arguments to you, will be commenting upon the testimony that you have heard and the evidence that has been presented. They, as you, will be recalling the testimony and the evidence in the case. They will not intentionally try to mislead you. However, if their recollection of the testimony or the evidence differs from your own recollection, you must follow your own recollection.

These final arguments by counsel are not to be construed by you as evidence or as the instructions on the law. Nevertheless, these arguments are intended to help you understand the contentions of each side, and you should give the attorneys your close attention.

Mr. . . . .

MR. REICHLING: Reichling. Thank you, Judge.

THE COURT: Just didn't know which one.

MR. REICHLING: Good morning, ladies and gentlemen.

You heard, during this case, that the Paycheck Protection Program was created to protect the paychecks of workers whose jobs were affected by the pandemic. The Paycheck Protection Program was not a personal stimulus program for business owners. This defendant treated the Paycheck Protection Program like his own personal stimulus check.

Now, the evidence in this case is what matters. And you've heard a lot of evidence in this case. And I'd like to go through that evidence with you here now. So let's begin.

On April 1st, 2020, the defendant sends a text message to Kyle DeCicco, who works at Sanibel Captiva Bank. He asks Mr. DeCicco for this payroll loan grant that says I need to apply through the SBA approved lenders. Are you guys approved? If not, who should I do it through? Mr. DeCicco tells the defendant to start to get 12 months of payroll ready.

Now, you'll notice that, in a lot of the slides that we'll be showing you this morning, there's a little exhibit, EX, and a number next to it. These refer to the government's exhibits that have been admitted in this case. And, when you deliberate in this case, you will have access to these exhibits. So I ask that you take note of the exhibits that I'll be showing you, because you can refer to them during your deliberations.

So what happens after this text exchange? Well, six days later, the first PPP application is submitted to Sanibel Captiva Bank. In this first application, Target Roofing and Sheet Metal was seeking $1,480,722. And what misrepresentations were contained on the first application?

Well, first, Crowther, the defendant, initialed and signed that current economic uncertainty make this loan request necessary to support the ongoing operations of the applicant.

The other certification, very important in this case, was a certification that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.

This certification goes on to state that I understand that, if the funds are used for unauthorized purposes, the Federal Government may pursue criminal fraud charges.

So what happens after this particular application is submitted to Sanibel Captiva Bank? Well, on April 8th, 2020, the defendant is notified by Kyle DeCicco, via e-mail, that he's been approved. He's been approved for this initial PPP loan application. So what does the defendant do? Two days later, on April 10th, 2020, the defendant finalizes the price for the purchase of a 40-foot, 2020, catamaran boat with four 400-horsepower engines on the back of it.

Now, I need you to keep in mind, you heard testimony from Brian Peterson and Ryan Bradley, and they told you that Casey Crowther had initially come to the Sara Bay Marina back in late March. So, this entire time that the defendant and his company are submitting PPP applications to Sanibel Captiva Bank, he's negotiating the price for the boat. So, on April 10th, the price is finalized. Shown here in this contract with the defendant.

What happens after that? Well, on April 13th, 2020, the defendant sends a text message to Kyle DeCicco. And he tells him, I think your PPP calculator is wrong. We are submitting ours now. Sorry, man. And Kyle tells him to submit it. Submit it. And the defendant goes on to say there is nothing in here, at all, that says we should deduct employee withholding from the total. I don't even know how that would make sense. I just sent mine. The defendant knows the details of the program. He knows what should be included, what should not be included, what should be submitted, what should not be submitted.

So a new, revised application is submitted. The new, revised application for a PPP loan is for $2,098,759. The difference between the first PPP loan application and the second PPP loan is roughly $618,000, very close to the price of the original -- the original price of the boat. A coincident?

Now, after the defendant's company submits this revised PPP loan application, Kyle DeCicco e-mails the defendant the first Interim Final Rules. And you heard a lot about the Interim Final Rules in this case, but I'd ask you to use your common sense here. What we have to prove is what the defendant's intent was at the time he submitted these applications, whether he was intending to defraud or deceive the lender concerning his intended use of funds.

So, before the loan agreement package is finalized, and the funds are deposited into Mr. Crowther's account, Mr. DeCicco sends the defendant the Interim Final Rule, the first one, the one back in April, April of 2020; not the one in February of 2021, we were back in April. And attached in this IFR are three specific sections that I want to talk to you about. These are sections in the same IFR that's attached to the e-mail that was sent to the defendant.

The first is how can PPP loans be used? It's rather clear, ladies and gentlemen. The proceeds of a PPP loan are to be used for, and it outlines those various uses: Payroll costs, costs related to continuation of group healthcare, mortgage interest payments, rent payments, utility payments, interest payments on any other debt obligations that were incurred before February 15, 2020. Refinancing of an SBA EIDL loan.

Not anywhere in here does it say you can use the funds to buy a boat. Nor does it say you could use the funds to pay principal on debt that you owe to an old business partner.

The Interim Final Rule goes on. What happens if PPP loan funds are misused? If you use PPP loans -- funds, excuse me -- for unauthorized purposes, the SBA will direct you to repay those amounts. But if you knowingly use those funds for an unauthorized purpose, you will be subject to an additional liability, such as charges for fraud.

And that's not it. That's not all that was included in the Interim Final Rules about using PPP funds. Talks about what certifications need to be made: The necessity certification, that current economic uncertainly makes this loan necessary; that the funds will be used to retain workers, and maintain payroll, or make mortgage interest payments, lease payments, and utility payments, and that I understand that, if the funds are knowingly used for unauthorized purposes, the Federal Government may hold me legally liable, such as for charges of fraud. The defendant was sent an e-mail with this clear guidance from the SBA on April 13th, 2020.

But the misrepresentations in this revised application are not all of the misrepresentations that the defendant made to the lender in this case. And you saw various loan documents that we put into evidence with Kyle DeCicco.

One of the misrepresentations contained in the loan documents was that the borrower would use the proceeds of this loan solely for payroll costs, costs related to continuation of group healthcare benefits, rent payments, business-related mortgage interest payments, utility payments, interest payments, refinancing of an SBA EIDL loan. These are all consistent with what is in the first interim rule, the same interim rule that was sent to the defendant. Nowhere in here does it state that the PPP funds can be used to buy a boat or to pay back an old business partner.

Goes on to say, in the same loan ap -- these same loan documents, that if the PPP funds are used for unauthorized purposes, the SBA will direct borrower to repay, and it goes on to say if the borrower knowingly uses the funds for unauthorized purposes, the borrower will be subject to additional liability such as charges of fraud. Identical to the first interim rule that was sent to the defendant on April 13th. The defendant signed the certification acknowledging that he read it and understood it.

That's not all the misrepresentations that were contained in the loan agreement documents. The undersigned hereby certifies, certifies, no part of the proceeds of the loan will be and/or were used for an unauthorized purpose. It goes to state various documents that are provided, so on and so forth. This was digitally signed by the defendant back on April 14th, 2020.

An additional attachment that was contained within these loan documents was the attachment of SBA Form 1050, which you can see, in the lower right-hand corner, was Exhibit 12. That was attached to a settlement sheet which showed what the funds could be used for. And this outlines again, payroll costs, costs related to the continuation of healthcare benefits, business related mortgage interest payments, rent payments, utility payments, interest payments on other debt. Nowhere on here does it say you can use the money to buy a boat or pay back an old principle on a debt to a former business partner.

So I want to talk a little bit about this PPP bank account that was opened up by the defendant. Now, you heard from Kristen DiIorio. She came in here and she testified that, back on April 10th, 2020, she sends an e-mail to the defendant telling him -- advising him of the funding instructions and where the money would be deposited into for his PPP loan application. And the defendant's initial response to that e-mail was deposit in my main operating account. But 20, 30, maybe 40 minutes after that e-mail, there's another e-mail sent back to Kristen DiIorio, and it says call me. Call me. Call me, please.

Well, you heard from Kristen DiIorio. She called the defendant and he told her, you know what? I want to put the funds in a separate account, and I want to be the only person that has access to that account. You can take a look at Exhibit 104, which is the signature card for this account. The defendant was the only account holder for this account.

So let's talk about when the money came into the account. This is the PPP account. Money was deposited on April 14th, 2020. You can see the amount there. $2,098,700.

Let's talk about the first transaction in this account. It's going to give an idea of what the defendant believes this money is for. 4/16/2020. The defendant transfers $126,000 to his main operating account. Is it for payroll? Was it for mortgage interest? Was it for rent? Utilities? No, no, no. It was to pay down a credit card, a company credit card that has all sorts of transactions on it. And I'll talk to you about that in a minute.

But the description of that transfer is important to look at. Loan from Casey. The defendant thinks that this PPP money is his own money. Not Target Roofing's money. He, himself, is loaning his company, who got him the $2.1 million loan, a loan. He's loaning him -- he, personally, is loaning his company $126,000. The money that his company got.

And Exhibit 168 are these credit card statements. They outlined a whole sort -- there's a bunch of different transactions. There's marina fees on there, there's purchases at Taco Bell, Bass Pro Shop, Kumo Japanese Steakhouse.

You heard from Diane Knott. She told you that, in the three months prior to when this was paid down, the balance was always over $120,000. And these are just some of the transactions that were occurring on the credit card.

So let's talk about the next transaction. Well, it's the wire transfer to Steve Adkins, the wire transfer payroll. Key word, payroll. Why is that important? Well, payroll is one of the permissible uses of PPP funds. The defendant was disguising this transfer as something that will be permissible under the program. Payroll. And it wasn't payroll.

You heard from Steven Adkins. There was a stock sale agreement, and the defendant was paying him back for stock that he owed him on. It's over $700,000. That included a residential property out on Saint James City, it included a property that Target Roofing and Sheet Metal sat on, and it included the ownership interest that Steven Adkins had in the business. It wasn't for payroll.

This is the payroll transfer paperwork. Shows here, clearly, payroll transferred to partner. Concealment, ladies and gentlemen. He's concealing his use of PPP funds and calling it something that is a permissible use under the program. Payroll. This isn't payroll.

Let's talk about the next transaction briefly. $3,300 is transferred to the defendant and his wife's personal Sanibel Captiva account, and that money has just later been mowed out somewhere.

