

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,	)	Fort Myers, Florida
	)	
	)	Case 2:20-CR-114-FtM-66MRM
Plaintiff	)	
	)	Friday, March 19, 2021
vs.	)	
	)	3:05 p.m. to 3:27 p.m.
CASEY DAVID CROWTHER,	)	
	)	Courtroom 5D
Defendant	)	
_____	)	

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE
HELD BEFORE THE HONORABLE JOHN E. STEELE,
United States District Court Judge

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

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computer-aided transcription.)*

A P P E A R A N C E S

COUNSEL FOR GOVERNMENT:

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

COUNSEL FOR DEFENDANT:

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

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COURTROOM DEPUTY: Your Honor, Case
Number 2:20-CR114-JESMRM, United States of America versus Casey
Crowther.

THE COURT: Good afternoon everyone. If you'd please
identify yourselves and your respective clients, beginning with
the government.

MR. REICHLING: Good afternoon, Your Honor. Trent
Reichling and Michael Leeman on behalf of the United States.
Also seated at counsel table is United States Secret Service
Agent Brian Kirby.

THE COURT: All right. Good afternoon.
And for the defense?

MS. WAID: Good afternoon, Your Honor. Nicole Wade
and Brian Dickerson on behalf of Mr. Crowther. Also seated at
counsel table is our legal assistant, Julie O'Brien.

THE COURT: Good afternoon. Thank you.

All right. We're set for a final pretrial conference
here. I've got a few questions.

I've received the government's amended witness list
and the defendant's witness list. Then I received . . . I
think it's three stipulations. And my question is does that
eliminate any of the names that I should be reading to the jury
in terms of witnesses?

1 MR. REICHLING: No, Your Honor, it does not.

2 THE COURT: Okay. And then I gather, but I wanted to
3 make sure I'm right, that the second superseding indictment's
4 reference to lender turns out to be the Sanibel Captiva
5 Community Bank?

6 MR. REICHLING: That is correct, Judge.

7 THE COURT: And then the mortgage broker is Angel Oak
8 Mortgage Solutions, LLC?

9 MR. REICHLING: The mortgage broker is VanDyk
10 Mortgage, and the mortgage lender is Angel Oak Mortgage
11 Solutions, Your Honor.

12 THE COURT: All right. So Angel Oak is which?

13 MR. REICHLING: Angel Oak is the mortgage lender.

14 THE COURT: I had that wrong. And the mortgage
15 broker, again, please?

16 MR. REICHLING: It's VanDyk. V A N D Y K E.

17 THE COURT: Man Dyke?

18 MR. REICHLING: VanDyk Mortgage.

19 THE COURT: Okay.

20 With regard to the jury instructions, I really don't
21 intend to discuss the substantive content of them other than to
22 note that I believe both sides have submitted the
23 Eleventh Circuit pattern for the bank fraud instruction, which
24 normally may be fine. I'm not convinced, in this case, that
25 that doesn't need to be tweaked because of the way the charges

1 are in the second superseding indictment.

2 You've gotten both of the alternative ways of
3 committing bank fraud alleged, and one of the annotations to
4 the instruction I think has a right. I'm not sure the
5 instruction has a right, because the elements are different;
6 and I would suggest that, between now and the time we get
7 there, that you folks take a look at that and see what you
8 think.

9 The question on voir dire for the defense . . . with
10 regard to some of your proposed questions related to a
11 different roofing company, Crowther Roofing Company, and I
12 think I understand the relationship now, based on some recent
13 pleadings, but my question really is, what if anything do you
14 want me to say or ask the jury in terms of do you want me to
15 tell them this is not a Crowther Roofing case, it's got nothing
16 to do with that entity? Do you want me to ask if they, for
17 example, have done business with Crowther as well as Target?
18 What's your thoughts?

19 MR. DICKERSON: The basis, Your Honor, is with
20 Crowther Roofing. The commercials that they have aired since
21 the arrest of our client is part of our concern of a partial
22 jury/impartial jury.

