

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES

v. Criminal No. 2:S20-cr-114-FTM-66MRM

CASEY DAVID CROWTHER

Defendant.

_____ /

**DEFENDANT’S MOTION FOR LEAVE TO FILE UNDER SEAL
PURSUANT TO LOCAL RULE 3.01
MOTION REGARDING TRIAL PROCEEDINGS**

Defendant, Casey D. Crowther (“**Crowther**”), through undersigned counsel, and pursuant to M.D. Local Rule 3.01, hereby files his Motion for Leave to File Under Seal Motion for Bench Trial or Alternatively to Seal Certain Proceedings or to Bifurcate Trial.¹

I. INTRODUCTION

Crowther requests this Court’s leave to file a sealed Motion for Bench Trial or Alternatively to Seal Certain Proceedings or to Bifurcate Trial. There are certain proceedings and trial procedures that need to be addressed with the Court in private

¹ This Court’s local rules do not specify the Court’s procedure for seeking leave to file under seal in a criminal case. For this reason, the undersigned contacted the clerk’s office for guidance and was advised that the procedure is substantially similar to the procedure for seeking leave to file under seal in civil cases under M.D. Local Rule 1.11.

The proposed duration of the request to file Crowther’s forthcoming motion under seal is through the close of the upcoming trial, including the verdict.

in order to preserve Crowther's constitutional rights, specifically his right to a fair trial pursuant to the Sixth Amendment. Crowther's forthcoming motion addresses certain sensitive information that could cause harm to the jury pool. As this Court is aware, this criminal case has received significant publicity and news media attention. The information contained in Crowther's forthcoming motion therefore should not be filed in the public domain.

Accordingly, Crowther requests that his forthcoming Motion for Bench Trial or Alternatively to Seal Certain Proceedings or to Bifurcate Trial be sealed.

II. MEMORANDUM OF LAW

There are certain matters regarding the upcoming trial that need to be addressed with the Court in a private setting. Due to the media coverage associated with this case, this sensitive information should be addressed with the Court in private to avoid any harm to the jury pool.

In *United States v. Cooper*, 679 Fed. Appx. 738 (11th Cir. 2017), the Eleventh Circuit discussed the criteria for sealing proceedings in a criminal action. The Eleventh Circuit stated:

The public has a qualified First Amendment right of access to criminal trial proceedings. *See United States v. Ochoa-Vasquez*, 428 F.3d 1015, 1028-29 (11th Cir. 2005). This right establishes a presumption of openness that precludes the sealing of criminal proceedings. *See id.* at 1030. ***To overcome this presumption, a party must show "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."*** *Id.* (quoting *Press-Enterprise Co. v. Super. Ct. of California*, 464 U.S. 501, 510, 104 S. Ct. 819, 78 L. Ed. 2d

629 (1984)). A district court, addressing the sealing of criminal proceedings, has "discretion to determine which portions of the record should be placed under seal." *Perez-Guerrero v. United States AG*, 717 F.3d 1224, 1235 (11th Cir. 2013). In denying a party's access to documents or sealing proceedings, however, a district court "must articulate the overriding interest 'along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.'" *Ochoa-Vasquez*, 428 F.3d at 1030 (quoting *Press-Enterprise Co.*, 464 U.S. at 510).

Cooper, 679 Fed. Appx. at 742.

Suffice to say, Crowther's right to a fair trial constitutes an overriding interest to the presumption of openness that normally attaches to criminal proceedings. The sensitive information that should be addressed with the Court in a private setting may impact the jury pool and thus cause harm to Crowther's Constitutional rights. The duration of the request of sealing the forthcoming motion will last not more than thirty days and may actually be able to be unsealed within fourteen days or less.

Accordingly, Crowther requests that his forthcoming motion regarding the upcoming trial and trial procedures be sealed.

III. CONCLUSION

Based on the foregoing, Defendant, Casey David Crowther respectfully requests that this Court (a) grant this Motion in all respects; (b) grant Crowther leave to seal his forthcoming Motion for Bench Trial or Alternatively to Seal Certain Proceedings or to Bifurcate Trial; and (c) enter such other and further relief this Court deems just and proper.

IV. CERTIFICATION

Pursuant to the Court's Pretrial Criminal Scheduling Order [D.E. 40], the undersigned certifies the following:

- i. moving counsel has conferred with opposing counsel;
- ii. counsel has not resolved the motion by agreement; and
- iii. the motion concerns a matter not covered by this Order.

Respectfully Submitted,

/s/ Nicole H. Waid
Nicole H. Waid, Esq.
Florida Bar No. 0121720
nicole.waid@fisherbroyles.com

/s/ Brian E. Dickerson
Brian E. Dickerson, Esq.
Fla. Bar No. 106615
brian.dickerson@fisherbroyles.com

FISHERBROYLES, LLP
2390 Tamiami Trail North, Suite 100
Naples, Florida 34103
Phone: (202) 906-9572
Fax: (239) 236-1360

CERTIFICATE OF SERVICE

I, Nicole H. Waid, attorney for Casey David Crowther, do hereby certify that I have, this day, filed the foregoing with the Clerk of Court via the CM/ECF system, which has caused a true and correct copy to be served on all counsel of record.

/s/ Nicole H. Waid
Nicole H. Waid, Esq.