But what about the April 24th wire for an equipment purchase? Right? An equipment purchase. Equipment, right? Business related. Something for the business. Concealment again. Calling it something that it's not. Hiding his use of

PPP loan funds. Roofing equipment, right? This boat wasn't bought for Target Roofing. This boat wasn't bought to take people out on to host clients and take out workers from Target Roofing to go fishing. This boat was bought for the defendant, and only for the defendant. The title registration documents. It's in the defendant's name. And his application for a title, the use of the boat is for pleasure. Recreational. Not commercial. The boat had to do with roofing.

We know that, on the date the defendant bought this boat, he didn't have sufficient funds in any other of his Sanibel Captiva accounts to cover the cost of this boat; right?

The defense talked about two pockets. The PPP account pocket is looking like this. It's thick. The pocket for the main operating account, a lot slimmer than that PPP account.

On the date the defendant bought this boat, there was only $131,000 in the main operating account. Not one cent had been transferred to the main operating account to cover any eligible uses of PPP funds. Not payroll, not interest payment on debt, not mortgage interest, not rent payments, not utilities. Nothing. Between the date the money came in and the date the money went to the boat, not one dime was transferred to the main operating account for any of that.

So what happens to the money after that? Well, on May 7th, the remaining funds are then moved over to the main operating account. There's about one . . . about $1.1 million left, and it's deposited into the main operating account.

Now, on May 13, 2020, the defendant receives an e-mail from Kyle DeCicco. And that e-mail is important for a variety of reasons, and I'll get to that. But this e-mail to Casey Crowther says I wanted to make you aware of recent guidance from the SBA. Borrowers that received PPP loans for amounts over $2 million will be subject to review by the SBA for compliance with the program requirements, including the certification of economic need.

If the SBA determines, in the course of its review, that a borrower lacked an adequate basis for the required certifications concerning the necessity of the loan request, the SBA will seek repayment of the outstanding PPP loan balance, and will inform the lender that the borrower is not eligible for loan forgiveness.

Crowther responds that he's on top of it. Yes. We got it all and more. More than prepared. Thank you. He's on top of it, all right. Two days later, 20 paper shredders are added to Target Roofing's payroll. Twenty. Let's talk about one of the 20. Uriel Cardenas. Started on 5/15/2020. The Social Security Card was fake.

All the Social Security cards were fake. They actually look alike. You'll have these exhibits with you as you deliberate. It's Exhibit 150. If you take a close look at the Social Security Card, you'll see a little pink dot next to the social. These documents were all probably created at the same time.

The HR director told you she never saw any of these people. The documents for these employees were all provided to her by Casey Crowther. The checks, when they came in from WBS, to be given to the employees, they were given to Casey Crowther. The human resources director thought the arrangement was unusual. This was something that hadn't ever really happened before. May have happened back during Hurricane Michael. There's no hurricane going on here. People hired to shred documents.

Even more important, Mr. Cardenas, who worked for three weeks, three weeks, shredding documents in some house conveniently located in the back of the property, did not cash a single paycheck. This guy got three separate paychecks, and he didn't cash one. Do you think he worked for free? I don't know. I'd say he probably didn't work at all.

Thirty-eight others were just like him. No one was ever seen, they were all fired on the same date, all their documents were fake, and none of the checks were cashed except for one, Agustin Castillo. He was also one of the individuals that was hired to shred documents on May 15, 2020. In the upper left-hand side of the slide, you'll see a portion of his new employment enrollment application, and he's got a signature there above the name Agustin Castillo.

You'll have copies of his exhibits when you deliberate and have you take a look at them, Exhibits 54, 56, and 150. Look at that signature, and look at the signature on the back of the check that says Agustin Castillo. I know it's hard to see, a little difficult. But it's not difficult to see that those signatures look nothing alike.

Where did that check go? Check went into the defendant's Bank of America account on August 20th, 2020, more than -- you know, nearly three months after Mr. Cardenas was working, shredding documents -- excuse me, Mr. Castillo was working and shredding documents of Target Roofing. Three months later. Did he just hand him the check?

Let's not forget, the family members were hired as well: The defendant's wife, the defendant's mother-in-law, the defendant's sister, his brother-in-law, his father-in-law. They were all given weekly salaries ranging between 1700 to 18, $1,900 and up. But they all had a common theme amongst them, and I'm going to get to that.

John Miller from the SBA testified, and he told you that there's a cap on forgiveness for individual salaries, and that's a hundred thousand dollars annualized. So the amount of money that the family members were paid was just under that threshold for forgiveness, just under that hundred thousand dollar threshold for forgiveness, just under that $100,000 threshold amount.

HR director testified she never saw any of these people working there. She never saw them in the office, she never saw them in the bathroom, the break room. She didn't know what they were doing. They were probably doing nothing. Never saw them. They were also all fired on January 5th, 2020. Or, excuse me, June 5th, 2020. My apologies.

Now, you may be asking yourself why did Casey Crowther add a bunch of fake employees and family members to the payroll? Well, it's quite clear. First, he was sent an e-mail, almost like a warning e-mail, from Kyle DeCicco, suggesting that his loan is going to receive an additional audit by the SBA. And, as you heard from testimony from John Miller and Kyle DeCicco, during the forgiveness process, a borrower only has to submit payroll documents to get forgiveness. There's no audit that bank needs to do. They don't need to look at bank statements and determine whether the money went where it went. All they need to be provided in forgiveness are payroll documents.

These people were added to boost the payroll numbers for Target Roofing so that the defendant could get forgiveness. The defendant wasn't intending for this thing to be a loan. This wasn't a loan. This was going to be a free $2.1 million.

Now, all these paychecks that weren't cashed, total of probably around a hundred thousand dollars, probably asking yourself why would a business just part with a hundred thousand dollars? What's a hundred thousand dollars if you get $2 million out of it, right? What's $100,000 if you get a 670 or 80 thousand-dollar-boat for free out of it?

Now, like I stated, the family members and the fake shredding employees, all 39 of them, were all fired on June 5th. And why is that relevant? Well, that's the same day that Congress and the President passed the Paycheck Protection Flexibility Act. And at that point in time you now had up to 24 weeks to use your PPP money towards payroll.

So these people weren't needed anymore. The defendant knew he'd be able to establish those payroll numbers in 24 weeks. Those documents that he would submit to his lender wouldn't include anything about where his money went and where it went, where it went and how it was used. The percentage of payroll, the money that needed to be spent towards payroll, went from five percent to 60 percent.

Again, the defendant was on top of the changes being made to the PPP program. Shown right here in this e-mail, sent to Evelyn Portinari on May 28th, 2020. It's Exhibit 51. Mr. Crowther e-mails Evelyn, can you please get us all together for a meeting tomorrow? They changed the rules, and no longer need to spend all the money in eight weeks. Need to change some strategy up immediately. Title of the e-mail is PPP rule changes.

Now, in the meantime, going on in the background of all this is another conversation the defendant has with Kyle DeCicco around May 18, 2020. Kyle reaches out to the defendant, and he needs to talk to him about his PPP loan. And they have a phone conversation that day, and DeCicco calls him out for buying the boat with PPP money. And Crowther, the defendant, asks DeCicco would it look better if I moved money from my personal account. That was during the May 18th phone conversation.

The next day, he sends a text message to Mr. DeCicco and says I'm going to move my personal money I had to purchase the boat over to my SanCap account. And then Mr. DeCicco responds okay. Talk to Craig. Make sure you guys are on the same page. Whatever you think is best.

Well, you heard from Diane Knott. She talked about all the bank statements that she reviewed between January and September of 2020. That money never showed up. There was no deposits of cash or any other deposits the defendant was moving over to cover the costs of the boat. That never happened.

In fact, there was an e-mail we showed you during the case from July 31st, 2020. That's what, two and a half months after this text exchange with Mr. DeCicco. That e-mail was Kristen DiIorio advising the defendant of what he would need to do to deposit cash, cash, that he got from the sale of a prior boat. That box of cash, maybe, that you were shown, that was from March? Defendant waited what, four months to reach out to Miss DiIorio about how to deposit cash? Four months later? Makes no sense. There's no evidence of any cash deposits being made in any of the accounts.

But the defendant wasn't done, yet, misrepresenting wire transfers and moving money around. Now, I will admit, I will tell you, that this horse wire happened after funds were commingled into the main operating account. Happened on June 1st. Also happened during this same time that the defendant had to spend PPP funds towards payroll during that eight-week period. It also happened pretty close in time to when Mr. DeCicco had called out the defendant for buying a boat with PPP money.

So what's the defendant do on January 1st, 2020? Excuse me, June 1st, 2020. He sends Kristen DiIorio an e-mail, and he asks her to wire $55,000 for materials. For materials. Not only that, but he sends an e-mail after the request and says can you send me something that shows we made the wire? I want to show them something so the guys can pick the materials up now.

You heard from Heather Mangus. She doesn't sell roofing materials. They bought a $55,000 horse on June 1st, and they disguised it, he disguised it, the defendant disguised it, as materials. Materials.

Not only that, but he went so far as to send the bank an e-mail, a follow-up e-mail, suggesting that guys were going to pick up materials. More misrepresentations made by the defendant.

Now, like I said, the money had been commingled by that time, but there's no reasonable explanation as to why the defendant would hide this transaction.

Now I want to talk to you a little bit about the law in this case, and what the defendant is charged with.

You'll be advised that the defendant is charged with bank fraud, and it can be proved in two alternative ways. The first way, and the elements are outlined here, the defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution; two, the defendant intended to defraud the financial institution; and three, the financial institution was federally insured.

Or, the other alternative way, is the defendant knowingly carried out, or attempted to carry out, a scheme to get money, assets, or other property from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact; the false or fraudulent pretenses, representations, or promises were material; and the financial institution was federally insured.

Now, I want to talk to you just a little bit, briefly, about the two alternative ways. What does it mean, right?

Well, it means that you can find the defendant guilty of bank fraud if the government has proven, beyond a reasonable doubt, that the defendant committed bank fraud in one of those two ways or both ways. If you find the defendant has -- that the government has not been able to prove, either way, of committing bank fraud beyond a reasonable doubt, you would find the defendant not guilty.

Let's talk about the scheme to defraud that's contained here within the elements. The scheme to defraud in this case, ladies and gentlemen, is the defendant intended to enrich himself with a forgivable loan made to his company for payroll. He made misrepresentations about what he would use the funds for to get the loan over, and over, and over again. Kept stating I'm going to use the money for payroll, utilities, rent, mortgage interest. This was all done . . . these misrepresentations were all done to get the bank to approve a PPP loan. A forgivable PPP loan.

