

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES

v.

Criminal No. 2:20-cr-114-FTM-66MRM

CASEY DAVID CROWTHER

Defendant.

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**DEFENDANT’S RENEWED MOTION FOR LEAVE TO FILE
UNDER SEAL TO AVOID SEVERE PREJUDICE TO
DEFENDANT’S RIGHT TO A FAIR TRIAL**

Defendant, Casey D. Crowther (“**Crowther**”), through undersigned counsel, and pursuant to M.D. Local Rule 3.01 and this Court’s Order dated March 17, 2021 [D.E. 103], hereby files his Renewed Motion for Leave to File Under Seal to Avoid Severe Prejudice to Defendant’s Right to a Fair Trial.

A. Crowther’s Right to a Fair Trial Will Be Severely Compromised in the Absence of Leave to File Under Seal

Crowther stands to suffer severe prejudice – i.e., irreparable damage to his right to a fair trial – if this Court does not permit Crowther to file under seal his motion requesting a bench trial or, alternatively, to seal certain proceedings or bifurcate Counts I – IV (Paycheck Protection Program “PPP” fraud allegations) from Counts V – VII (mortgage fraud allegations) for the upcoming trial. Specifically, if Crowther’s forthcoming motion is available to the public on the Court’s docket, it is without a doubt that multiple media outlets will immediately broadcast the sensitive information

set forth in the motion. As a direct consequence, the jury pool will be contaminated, thereby severely jeopardizing Crowther's right to a fair trial.

The specific content that Crowther seeks to file under seal cannot be discussed here because doing so will have the same effect of filing Crowther's forthcoming motion in the public domain, which is highly likely to cause the severe damage to Crowther's constitutional rights discussed above. That being said, the undersigned hereby assures the Court that the specific material sought to be filed under seal need remain under seal only for the shortest duration of time possible; i.e., only until this Court has ruled on Crowther's forthcoming motion. Consequently, the concerns expressed in the Court's Order [D.E. 103] regarding the presumption of openness precluding sealing of criminal proceedings set forth in *United States v. Cooper*, 679 F. Appx. 738, 742 (11th Cir. 2017) are demonstrably minimized under these circumstances.

B. The Media Have a History of Reporting False, Inaccurate, and Misleading Information Regarding Crowther

Because this case has been so highly publicized in television, digital, and print media, it is inevitable that multiple media outlets will immediately report sensitive information that Crowther hereby requests to file under seal for only the briefest period necessary for this Court to rule on the motion. When Crowther was arrested, almost every Southwest Florida news media outlet was dispatched to Crowther's residence in St. James City to cover the story. Surveillance drones were flown over Crowther's residence on the day of his arrest. News reports of the arrest were broadcast on live

television on every local news channel. A search of online and print news media articles demonstrates that the case was highly publicized when Crowther was arrested, and significant coverage of the case has continued through the present. **Composite Ex. “A”**.

The news reports (both live and written press) continued incessantly for every status hearing and subsequent indictment. **Composite Ex. “B”**. Most notably, there were significant inaccuracies reported in the news media that made their way to the jury pool. As recently as February 12, 2021, NBC2 News and ABC News Fort Myers inaccurately reported that “Casey Crowther faces 7 additional charges in his PPP fraud case.” **Composite Ex. “C”**. The online article falsely reported that “[n]ow, Crowther faces a total of 15 charges.” *Id.* This information was demonstrably false, as Crowther has never been charged with more than (7) criminal offenses. *See* Doc. 62. The article also erroneously intertwined the PPP allegations with the mortgage fraud allegations. Because of the “importance” of this breaking news, it was pushed out to mobile devices of NBC2 and ABC followers throughout Southwest Florida. It was then posted on NBC2 and ABC’s websites. The undersigned was forced to contact the news outlets to point out the inaccuracies and demand the story be retracted. *See* Ex. **“D”**.

Separately, Crowther has been the subject of endless, scathing public attacks from his own family members and business rivals who operate one of the largest roofing businesses in Southwest Florida and are in direct competition with Crowther. Crowther Roofing has been in business for the past thirty (30) years and is a household

name in most homes within Southwest Florida. The owner of Crowther Roofing is Lee Crowther, Casey Crowther's grandfather. Crowther originally worked for his grandfather but left Crowther Roofing to build his own roofing company, Target Roofing. As Target grew, the Company became a direct competitor to Crowther Roofing. Once Target won projects that used to be Crowther Roofing contracts, the familial relationship completely deteriorated. Since Crowther's arrest, Crowther Roofing has conducted a targeted negative media campaign against Crowther which has poisoned the jury pool and has negatively impacted Target's business.