But that's not all that was to the scheme to defraud. The defendant took steps to conceal his misrepresentations, his use of the money. We talked about that, he called his wire transfers payroll, equipment, words that are synonymous with business-related expenses; right? Payroll's for business, equipment is for business.

He took steps to ensure that he was going to get forgiveness. Right? This wasn't a loan to him. He wanted forgiveness. He wanted a free $2.1 million.

He hired 39 fake employees to shred documents. He hired five family members that did no work. He was fine with running through a hundred thousand dollars because, like I said, what's a hundred thousand dollars if you're getting $2.1 million out of.

Let's talk about some of the false representations, pretenses, or promises. I talked about them a lot as I went through the evidence. The representations that were made by the defendant about his intended use of the money were clearly false. You saw that in the bank records. The money comes in, the money goes out. It's in a segregated account that he actually asked to be opened up so only he could have access to it. They were clearly false. The money didn't go to payroll. It went to a boat. It went to pay back an old business partner.

The government doesn't have to prove that all of the money was not used appropriately. We just have to prove that portions of that money was. Because why? It's a lie. He told the bank he was going to use the money for certain purposes, and he didn't do it. These false representations, as I said, were made repeatedly, through applications, and loan agreement documents. And, in those documents that the defendant signed himself, there's no law, rule, guidance, ever, that's ever come out, in any IFR, that a boat could be purchased with PPP money.

Now, you'll see this materially false representations, pretences, or promises. And the government doesn't have to prove that the false representations were material to Sanibel Captiva Bank. Definition of materially false is, is a false representation that a reasonable person would rely on to decide whether to do something.

Well, these certifications, these representations of use of funds, had to be made to get the PPP money. A bank would need to rely upon those statements to issue an SBA approved loan number -- approved loan. They needed those certifications, and they needed to be accurate, to get that guaranty, and to get that SBA loan number. The bank would not have made the loan without those certifications because they were required to participate in the PPP program, like I discussed.

Mr. DeCicco even got on the stand and told you will that he would not have approved the PPP loan application had he known that the defendant was going to use the money to buy a boat. That's materiality. That's a material false representation, ladies and gentlemen.

Now, this is important. You'll be advised on the elements of the offense. But whether the bank believes it was a victim or not is not an element of bank fraud. Whether the bank suffered a loss is not an element to bank fraud. The question is whether Crowther schemed to obtain something to which he would not have otherwise received. If so, Crowther intended to harm the bank, and that is sufficient.

Fraudulent intent. Run through this quickly. The timing of the loan. He's applying for the loan while he's also looking to buy a boat; right? He finalizes the purchase of the boat two days after he finds out he's approved for the loan. Crowther has an account that the money goes into that he is the only one that has access to. There are lies made to cover up the boat purchase, the payroll transfer, and the horse. Fraudulent steps that were taken to ensure forgiveness when the defendant added 39 paper shredders and his family members to the payroll.

Count 2, believe, charges false statement to a financial institution. The defendant made a false statement or report, the defendant did so knowingly and with an intent to influence an action of the institution described in the indictment regarding an application or loan, and the deposits of the institution were insured by the Federal Deposit Insurance Corporation, the FDIC.

I want you to think about this with Count 1. The government, for false statements, does not have to prove the bank was actually influenced or misled by the defendant's false statements.

The government has to prove, of course, that the statement was false. It was false. The defendant lied about his use of funds. We know that because of the bank records and other things.

And that the defendant did so knowingly, and with an intent to influence the action of the institution, Sanibel Captiva Bank. These representations were needed to be made -- these false misrepresentations were needed to be made to get a forgivable PPP loan. They were made with the intent to influence the action of Sanibel Captiva Bank.

These are some of the exhibits. The application for the $2.1 million is what we're alleging is the false statement. The false statement contained within the April 13th PPP loan application revised submission. As well as the false April 13th certification about the use of funds contained within that application that was signed and initialed by Crowther and submitted to the bank.

Like I said, the government does not have to prove the bank was actually influenced or misled with Count 2.

For Counts 1 and 2, the parties have agreed that Sanibel Captiva Community Bank was insured by the FDIC. We stipulated to that. That's Exhibit 171.

Count 3 and 4 involve illegal monetary transaction. These were funds that were used and derived from bank fraud. The defendant knew the proceeds were proceeds of a crime, bank fraud. And the transaction was over $10,000, and the money transaction affected interstate commerce.

Counts 3 and 4 deal with the wire transfer that was sent to Steven Adkins which used money the government believes was from bank fraud, the bank fraud being the money from the PPP loan that the defendant got by making false and fraudulent misrepresentations to the bank about his misuse of funds. The other count is about the wire transfer for the boat. Both of them were over $10,000. The parties also agree and have stipulated that the wire transfers affected interstate commerce. That's Exhibit 170.

Now, as the Judge said, I will have another opportunity to hopefully speak to you briefly; but, before I forget, I wanted to thank you for your service during the week. You've sat here patiently, attentively, and given us your attention and your time; and we certainly appreciate it, especially during these times.

Thank you.

THE COURT: Thank you.

Who is it? Mr. Dickerson?

MR. DICKERSON: Thank you, Your Honor.

THE COURT: Does the jury need a break before we continue? You're okay? All right. Thank you.

MR. DICKERSON: May we publish the publication on the screen, please?

May I proceed, Your Honor?

THE COURT: You may.

MR. DICKERSON: Thank you, Your Honor.

Good morning, ladies and gentlemen of the jury.

It's been a long week. Thank you for your attendance and paying attention during this case.

When Nicole Waid spoke to you on Tuesday morning, in her opening, she spoke to you about Target Roofing. She gave you her presentation of what's going to come out at this trial. And, if you remember -- there's been a lot of words since then; but, if you remember, she talked about facts matter. And, ladies and gentlemen, that's where we are.

Facts, not matter. Facts matters, not stories. Not side stories. The agreements matter. And not just the documents that the government single-handedly selects and say, here, look at this document, but not the entire document. That's important. Like the IFRs that was just stated by the government. They're important.

But you know what the government hasn't shown you? On their theory -- I think we all agree the government's theory is that money came from Sanibel Captiva Bank, the government believes that is directly some type of PPP direct fund controlling by the CARES Act, and that that money went into this account, a Target corporation bank account, at Sanibel Captiva Bank; and because it said PPP on it, all of those funds had to be used pursuant to the forgiveness application process from day one.

Now, the biggest shortfall of the government's case is I haven't heard, in any of this evidence, that there is an IFR, a guidance, or any authority that those funds are earmarked. Once that money goes into the corporate account, that's corporate money, no matter what that account is called.

But the documents which I will show you confirm that forgiveness and the actual application of PPP CARES Act money kicks in when -- remember, when -- a company either files for forgiveness and receives forgiveness, or defaults. Because, until that time . . . Mr. DeCicco said it over again, and I'll show you testimony, it's Sanibel Captiva Bank money. It's their asset. It's on their books.

I thought it was interesting during the trial how it was -- it seemed like part of the story was always presented to you. Just a little piece. And then, cross-examination, and we were asking the questions, and there were full answers. I mean, you, as jurors, the fact finders, can use your common sense, can think about what you saw from that witness stand and what you saw at the podium, and the interaction between the two. And sometimes it got hostile. Why?

Now, there's the presumption of innocence. We talked about that in voir dire. The Judge is going to talk about that further, and he's going to read you a jury instruction specifically talking about the presumption of innocence. And, like we spoke in voir dire, Mr. Crowther is presumed innocent, and he's sitting there as an innocent man, and you all agreed that he was an innocent man sitting at that table.

The defense and the defendant, the Judge will tell you, do not have to put on any evidence at all. It is up to the government to put on the evidence to criminally convict a person. And they must do it by proof beyond a reasonable doubt. Now, what is that?

First sentence. It's a heavy, it's a heavy burden, people. It's not easy. So beyond a reasonable doubt. If you're not convinced that the alleged allegations of charges were proved beyond a reasonable doubt, you must find Mr. Crowther not guilty. And it's based upon your reason, common sense, as you carefully consider all of the evidence in the case.

And the Judge is going to tell you evidence, the paper documents that's gonna go back to you, of the testimony that you're gonna hear, as well as your observations of the witnesses, and the interaction that I'm talking about. And it's gonna be that there's no IFR, no presentation at all, about this earmarking theory.

Now, the case is dealing with bank fraud, and you're going to have the Judge provide you an annotation that specifically talks about the intent to defraud. And this jury instruction annotation specifically states proving intent to deceive a loan without the intent to cause loss or injury is not sufficient to prove intent to defraud. You're gonna have that document back there, and you're gonna have that annotation, you can see it right in front, the Judge is going to give it to you.

Now, going back to the facts, because facts do matter, and going back to what the government presented, and then when we came and did our cross-examination -- and, by way of example, I think, we can all remember that the government has brought in a couple of these loan documents single-handedly.

And do you remember when I was cross-examining Mr. DeCicco -- again, a government witness -- and I asked him about the loan packet? Well, ladies and gentlemen, you are going to to have that loan packet. The government didn't produce the loan packet. They didn't introduce it. They wanted you to see a couple documents. Again, not all the facts. Remember that. And they didn't necessarily want you to probably read all the documents clearly.

But this is a loan, one-percent interest loan between Sanibel Captiva Bank and Target Roofing. And, in the loan document, Exhibit 9, the promissory note -- do you remember Kyle DeCicco speaking about the promissory note -- that is what contractually binds the bank and Target Roofing. Okay? That's how Target Roofing and Sanibel Captiva are going to have their business relationship. That's what creates the asset on the books of Sanibel Captiva Bank.

And when you look at that document back there in the jury room, loan forgiveness, the bank's document, says borrower may apply to lender for forgiveness of the amount due on this loan in an amount equal to the sum of the following costs incurred. The bank's document, specifically spelling out the promissory note.

Paragraph 1, the promise to pay, specifically states that they may. It doesn't say you shall, it doesn't say you will. And the government, during their case in chief, showed a line of credit to Mr. DeCicco. That line of credit they showed, it said use of proceeds in that line of credit, where it said Target Roofing could only use those loan proceeds for business purposes.

This is the document that controls the promissory note, that's the document, the $2 million that went from Sanibel Captiva Bank over to Target Roofing. And, ladies and gentlemen, I would pull up that provision, but it doesn't exist. There is no use of proceeds. It's a specific may apply for loan forgiveness.

The maturity note, it will mature in two years. Now, we heard testimony that changed to five years in June. But Number 9, I always find it interesting this isn't being brought up enough. When SBA is the holder. When. Not that SBA is the holder of this note. When. And that goes to the entire discussion that you've heard these witnesses talk about. There are bank loan proceeds, there are SBA loan proceeds. And when those SBA loan proceeds are used for forgiveness, or when the bank comes back and says we're not being paid on this loan, we want to invoke our guaranty.

Now, remember, there is no contract between Target Roofing and SBA. The agreement that's in the materials, Exhibit 7, that's an agreement between the lender, Sanibel Captiva Bank, and the SBA. So the lender, if Target Roofing, or any borrower on a note with a 7(a) program, does not pay, the lender then goes over and they get repaid. And that's when the 7(a) or the SBA provision's invoked, and that's when, Paragraph 9, SBA becomes the holder. Or at the time that there's a forgiveness. But there has been no forgiveness.

May I grab my water, Your Honor?

Now, am I making this stuff up? No. You heard it. But, actually, Kyle DeCicco specifically said it in his trial testimony. It's not a story. It's not a side story that there's fake employees.

MR. REICHLING: Objection, Your Honor. The defendant is presenting a transcript of the trial testimony of Kyle DeCicco.

THE COURT: The objection is overruled, but the jury is instructed that I've allowed counsel to use demonstrative evidence, but the fact that they've put something in writing, and make a chart, or whatever it purports to be, isn't binding on you. If your memory is different, you follow your memory, regardless of what counsel may have on the screen. That applies to both sides.

MR. DICKERSON: Thank you, Your Honor.

But as the Judge said, use your memory, but Kyle DeCicco specifically said those loan proceeds, bank loan proceeds, Sanibel Captiva, and Target Roofing.

And you also understood that, if they do apply for forgiveness, then that is the triggering mechanism, the triggering requirement of the Paycheck Protection Program. So yes, Kyle DeCicco was quite clear, the bank has its loan with Target Roofing. There is this SBA possibility out there for the guaranty. Bank loan proceeds, SBA loan proceeds. Not until there is a forgiveness application or a default does the SBA loan proceeds or the SBA provision even kick in. He said that in his testimony.

Now, there are a lot of different versions of these agreements; but when you look in these agreements, it's at 75 percent of the PPP loan proceeds shall be used for payroll costs, not more than 20 percent of non-payroll costs may by forgiven. Why do you think there's may be forgiven, not a guaranty?

And the testimony that was in trial was from Kyle DeCicco with regard to the forgiveness, is that Sanibel Captiva

Bank has their own third party reviewing the forgiveness application. So, when it's submitted, they have a third party. That was the testimony. It's not as if, oh, willy nilly, just send us some documents and we'll waive your $2 million, we'll forgive you. No.

Then, after Sanibel Captiva Bank has their third party approve it, if they do approve it, then it gets submitted to the SBA, and then the SBA, at that point, makes their determination. There's a lot of steps here to even trigger whether or not that SBA loan proceed is gonna be invoked.

Now, the government loves showing you the couple few documents where it says the borrower will use the proceeds of this PPP loan solely for. Now, of course, I'll show what you Mr. DeCicco said, and you use your own memory, but we had a conversation about how, right there, the CARES Act disclosure, discussing about the disclosure of the CARES Act, which is the part that is the forgiveness of the loan, and invoking that forgiveness. And talking about that.

Again, remember your own recollection; but when I was asking specifically about the boat, does the boat apply to this CARES Act disclosure document, use your memory, but that doesn't apply. And it doesn't apply because there is no forgiveness. There is no invoction of the use of proceeds of forgivable assets. Expenses, I'm sorry.

Now, the CARES Act disclosure is specifically a disclosure. It's not talking about what the actual money was going to be used in the loan. Promissory note, loan agreement. That's Sanibel Captiva Bank's obligation with Target Roofing. Then you have the other documents, which you will see in that packet, are SBA driven for the forgiveness.

Now, there is clear evidence, undisputable evidence, that there is no demand from the SBA for repayment of any monies from Target Roofing. And whether the government wants to say, well, we're here as a criminal prosecution, that's what we're doing, wouldn't you think the SBA would have demanded this money back if, truly, this was part of SBA loan proceeds? And wouldn't you think, if Sanibel Captiva Bank thought they were out of this money, thought that they were harmed, thought that they couldn't get this money back, they would be doing one of two things? They'd be telling Mr. Crowther pay us the money back.

I didn't see any texts, any e-mails, from Mr. DeCicco after, as the government conveys it, he discovered the boat. I didn't see him say we're taking the loan back. I didn't see a letter, a text, where he said you used these proceeds illegally, wrongfully. No. In fact, his testimony up here is completely opposite of that. No demand. Mr. DeCicco is the number two guy, Sanibel Captiva Bank, the number one guy handling all the PPP. No demand.

Again, it's just government witnesses, it's their witnesses, and their witnesses are saying no demand, these are bank loan proceeds, they are not SBA loan proceeds, and there's no forgiveness filed. Oh. And again, there's no earmarking.

Loan agreement. Exhibit 14. A will discussing forgiveness, and then may result in the borrower having to repay the loan. It's all going whether or not the borrower submits for forgiveness. And if the borrower does not submit for forgiveness, ladies and gentlemen, he's gonna repay that loan. And, as Mr. DeCicco says, it comes due November 1st.

And here's another document we provided you, our Exhibit J. It's actually the time stamp completion of the entire loan packet. And as Kyle stated, as Mr. DeCicco stated, I'm sorry, he was signing a lot of these, so not necessarily did he sign every one of them. But if you look at that, 12:45, he actually ends up -- and that document's gonna go back with you -- executing all the documents in 30 seconds, 35 seconds. Casey Crowther, with his e-Signature, completed the entire loan packet, 50 pages, with the e-Signature, in roughly 55 seconds.

And that's what I'm talking about, ladies and gentlemen. That question right there. If the company doesn't file for forgiveness, they just pay the loan back; correct? That's correct.

Oh. But that's not Mr. DeCicco. That's Mr. Miller, from the SBA. Who you'd think, if he disagreed with that . . . but Mr. Miller, the government's witness, who's in charge of the SBA and this program, said, if the company doesn't file forgiveness, they just repay the loan? Yes.

Number two indisputable fact. There are no loan proceeds, SBA loan proceeds, to Target Roofing in the Sanibel Captiva loan. Target Roofing is in good standing with Sanibel Captiva Bank.

Again, if, per the government's theory, this was this abusive misuse of funds, you bought a boat, and we didn't know it, well, we did, 'cuz there's a wire that goes out, and three of our employees actually sign off on it, and it said Marina, Sara Bay Marina. Kind of hard not to believe that the bank wouldn't know that it is a marina. In fact, somebody told Mr. DeCicco, per the government's theory, and that's why Mr. DeCicco had these conversations in May. There was no hiding it.

As far as equipment, the government wants you to believe, oh, that's concealing it. Again, it says Sara Bay Marina. I haven't heard the government say oh, but equipment, that's a PPP use. He was concealing that as a PPP use because this is out of the PPP account. Because equipment is not a forgivable expense. All this other concealing, the purpose of the wire, it's all smoke. It's a sideshow. You gotta look at the documents. That's the real show. That's the real thing.

The Judge told you, numerous times, you got the best seat in the house. You're gonna have to read the documents.

But you heard the testimony. No loan, SBA loan proceeds in this loan.

Mr. Miller, again, discussing that only if there's forgiveness does the money come out of SBA, and then that invokes the forgiveness, that invokes the PPP CARES Act. Mr. Miller answered that question, no SBA proceeds going to the borrower.

Now, the government, again, with this earmarking theory, and showing you different provisions of the actual guidance. I wasn't asking or talking about sum, the sum of total costs, the sum of total expenses, because I like the word. As the government just pointed out, they think, they just told you, Exhibit 16 is very important. That's when Kyle DeCicco sent the IFR, the first IFR, to Mr. Crowther. But what they don't do is actually show you the entire IFR and the provisions of the IFR.

You're gonna have that IFR, and you can read it. And I'm gonna show you what it says here in a bit. But what I'm gonna tell you it says is, for forgiveness, it's the sum of all proceeds. Just like Mr. Miller believes. No SBA loan proceeds in this loan.

Now, the government goes over and over again about the purpose to protect the employees. Payroll protection. $3,100,000 is the testimony that came out of three witnesses in this trial. Now, again, when you look at the exhibits, look at the fact that C8 and C9 are the exhibits we put forward. Okay? Those exhibits show that there are $3 million.

More importantly, Mrs. Knott, the summary witness, provided this nice report, and the government relied upon it, and the government wants you to review it. Remember I threw my iPhone up there for her to do the calculation. When you calculate 4/20/2020, which is after the monies were received from Sanibel Captiva Bank, you go down just to 8/31/2020, because that's where their report ends. Now, the covered period goes through September. But that's just where the government report ends. It was over $3,100.

This shows you actually what happens with payroll. And if you look at that decline, and if you look in March, look how small the payroll is, and then it shoots back up, that's how you get $3.1 million from April to August.

Another indisputable fact. The government wants you to believe there's misrepresentations. There are no misrepresentations. On the April 13, 2020, application, first and foremost, you're gonna see the e-mail from Brad North, exhibit 167. Brad North, who is in charge of getting all the documents together, getting the application together. You've heard the witnesses -- the government's witnesses. He's the person. He is that contact. In fact, he's the primary contact, when you look at it, on the actual application.

But when you look at what the government wants you to believe is the issue, under the representations and authorizations, all SBA loan proceeds will be used only for business related purposes. Mr. Miller and Mr. DeCicco have both testified that the money that Sanibel Captiva Bank loaned to Target Roofing were not SBA loan proceeds.

Now, the government has also brought in, on one of these sideshow arguments, that . . . Mr. Crowther and Target Roofing, they weren't entitled to this money. They didn't show their need. Normally I don't do this, but I'll go back to that slide. That payroll, that declined. I don't think you just have your payroll decline like that unless you're getting rid of employees because you don't have business.