The official statement on the Crowther Roofing website states: "We here at Crowther Roofing & Sheet Metal were shocked and disappointed to read of the Federal allegations against Casey Crowther. Casey Crowther is the grandchild of our founder, Lee J. Crowther, but is not employed by, nor connected in any way with, Crowther Roofing & Sheet Metal." *See* Ex. "E". The day after his arrest, Crowther Roofing began a television campaign against Crowther. Crowther has been the subject of incessant personal attacks via TV advertisements for the past six (6) months. In these advertisements, Crowther Roofing has insinuated Crowther's guilt and condemned him for his actions by stating that while competitors took government money, Crowther Roofing business did not apply for or receive PPP loan funds from the government¹ and "there is only one Crowther Roofing". These personal attacks

¹ This statement is also an inaccurate statement; PPP loans are funded by the Lender and are not Government funds.

against Crowther have been broadcasted on television in Southwest Florida multiple times daily.

Against the backdrop of this magnitude of biased, inaccurate, and misleading information being broadcasted to the jury pool (and the inevitable posting and sharing of this information on social media), any further media reporting of sensitive information may irreparably compromise Crowther's constitutional right to a fair trial. Against the severe likelihood of irreparable harm to Crowther's constitutional rights, it is clear that a temporary seal of information set forth in Crowther's forthcoming motion for only the shortest duration necessary for the Court to rule on the motion is entirely appropriate.

C. The *Singer* Analysis Does Not Require the Government's Consent to a Bench Trial

Finally, it is necessary to briefly address the position set forth in this Court's Order [D.E. 103] that "[a] request for a bench trial requires a written waiver of a jury trial by defendant and the consent of the government." Order at p. 2.

While it is acknowledged that a written jury trial waiver is necessary, the Government's consent is not required in order to request a non-jury trial under the factors discussed in *United States v. Singer*, 380 U.S. 24 (1965). In *Singer*, the Supreme Court specifically confronted the issue of whether the effectiveness of a jury trial waiver may be conditioned on the Government's consent and the consent of the trial judge. The Court recognized "there might be some circumstances where a defendant's reasons for wanting to be tried by a judge alone are so compelling that the

Government's insistence on trial by jury would result in the denial to a defendant of an impartial trial." *Id.* at 37. These situations include where passion, prejudice, public feeling, or some other factor may render impossible or unlikely an impartial trial by jury. *Id.* at 37-38; *see also United States v. Caramadre*, No. 11-186 S, 2012 U.S. Dist. LEXIS 144280 at *3-4 (D. R.I. Oct. 5, 2012) (stating that "the government's ability to withhold consent is not absolute"); *United States v. Schipani*, 44 F.R.D. 461, 463 (E.D. N.Y. 1968) (recognizing that "[a]s the Supreme Court indicated in the *Singer* case, however, there may be 'some circumstances' in which the government's insistence on a jury trial would be unreasonable").

The sealed motion will set forth the factual basis for Crowther's requests and will unequivocally demonstrate the passion, prejudice, and public feeling that satisfies the elements in *Singer* and justifies Crowther's request for a bench trial. The sealed motion will illustrate why a bench trial is still warranted, in the absence of the Government's consent, in order to protect Crowther's constitutional rights. As such, the relief that will be requested in Crowther's forthcoming motion is entirely legally viable; however, as noted above this legal argument cannot be advanced without disclosing highly sensitive information that should be discussed in private and kept under seal for the short duration requested herein to protect Crowther's right to a fair trial. In the event this motion is denied, Crowther will be forced to file the aforementioned motion in the public domain which will cause significant prejudice to Crowther's ability to a fair trial and will add substantial time to voir dire in order to empanel an impartial jury, if possible. If the Court reads the motion and does not

believe the motion warrants being filed under seal, the Court can unseal the motion with no prejudicial harm to the public.

WHEREFORE, Defendant, Casey David Crowther respectfully requests that this Court (a) grant this Motion in all respects; (b) permit Crowther leave to file the sealed motion discussed herein; and (c) enter such other and further relief this Court deems just and proper.

Respectfully Submitted,

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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.