But Mr. Miller, again, the government's witness, SBA, certification of the borrower, it's subjective. It's in the eyes of the borrower. It's not in the eyes of the United States Government 6, 9, 12 months later. The SBA witness says it's in the eyes of the borrower.

You gotta put you guys back in those shoes back in March of last year, when we're being told you have to stay in your house. You can't even get a medical procedure until May 15th. You can't go out of your house. You thought there was going to be some automatically end of coronavirus? Businesses were shut down. That's the state of mind that was going on at that point in time.

When I asked Mr. DeCicco whether he, who is the bank representative for these applications, for these loan documents, he's the one that submits it to the SBA to get that SBA loan, because he signed the document on Exhibit 7, saying hey, we're doing this loan. If they don't file for forgiveness, or they default, then we're going to want you guys to kick in on this. He said there's no misrepresentation on Exhibit 8, the document the government thinks has a misrepresentation.

There was no loss or injury to Sanibel Captiva Bank. Indisputable fact number five. Again, use your memory, but I'm telling you Mr. DeCicco said that the bank hasn't lost money, they're not a victim, they have not been harmed. He does not feel that there was any misrepresentation. No injury. You know why. Because the loan, first payment, doesn't come due until, he said, November. The loan was not forgiven and the first payment was missed, they can invoke the guaranty. It hasn't happened yet.

This is really a case where the government jumped the gun. They arrested Mr. Crowther because of a boat. They didn't introduce any payroll records here. Their summary witness didn't provide you any summary of forgivable payroll records. They just said here's these records.

Ladies and gentlemen, the government didn't want to know all the facts. They didn't want to know that facts matter. They just wanted to react. And they overreacted. And that's why, in this trial, they're not keeping you focused on the actual matter, the loan documents, and what they say, they're doing these sideshows. Roughly 2021 is when that loan first payment is due by Mr. DeCicco.

Indisputable fact number six, there was and is confusion with the implementation of the Paycheck Protection Program. I don't think anybody could disagree with that. The witnesses we've heard, the Flash Report, SBA, Mr. Miller, had to remind him of that Flash Report last year, where his office Inspector General came back and said they don't necessarily align with forgiveness. You have that report, you'll be able to take it back there. There are a lot of pages on that 40-page document that describe and set forth how the CARES Act says may; the interim rule, are to be used for.

Remember, a regulation is the agency's interpretation of the law. These IFRs are the interpretation by the SBA of the law. Mr. Miller testified not until there's forgiveness or nonpayment do the SBA proceeds even hit this conversation. We shouldn't be having it.

Mr. DeCicco, from his recollection, roughly 50 IFRs to follow. And they do change. There's been a lot of changed IFRs just since last April 1st. We're not even a year out. All the different revisions, suggestions, and interpretations of one statute by one agency.

Now let's go to Miss Knott.

She paraphrased it as I'm doing a benefit to Crowther roofing -- excuse me, Target Roofing and Mr. Crowther. And I'm doing him a benefit in giving him these forgivable expenses in my analysis. She didn't even include some of the most basic, like healthcare, which was initiated on April 1st. And you've got that interim rule with Mr. Kyle DeCicco's e-mail, it's in 16, talks about payroll and healthcare.

She didn't include all of them, because she didn't know. She didn't read them all, number one. And when she tries to give this illusion that she knows something about it, and she starts getting questioned, she doesn't. She just included the items she wanted to. But most importantly, when she was pushed, I'm not here as an expert on the PPP forgiveness. Nobody was here as an expert on the PPP forgiveness. Nobody. Not even Mr. Miller.

Now, going to the confusion, Kristen DiIorio, when asked about the Steve Adkins wire, where it does say loan proceeds, she even thinks, from her opinion as just a branch manager, not an expert, but as her opinion, she would think that that would be a presumable expense -- a permissible expense.

This consonant right here, I'm going to discuss that later, but the purpose of that wire, just remember, Kristen said that the purpose of the wire doesn't matter to bank. They don't rely upon it. It's like the memo in the check.

Now, the Judge is going to talk to you about good faith and a good-faith defense. Part of that good-faith defense is the fact that Mr. Crowther relied upon his team, management team, you heard testimony of that. Mr. DeCicco did the same thing. He talked about that. You see these e-mails going back, you've got Mr. DeCicco on the e-mail, you've got Casey Crowther on the e-mail, but then you also have both of their teams communicating. And you have Brad North communicating with the Sanibel Captiva team. You have Evelyn Portinari communicating.

Then you have the fact that what is the rule right now? They're changing all the time. But if I don't file for forgiveness, as Mr. DeCicco agreed and Mr. Miller agreed, I've just a loan with the bank, and just paying back that loan when it becomes due.

I've already hit on this, but in my presentation I went a little bit early, but no requirement for segregating or earmarking loan proceeds. There has not been any testimony with regard to that. And you know, if there was, if there was IFR or guidance that existed, that would be shown to you. It doesn't. Mr. Miller from the SBA, talking about the fact, doesn't recall anything requiring that. Kristen DiIorio, she's asked. No, there's nothing required, any segregation. In fact, no requirement at all.

Loan forgiveness, if and when sought, will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered utilities, and other forgivable expenses during the covered period. That is indisputable fact number eight, ladies and gentlemen. The sum, during the covered period. It's eligible for forgiveness if one applies.

Exhibit 16. Mr. Reichling's been showing you that document -- well, not the full document, just a portion of it -- in his presentation. You're going to have the full document. I can't pull the full document for you right now, but there's the title of it, and you'll see it when you go back to the jury room. But, in that document, loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest, and it gives the entire aspect, at that point in time, on April 1st, what the SBA thought that the CARES Act, which was just passed four days before, three days before, included.

But the sum. Didn't say the earmarked funds. It didn't say payroll earmarked use from a loan bank proceed. Doesn't say that. That's what the government wants you to believe. They want you to believe this is earmarked.

Miss Knott's testimony. When I had her review her payroll summary, 3 million -- that's my bad error right there, ladies and gentlemen. That's supposed to be $3 million that she found. So there's a perfect example of what the Court's saying. Please use your own recollection. She said she had over $3 million that she counted. You guys can count, at that table back there, her chart, and you'll see it's over 3 million.

The other person that testified, which was quite clear, Colleen Clark, also talked about the payroll. She's the one that came in and actually, WBS, talked about how much money was paid in payroll. You had the charts, how much -- the WBS chart, and that's the chart that Miss Knott is summarizing.

And also, remember, on the story of these 39 fake employees, what she also said. Miss Clark said that WBS has that money. Those checks were not cashed. Deposited any funds. The money is still with WBS. So I guess the government's theory of I'm going to just throw a couple hundred thousand, or in this case a hundred thousand dollars away, or is the real story just not in front of you? The facts matter. Not stories. Facts.

Oh. I can't miss that one. I'm sorry.

Mr. Miller, when asked about . . . 24-week period, sum of proceeds being paid, that's acceptable for forgiveness.

Indisputable fact number nine. There are no proceeds of criminal activity. There is no loss or injury to Sanibel Captiva Bank, and there were no misrepresentations on the applications submitted to Sanibel Captiva Bank, as there are no SBA loan proceeds. Don't worry, I'm not going to show you any new slides, because I just showed you all the slides that demonstrate that.

The purpose of the wire field with Sanibel Captiva Bank is not relied upon by the bank. It is akin to the memo field on a check. Indisputable fact number ten. I don't think I would want to be scrutinized about what I put on my memos to my checks from ten months ago, 11 months ago. I don't even know what I put on the checks sometimes. I know I have some standard. But imagination being judged by that?

You have your own ability to track your monies. There's no law requiring you you have to tell the bank everything you're doing with your own money. When you're the sole shareholder of a company, it's your money as well. You're responsible for it. You're responsible for the taxes.

And when Miss DiIorio was asked about the purpose of the wire, it's akin to the memo line. They don't rely upon it. They've got three people reviewing it. There's no concealment. They know where the money was going.

They also know when Mr. Adkins received his money. He's another member of their -- customer of their bank. There's no where is it going? It's a scheme. I don't know. It's going to Mr. Adkins. And Miss DiIorio, in her testimony, as I showed earlier, she even thought it was a permissible allowable expense.

Credibility of the witnesses. All the witnesses here are the government's witnesses. The Judge is going to instruct on the credibility and your evaluation of their credibility. And, in doing so, like when I started off this summation, it's your common sense and what you saw. The interaction back and forth. Sometimes the questions were being asked in a way that there was no other way to answer for the witness. And then, when the witness was given the opportunity to answer, it was quite refreshing what they had to say.

But my question is, does the government care about the facts? The cash. Did they bring up the cash to sell the boat for 385, $400,000? Nope. Only after we did.

The marina agreement. I couldn't quite get that one. The marina agreement, it's Government's Exhibit 1. They didn't introduce it, we introduced it. I don't understand that. And it's really not the agreement, it's the note summary of reaching the agreement from Ryan Bradley.

And Ryan Bradley, remember him. He was talking about how that boat, he thought he was gonna get a commission on it. And Ryan was a new employee in February of that year. He didn't have the relationship that Peter did with Mr. Crowther. He didn't have that knowledge that Mr. Crowther has been buying and selling boats, Mr. Peterson said since 2017. He didn't have that. But he thought he was gonna get a nice commission on this boat. He was a little upset about it. But he was going to say, great deal on that boat. Great deal on that boat. And he wouldn't have lowered it that much.

Now, we talked about the loan packet defense, how they -- our Defense Exhibit 1. We are giving you the entire documentation. Government's Exhibit 167, I want you guys to take a careful look at it. That's that e-mail that I'm describing that Brad North sent on October 13th at 5:38 or 5:39 p.m. He sent it to the entire SanCap team. He's got the team from Target Roofing on it, that they're resubmitting all their payroll, and just remember what the government showed you.

The government showed you the one document, the application. And that's the document that they're claiming there's a misrepresentation, the document that has the SBA loan proceeds representation affirmation. Not anything else but the SBA loan proceed.

You'll see all of the documents that were submitted to the bank on April 13th, and you tell me if you think if that is somehow not being full disclosure to a bank.

Summary witness? Miss Knott? I mean, I'll hit it real quick down here, but that was interesting testimony. Never heard that before. The cash. Government doesn't want you to know about the cash. They even excluded the cash in a summary witness even though the government knew about the cash.

The government didn't conduct a summary witness analysis of the books and records of Target for April 24th. No. They just went and picked Sanibel Captiva Bank accounts, just right there. The pocket analogy? I was using that, Mr. Reichling used it.

The difference is, when you do the pocket analogy when you do an entire bank analysis, yes, you have the one pocket here, which is a PPP fund that has no requirement for segregation or earmarking; but when you're going to look at the other comparison, it's not just one bank. It's more like wearing cargo pants, multiple pockets down the side of your pants because there's multiple bank accounts.

Even the government's witness admitted that, Miss Knott. Cash isn't going to show up on a bank statement, Miss Knott said. Everybody knows that. Your own cash is sitting either in your safe, your purse, wherever you want it kept. In a business, you've got petty cash. Petty cash is stored. So none of that's in that analysis. Wouldn't have the knowledge of any cash payments. I only reviewed bank statements, so I don't know of any cash payments. Just a picture of Sanibel Captiva Bank.

And honestly, ladies and gentlemen, we were trying to figure out when I was going to do this cross on her, why are these bank accounts only being included? Why isn't this just a pure review? Because there isn't a title to the document. It didn't say Sanibel Captiva Bank analysis. It was giving the impression of what monies were on hand, and that's what the government wanted you to believe. That's what they wanted you to believe, that that's the money that Mr. Crowther had. Not that he could pay for this boat with other means. They don't want you to know that.

After confirming it, not a picture of the whole thing, but more importantly, if Miss Knott, as a summary witness, was going to conduct an entire financial picture summary report, wouldn't be the one she provided, it would be a complete different chart.

And I couldn't go into every document, but I mean we heard her. She was running out of time. Summary witness, former employee, contract employee of the U.S. Attorney's Office, comes in to testify under oath that these summary witness reports are accurate and complete. I'm not the one that asked her what are these reports for, and she says they're all from January 1st to September 2nd. And then, low and behold, they're not.

What did she not include? We already know she hand picked expenses for her definition of forgivable expenses that she's not an expert, doesn't know. What else did she forget, what else did she not include? And that's their last witness, trying to convince there's some nefarious act. Ooh, we're getting a summary witness.

Again, ladies and gentlemen, don't believe the side stories. That's why they had her to come in and testimony testify. Thank goodness she did that analysis on the payroll so you could see that firsthand from her that the payroll was over $1.3 million from April 20th to September 2nd. Who knows what it was the following 30 months -- I mean 30 weekdays. And let's not forget, this -- what she did here, on this report, and testifying, that was her side job, that she already works 50 hours a week elsewhere.

And while I have -- the aerial shot is just the direct examination of Miss Portinari. Did you see John Doe? Did you see Jane Doe? Why didn't you see John Doe? Why didn't you see Jane Doe? It was always no, no, because she couldn't expand.

Then, on cross, when Ms. Waid, explain to the ladies and gentlemen of the jury, well then you find out that she was staying in her office, she doesn't associate with -- I think she said she knew of 50 people that she could identify; but, beyond that, there's so many workers coming in and out, doing roofing projects, she's not gonna see them.

But, ladies and gentlemen, this is a five-acre piece of property. Five acres. You got the aerial shot back there with you, that you can look at. You can look at the size of the cars. You can look at the big house that's in the back. That has admin storage. You think, the front of the office building, you're going to have any idea what's going on in the warehouse, let alone what's going on back there? No.

But that's not what the government wants you to believe.

The government wanted you to just believe that she didn't see anybody. Again, smoke. They're just making this up, the side stories.

The only thing I'd want to say that I didn't necessarily hit, is Mr. Adkins. When we look at good faith, when we look at interaction, the wire to Mr. Adkins, the government puts up the stock redemption agreement. Mr. Adkins, a businessman in his '50s, kind of took Mr. Crowther on as a . . . mentoring.

Do you remember what he said? Well, the government actually put it in evidence. He reached out to Casey Crowther and says hey, you've got that loan with me, it's 7.5 percent interest. This interest is only one percent. It's a loan. And he said, on cross, that those are just bank loan proceeds, not SBA.

So when a mentor who used to be your business partner is even telling you this is what you need do, get that loan, you don't know what's gonna happen, and that's a good faith, relying on somebody you looked up to and you were a business partner of.

Ladies and gentlemen, there is not evidence beyond a reasonable doubt, you cannot be sitting here thinking, you know, these are my common sense, my thoughts that that heavy burden has been met by the government, that when Miss Knott was the last witness, that's the case.

Look at the witnesses who came in. Mr. Miller, SBA.

Good witness for us. Kyle DeCicco? I mean, he's the guy. He's the guy. And he said there's no misrepresentations on the application. That's who you have to rely upon. That's what he said. He's not happy that Casey bought a boat. He agrees with that. But that's not a misrepresentation.

Ladies and gentlemen of the jury, we ask you to go back, review the evidence, the facts matter, and review the facts, not just the stories that have been told. Review the facts. You've had the front-row seat here, second, third row. Pay attention, and focus on the facts. We ask you to return a verdict of not guilty on all four counts.

And thank you again for your time and service.

THE COURT: Thank you.

Jury still good? All right.

Mr. Reichling? Or Mr. Leeman.

MR. LEEMAN: Yes, Your Honor. Thank you. I'm going to need the ELMO, please.

THE COURT: And you may proceed.

MR. LEEMAN: Thank you, Your Honor.

Mr. Dickerson said Mr. Miller was a good witness for the defendant. My memory, and you need to rely on yours, of Mr. Miller's testimony is that, through all the various changes of the PPP program, nothing ever expanded the permissible use of funds in a way to allow the purchase of a boat for your own use. Mr. DeCicco, indicated as a good witness for the defendant, also confirmed the program has never been expanded in a way that would allow the purchase of a boat.

And let's not forget here, folks, we're not talking about how the program changed. Your job is to figure out, when Mr. Crowther applied for a loan back in April of 2020, whether he was lying to the bank, at that time, to try and get a loan. Whether he was deceiving them then. Doesn't matter that the law changed, because it never changed it anyway; but the real question is what happened in April? What was the law in April? You couldn't buy a boat in April. You can't buy a boat, right now, under the PPP program. You never could.

So a lot of things have changed. Some of them are relevant to this case. How long you had to spend the proceeds, from 8 to 24 weeks, that changed. That's relevant. But you don't just get to come up here and say there's 51 interim rules, how confusing. You know who wasn't confused, ever, about how to use this money, and what was appropriate? Casey Crowther.

Correcting the bank's own loan PPP calculator. E-mailing everybody he's on top of it. Calling a management strategy meeting when the law is about to change. Knowing enough to hire fake employees to boost payroll, and knowing enough to fire them on June 5th, when the law changed. Guess who did that. Guess who knew that. Guess who wasn't confused. Mr. Crowther.

I don't have enough time to respond to all of the different theories of how the CARES Act works; but Mr. Crowther didn't believe any of those theories about the CARES Act. He knew you couldn't buy a boat with that money. He tried to conceal it. He went so far as to hire fake employees to ensure that his boat purchase was for free. Okay?

We can make a lot of hay about whether the bank relies on a . . . description of a wire transfer or not, whether the bank really cares about it about. Do you know who did care about it? Enough to do it? This guy, sitting right here. Casey Crowther. He cared enough to do it. And it's wrong. It's false. It's a lie. That tells you about something what was going on up in his head at the time.

Now, what whatever one wants to say about the PPP program, it is not a program in which anybody that otherwise qualified could get a loan and use it on anything with a one-percent interest rate. And that's the defendant's argument about what the CARES Act is. As long as you never apply for forgiveness, you could have got a loan at one percent, and spent it on anything. Does that seem common sense to you? Does that align with anything you've seen in the documents?

Let's just show you the official SBA form. All right? I'm going to show you something. Forgiveness? Forgiveness does matter in this case, somewhat, because it relates to what the government has proven to you this gentleman was trying to do. But forgiveness in the use of proceeds, the permissible use of proceeds, are different. Are different. There are things, whether you apply for forgiveness under this loan that you are authorized to use them for, and there are things which you are not, whether or not you apply for forgiveness.

Those things are: The funds will be used to retain workers and maintain payroll or mortgage payments, lease payments, and utility payments. It does not say, if you apply for forgiveness, this is what you have to have used the funds for. No. It's right out of the gate, folks. It's right out of the gate. When you get the money, you gotta use it for those purposes.

And you know why it's right out of the gate? Because it says, if you don't, you can be prosecuted for fraud. There's no ambiguity there. It doesn't say if you don't use these things for those purposes, and you apply for forgiveness, then you can be prosecuted for fraud. No, it doesn't say that.

Use your common sense. The PPP program, the money's supposed to be used for payroll, rent, utilities, and the like. That this gentleman hasn't yet applied for forgiveness makes not a dime of sense.

I guess the theory is, if it's just a loan, there can't be any fraud. If it's not a -- well, if it's just a loan, well then there can't be any fraud. Well, how does that make any sense, folks? Most loans aren't forgivable. Most loans aren't forgivable. Is the theory really you can't commit bank fraud upon a not forgivable loan? What if Mr. Crowther wanted to buy a boat with a one-percent loan, and he defrauded the bank to do that? An unforgivable one-percent loan. That's still a crime. That's still a crime.

The law is not confusing, folks. It says, here, it says -- this is Government's Exhibit 8, it says in Government's Exhibit 6, it says in Government's Exhibit 10, multiple others, you will use the funds of this loan from Sanibel Captiva Bank.

No one has ever alleged this is an SBA loan. That's not part of the government's case. This is an SBA guaranteed loan. That's about the first sentence you heard out of my mouth in opening statement. This is a guaranteed loan. This is the bank's money. This is a bank fraud case. This gentleman hasn't been charged under some statute for defrauding the government. He's charged with defrauding a bank. This isn't confusing.

The payroll numbers. Let's talk about the payroll numbers briefly. The $3.1 million, whatever it is she didn't use to the penny. You don't have to trust Mr. Crowther's bank payroll numbers farther than you can throw them. He created 39 fake employees that were found during the course of this investigation to inflate them. He claims there's evidence in worth 3.1 million dollars. You're not required to accept a cent of that as true. Some of it probably is. It is a real company. How much he spent? You're not required to rely on that. And it's besides the point. It's besides the point. The question isn't whether he paid enough payroll, the question is whether he lied to a bank. And he did. And that is what he's charged with.

I just make another point. No, I'm not gonna make it.

Folks, when I stood up in opening, I walked you through exactly the evidence the government intended to show you. All of that evidence has come in. All of it. It's over there. It's in your heads. It's the testimony you heard. The government's proven its case, and we're asking you to return a guilty verdict on all four counts.

THE COURT: Thank you.

Ladies and gentlemen, I have maybe 25 to 30 minutes of instructions. Are you good, or do you want a break? Good to go? Okay.

Members of the jury, it is my duty to instruct you on the rules of law that you must use in deciding the case. After I've completed these instruction, you'll go to the jury room and begin your discussions, what we call your deliberations.

You must decide whether the government has proved the specific facts necessary to find the defendant guilty beyond a reasonable doubt. And I will tell you now that the instructions, a written copy will go back with you, so don't feel compelled to take notes. You'll get the instructions themselves. Of course, you can take notes if you want.

Your decision must be based only on the evidence presented during the trial, and you must not be influenced in any way by either sympathy for or prejudice against the defendant or the government.

You must follow the law as I explain it, even if you do not agree with the law, and you must follow all of my instructions as a whole. You may not single out or disregard any of the Court's instructions on the law.

The indictment, or formal charge against a defendant, is not evidence of guilt. The law presumes every defendant is innocent. The defendant does not have to prove his innocence, or produce any evidence at all.

A defendant does not have to testify, and if the defendant chose not to testify, you cannot consider that in any way while making your decision.

The government must prove guilt beyond a reasonable doubt. If the government fails to do that, you must find the defendant not guilty.

The government's burden of proof is heavy, but it does not have to prove a defendant's guilt beyond all possible doubt. The government's proof only has to exclude any reasonable doubt concerning the defendant's guilt.

A reasonable doubt is a real doubt, based upon your reason and common sense, after you have careful and impartially considered all of the evidence in the case. Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it, without hesitation, in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But anything the lawyers say is not evidence, and is not binding upon you.

You should not assume, from anything I have said, that I have any opinion about any factual issue in the case. Except for my instructions on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial.

Direct evidence is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part.

The number of witnesses testifying concerning a particular point does not necessarily matter. To decide whether you believe any witness, I suggest that you ask yourselves a few questions:

Did the witness impress you as one who is telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to accurately observe the things he or she testified about? Did the witness appear to understand the questions clearly, and answer them directly? Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact, and ask whether there was evidence that, at some other time, a witness said or did something, or did not say or do something, that was different from the witness's -- from the testimony of the witness during this trial.

But keep in mind that a simple mistake does not mean a witness was not telling the truth as he or she remembers it. People naturally the end to forget some things or remember them inaccurately. So if a witness misstated something, you must decide whether it was because of an innocent lapse of memory, or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

You have been permitted to take notes during the trial. Most of you, perhaps all of you, have taken advantage of that opportunity. You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence, and you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impression about the testimony.

The second superseding indictment charges four separate crimes, called counts, against the defendant. Each count has a number. You will be given a copy of the second superseding indictment to refer to during your deliberations. I will refer to the second superseding indictment simply as the indictment. I will now explain the law governing these offenses.

First, Count 1, bank fraud. Count 1 alleges that Casey David Crowther committed the federal offense of bank fraud between April, 2020, and February 20, 2021. Specifically, Count 1 alleges that Mr. Crowther entered into a scheme to defraud the Sanibel Captiva Community Bank and to obtain money from that bank by submitting a false loan application and revised loan application on behalf of his company, Target Roofing and Sheet Metal, which knowingly contained false information, in order to obtain a loan from the Sanibel Captiva Community Bank which was guaranteed by the United States Small Business Administration, the SBA, pursuant to its Paycheck Protection Program, what we've called the PPP.

It is a federal crime to carry out or attempt to carry out a scheme to defraud a financial institution, or to obtain any monies owned by or under the custody or control of a financial institution, by means of false or fraudulent pretenses, representations, or promises. There are two alternative methods for establishing this offense: Proving a defendant carried out or attempted to carry out a scheme, one, to defraud a financial institution; or, two, to obtain money owned by or under the custody or control of a financial institution by means of false or fraudulent pretense, representations, or promises.

Where a statute specifies multiple alternative ways in which an offense may be committed, the indictment may allege the multiple ways in the conjunctive; that is, by using the word "and." If only one of the alternatives is proven beyond a reasonable doubt, that is sufficient for conviction so long as you agree unanimously as to that alternative. The verdict form given to you therefore will address both alternative methods of establishing bank fraud.

As to the first alternative method, the defendant can be found guilty only if all of the following facts are proved beyond a reasonable doubt: One, the defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution; two, the defendant intended to defraud the financial institution; and three, the financial institution was federally insured.

As to the second alternative method, the defendant can be found guilty only if all of the following facts are proved beyond a reasonable doubt: One, the defendant knowingly carried out or attempted to carry out a scheme to get money, assets, or other property from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact; two, the false or fraudulent pretenses, representations, or promises were material; and three, the financial institution was federally insured.

A scheme to defraud includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises relating to a material fact.

To act with intent to defraud means to act knowingly, and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss or injury. Proving intent to deceive a loan without intent to cause loss or injury is not sufficient to prove intent to defraud.

The government does not have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also does not have to prove that the alleged scheme actually succeeded in defrauding anyone. What must be proved beyond a reasonable doubt is that the defendant knowingly attempted or carried out a scheme substantially similar to the one alleged in the second superseding indictment.

As you know, the parties have stipulated that Sanibel Captiva Community Bank is an insured financial institution at all material times.

A statement or a representation is false or fraudulent if it is about a material fact that the speaker knows is untrue, or makes with reckless indifference as to the truth, and makes with intent to defraud. A statement or representation may be false or fraudulent when it is a half-truth, or effectively conceals a material fact, and is made with the intent to defraud.

A material fact is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is material if it has the capacity or natural tendency to influence a person's decision. It does not matter whether the decision maker actually relied on the statement, or knew or should have known the statement was false.

As to Count 2, which alleges a false statement to a federally insured institution, it is a federal crime to knowingly make a false statement or report to a federally insured financial institution. Count 2 alleges that Casey David Crowther committed the federal offense of making a false statement to the Sanibel Captiva Community Bank on or about April 13th of 2020.

Specifically, Count 2 alleges that Mr. Crowther knowingly made false statements in the PPP revised loan application regarding the intended use of the loan proceeds in order to influence the actions of the Sanibel Captiva Community Bank.

The defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt: One, the defendant made a false statement or report; two, defendant did so knowingly and with intent to influence an action of the institution described in the indictment regarding an application or loan; and three, the deposits of the institution were insured by the Federal Deposit Insurance Corporation.

A statement or report is false if it is untrue when made and the person making it knows it is untrue.

The heart of the crime is the attempt to influence the action of the institution by knowingly making a false statement or report. The government does not have to prove that the institution was actually influenced or misled.

As you know, the parties have stipulated that Sanibel Captiva Community Bank was an insured financial institution at all material times.

Counts 3 and 4 relates to an illegal monetary transaction. It is a federal crime for anyone to engage in certain kinds of financial transactions commonly known as money laundering. Counts 3 and 4 allege that Casey David Crowther committed the federal offense of engaging in an illegal monetary transaction, also known as money laundering.

Specifically, on or about April 21, 2020, for Count 3, and on or about April 24, 2020, for Count 4, it is alleged that Mr. Crowther engaged or attempted to engage in a specified monetary transaction in criminally derived property of a value greater than $10,000, the property having been derived from the bank fraud which is alleged in Count 1.

In Count 3, the monetary transaction is described as a $100,000 wire transfer from Sanibel Captiva Community Bank in connection with the payment of a promissory note. In Count 4, the monetary transaction is described as a $689,417 wire transfer from Sanibel Captiva Community Bank in connection with the purchase of a boat.

The defendant can be found guilty of this offense only if all of the following are proved beyond a reasonable doubt: One, the defendant knowingly engaged or attempted to engage in a monetary transaction; two, the defendant knew the transaction involved property or funds that were the proceeds of some criminal activity; three, the property had a value of more than $10,000; four, the property was, in fact, proceeds of bank fraud, as alleged in the indictment; and five, the transaction took place in the United States.

The term "monetary transaction" means the transfer or exchange of funds by, through, or to a financial institution in a way that affects interstate commerce.

As you know, the parties have stipulated that Sanibel Captiva Community Bank was a financial institution at all material times.

The parties have also stipulated that the transfers described in Counts 3 and 4 affected interstate commerce.

The term "proceeds" means any property derived from, or obtained or retained, directly or indirectly, through some sort or some form of unlawful activity, including the gross receipts of the activity.

It does not matter whether the defendant knew the precise nature of the crime, or that the property came from committing bank fraud; but the government must prove that the defendant knew the property involved in the monetary transaction was obtained or derived from committing some crime. Also, it does not matter whether all the property involved was derived from a crime. The government only has to prove that $10,000 worth of the property was obtained or derived from committing a crime.

It is possible to prove the defendant guilty of a crime even without evidence that the defendant personally performed every act charged. Ordinarily, any act a person can do may be done by directing another person or agent, or it may be done by acting with or under the direction of others.

Good faith is a complete defense to a charge that requires intent to defraud. A defendant is not required to prove good faith. The government must prove intent to defraud beyond a reasonable doubt. An honestly held opinion, or an honestly formed belief cannot be fraudulent intent even if the opinion or believe is mistaken.

Similarly, evidence of a mistake in judgment, or error in management, or carelessness cannot establish fraudulent intent. But an honest belief that a business venture would ultimately succeed does not constitute good faith if the defendant intended to deceive others by making representations the defendant knew to be false or fraudulent.

During the trial, you have heard the parties and witnesses talk about Interim Final Rules, which are regulations issued by the Small Business Administration to implement the Paycheck Protection Program as included in the CARES Act. An Interim Final Rule is a rule adopted by a federal agency that becomes effective without prior notice and public comment, and that invites public comment after its effective date.

You will see that the indictment charges that a crime was committed on or about a certain date. The government does not have to prove the offense occurred on the exact date. The government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that the act was done voluntarily and intentionally, and not because of a mistake or accident.

Each count in the indictment charges a separate crime. You must consider each crime, and the evidence relating to it, separately. If you find the defendant guilty or not guilty on one crime, that must not affect your verdict as to another crime.

I caution you that the defendant is on trial only for the specific crimes charged in the indictment. You are here to determine, from the evidence in this case, whether the defendant is guilty or not guilty of those specific crimes.

You must never consider punishment, in any way, to decide whether the defendant is guilty. If you find the defendant guilty, the punishment is for the Judge alone to decide later.

Your verdict, whether guilty or not guilty, must be unanimous. In other words, you must all agree.

Your deliberations are secret, and you will never have to explain your verdict to anyone. Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try and reach an agreement.

While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong; but do not give up your honest beliefs just because others think differently, or because you simply want to get the case over with. Remember that, in a very real way, you are judges, judges of the facts. Your only interest is to seek the truth from the evidence in the case.

During your deliberations, you may not communicate with or provide any information to anyone, by any means, about the case. You may not use any electronic device or media to communicate with anyone any information about the case or to conduct any research about the case until I accept your verdicts. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about the case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect that you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide the case based solely on the evidence presented in the courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during your deliberations because they have seen and heard the same evidence that you have.

In our judicial system, it is important that you are not influenced by any thing or any one outside this courtroom. Otherwise, your decision may be based on information known only to you, and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

When you go into the jury room, select one of your members to act as your foreperson. The foreperson will direct your deliberations, and will speak for you in court.

A form of verdict has been prepared and will be sent back with you. It is three pages. I'm going to go over it with you right now.

With regard to Count 1, that's on Page 1, there's actually two different questions, because, as I told you, there's two alternative ways to commit bank fraud.

The form says, Count 1. As to Count 1 of the second superseding indictment, which charges bank fraud, A, as to defrauding a financial institution, we, the jury, unanimously find the defendant, Casey David Crowther, and then it's got two lines, not guilty and guilty. Obviously, you check one of those.

For Count 1, Section B, it reads, and again the preface is as to Count 1, which charges bank fraud, B, as to obtaining money or funds from a financial institution by means of materially false statement, or fraudulent pretenses, representations, or promises, we, the jury, unanimously find the defendant, Casey Crowther, and again you've got two choices, not guilty or guilty.

Now, there are two alternatives. We have to answer both. And they can be different. You can find guilty of both, not guilty of both, guilty of one, and not guilty of the other. But you have to fill out both questions for Count 1.

The verdict form for two Count 2, in the next page, says, as to Count 2 of the second superseding indictment, which charges false statement to a financial institution, we, the jury, unanimously find the defendant, Casey David Crowther, and again, not guilty or guilty. You check whichever one is appropriate.

Count 3, the form says, as to Count 3 of the second superseding indictment, which charges illegal monetary transaction on April 21 of 2020, we, the jury, unanimously find the defendant, Casey Crowther, again, not guilty or guilty. You check the appropriate one.

And finally, Count 4 of the form says, as to Count 4 of the second superseding indictment, which alleges illegal monetary transaction on April 24, 2020, we, the jury, unanimously find the defendant, Casey Crowther, and again, not guilty or guilty. You check whichever one is appropriate.

Page 3, it says so say we all, indicates again that your verdicts are unanimous, and it has a line for the date and a line for the signature of the foreperson.

You will take the verdict form with you to the jury room. When you have all agreed on the verdict, your foreperson must fill the form in, sign and date it, and then you all will return to the courtroom.

If you wish to communicate with me at any time, please write down your message or question, and give it to the Court Security Officer. The Court Security Officer will bring it to me, and I will respond as promptly as possible, either in writing or by having you come back to the courtroom. But I caution you not to tell me, at any time, how many jurors have voted one way or the other.

In a moment I'm going to have you return to the jury room. Shortly, we will gather all the exhibits that have been admitted, and have those taken back to you. That might take a few minutes as we make sure that we've got just the right ones. I'll send back the verdict form. We're send back a copy of the jury instructions. So you'll have those.

(The Court confers with the Courtroom Deputy privately.)

THE COURT: I suggest, among the first things you do when you get back there, is they're going to order you lunch. So you need to tell the Courtroom Deputy or the CSO, and make your luncheon arrangements.

You remember all those instructions I gave you about not talking about the case? Those instructions are rescinded. Now is the time you are to talk about the case. So, with the exception of Miss King and Miss Shaw, if you two would remain present, the rest of you would follow the Court Security Officer, he will take you to the jury room.

(At 11:27 a.m., the jury was escorted from the courtroom.)

THE COURT: Miss Klein?

JUROR KLEIN: Yes, sir?

THE COURT: Go on with the jurors.

JUROR KLEIN: Oh, okay.

THE COURT: You may have a seat.

You may be seated.

Ms. Shaw and Ms. King, you are the alternates in the case. What that means is all the instructions I told you about not talking about the case still apply. And the reason for that is, if, for example, a juror got sick before they returned a verdict, or got in a car accident or something, instead of having to try the case all over again, I'd just call one of you, and the jury would be told to begin their deliberations all over again.

So you can't talk about the case among yourselves or with anyone else, you can't do any of the research or view any publicity.

What I'm going to ask do you is give my Courtroom Deputy a cell number, or some number we can get a hold of you. We will call you and let you know whether we need you or not, but I can't tell you when, because I don't know how long the deliberations will make. If it's the end of the day, we will call you to let you know that you're not needed. If they go over into Monday, we'll call you Monday. Like I said, I don't know when. But whenever it is, we'll call you at some point.

Any questions?

If you'd come on up, give us -- my question is, do you have anything in the jury room that needs to be retrieved? If you'd tell the CSO, he'll get it for you. And then you need to give us a phone number, and we'll get you out of here.

(Thereupon, after providing contact information to the Courtroom Deputy, the alternate jurors left the courtroom.)

THE COURT: All right. Counsel, if you'd take a look at the exhibits, and make sure we have the right ones, and nothing extra. And then we'll get the verdict form, and I do need to get a new page for that instruction.

And you obviously can take a look at the instructions that are going back, and the verdict form. I would suggest that we kind of hang around and see if there's a quick question. As you heard, the jurors will be ordering lunch. That probably takes a while to get them, but I would think it's safe for any of us to go for lunch shortly.

Anything else?

MR. REICHLING: No, Judge.

MR. DICKERSON: No, Your Honor.

THE COURT: All right. We'll be in recess until we hear from the jury then.

(At 11:30 a.m., court was recessed.)

AFTER RECESS

(At 1:29 p.m., court was reconvened.)

THE COURT: Be seated.

Counsel, I'm told the jury has reached verdicts, so we'll just wait for the jury to be brought upstairs.

(At 1:31 p.m., the jury was escorted into the courtroom.)

THE COURT: Be seated, please.

Mr. Day, since you're one carrying pieces of paper, may I assume you're the foreperson?

JUROR DAY: Yes.

THE COURT: And I'm informed that the jury has reached verdicts. Is that correct?

JUROR DAY: That's correct.

THE COURT: I'd ask that you hand the verdict form to the Court Security Officer, and he'll bring it to up to me.

Thank you.

Ladies and gentlemen, if you'd all please rise and listen to your verdicts. Which means stand up, please.

As to Count 1, Subpart A, you have found the defendant guilty. As to Count 1, Subpart B, you have found the defendant guilty. As to Count 2, you have found the defendant guilty. As to Count 3, you have found the defendant guilty. And as to Count 4 you have found the defendant guilty. The verdict form is dated today's date and signed by your foreperson.

Are these your verdicts, so say all of you?

(All jurors indicate affirmatively.)

THE COURT: Mr. Day, are these your verdicts?

JUROR DAY: Yes, they are.

THE COURT: Ms. Freymoyer, are these your verdicts?
JUROR FREYMOYER: Yes.
THE COURT: Ms. O'Brien, are these your verdicts?
JUROR O'BRIEN: Yes.
THE COURT: Mr. Combs, are these your verdicts?
JUROR COMBS: Yes.
THE COURT: Mr. Turner, are these your verdicts?
JUROR TURNER: Yes.
THE COURT: Ms. Ford, are these your verdicts?
JUROR FORDE: Yes.
THE COURT: Mr. Priddy, are these your verdicts?
JUROR PRIDDY: Yes.
THE COURT: Mr. Smith, are these your verdicts?
JUROR SMITH: Yes.
THE COURT: Ms. Graley, are these your verdicts?
JUROR GRALEY: Yes.
THE COURT: Mr. Hochman, are these your verdicts?
JUROR HOCHMAN: Yes.
THE COURT: Ms. Klein, are these your verdicts?
JUROR KLEIN: Yes.
THE COURT: And, Mr. Anderson, are these your verdicts?
JUROR ANDERSON: Yes, sir.
THE COURT: Ladies and gentlemen, I want to thank you for your time and attention in this case. This will complete

your jury service both in this case and you do not need to call that telephone number for the rest of the month. You will be excused.

If you'd exit through the jury room, I'd request that you leave the lanyards for future use, and like I say, I do appreciate your time and effort in the case.

(At 1:34 p.m., the jury was escorted from the courtroom.)

THE COURT: You may be seated.

Mr. Crowther, if you and one or both of your lawyers would come on up to the podium for me, please.

Mr. Crowther, pursuant to the verdicts of the jury, the Court would adjudicate you guilty of Count 1 as to both alternatives; that is, the bank fraud, for defrauding a financial institution, and by obtaining money by means of false pretenses, representations and promises. The Court would also adjudicate you guilty of Counts 2, 3, and 4 of the second superseding indictment.

The Court will order a presentence report to be prepared, and you and your attorneys, of course, will be given the opportunity to review that report and make any objections that you think may be appropriate.

I don't know if we have a date yet for sentencing. We'll set the date of sentencing by separate notice. That typically is anywhere from 75 to 90 days out for the preparation of the presentence report.

Counsel, anything further? From the government?

MR. REICHLING: No, Your Honor.

THE COURT: From the defense?

MS. WAID: No, Your Honor.

THE COURT: Mr. Crowther, the Court is not going to change the terms and conditions of your release, so whatever the magistrate judge has said you will still need to comply with until the time of sentencing.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. If there's nothing else, we will be in recess.

The jury verdict form will be available for inspection. If you'd like, we'll make copies of it for you for your respective files.

All right. We'll be in recess.

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(Thereupon, at 1:36 p.m., the above-entitled matter was concluded.)

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CERTIFICATE

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

Dated this 15th day of November, 2021.

Jeffrey G. Thomas

JEFFREY G. THOMAS, RPR, CRR