23 THE COURT: That's a different issue.

24 MR. DICKERSON: In addition to that, if they go to
25 the Crowther website, there is, again, on the Crowther website,

1 roofing specifically mentioning Casey Crowther and publicizing
2 the negativity toward us. So I think there is a question if
3 they use Crowther or not. Not if they've used Crowther
4 Roofing, saw anything on the website, and if they entertained
5 anything about their commercials. It's a combination of that.

6 THE COURT: Do you want me to tell the jury that the
7 entity Target Roofing and Crowther Roofing are separate and
8 distinct?

9 MR. DICKERSON: Yes.

10 THE COURT: And say something along the lines of
11 Crowther is not involved in this case?

12 MR. DICKERSON: Yes.

13 THE COURT: All right. And I presume you want me to
14 ask the more standard questions have you done business with
15 Crowther, do you know any of the employees, that kind of thing?

16 MR. DICKERSON: Correct, Your Honor.

17 THE COURT: Then, in terms of the websites that you
18 were getting into, do you want me to ask have you accessed
19 Crowther's website?

20 MR. DICKERSON: Yes, Your Honor.

21 THE COURT: And then the more general question is
22 what they know generally may lead to some of the publicity that
23 you've mentioned?

24 MR. DICKERSON: Correct, Your Honor.

25 THE COURT: Okay. All right. Any thoughts from the

1 government as to that, or what I should or shouldn't do with
2 regard to Crowther Roofing?

3 MR. REICHLING: No, Your Honor.

4 THE COURT: All right. Are there any exhibits that
5 the parties are in agreement in terms of their admissibility
6 that can be handled pretrial, as opposed to one at a time as we
7 go during the course of the trial?

8 MR. REICHLING: Your Honor, I believe it was at least
9 three to four weeks ago we conferred with defense counsel and
10 went through at least 148 approximate exhibits that the
11 government was intending to introduce at trial. Of course,
12 since then, we've added about an additional 20 to 21 exhibits
13 that were reflected on the most recent exhibit list that was
14 filed on Monday of this week.

15 I believe we have agreed to stipulate to the entry of
16 some of these documents. I don't have the list before me to go
17 through which numbers they are at the moment, but I know we
18 have conferred -- I can tell the Court that we have conferred
19 before today, and gone through various exhibits, at least, and
20 decided on what exhibits would be stipulated to, at least from
21 an authenticity standpoint.

22 THE COURT: Does that make sense to do before the
23 taking of testimony, maybe after the jury selection and the
24 opening statements even, but at some point before we get into
25 testimony?

1 MR. REICHLING: I mean, Your Honor, it would be fine
2 to do before. I mean, that certainly would make sense. If
3 defense counsel's willing, we would be willing to confer again
4 and have that taken care of before we start the trial.

5 THE COURT: All right.

6 From the defense perspective, does that have any
7 merit to it?

8 MS. WAID: Yes, Your Honor, that's fine. We have
9 discussed -- we've already agreed to stipulate to the
10 authentication of the bank records, and we've actually gotten
11 rid of a few witnesses that way as well, and we're happy to
12 actually go through with the government. We know certain
13 things are coming in, so the quicker we can move things, the
14 better off I think we'll all be.

15 THE COURT: All right. Sounds like what I should do
16 is revisit that on the morning of trial, as opposed to going
17 through it now. Doesn't sound like you're ready to do it now.

18 MR. REICHLING: That's fine, Judge. If anything's
19 changed with defense counsel, we'll go through it. We've
20 already created a list, or tally, as to what both sides had
21 agreed to previously, and we can confer again just to make sure
22 none of that has changed. And we'll provide the remaining
23 exhibits here late this afternoon, and if there are any other
24 objections or foreseeable issues, we'll take care of that
25 before Monday so, Monday morning, we can move quickly through

1 those stipulations, Judge.

2 THE COURT: I would also ask that if, as a result of
3 that, any witnesses are not going to be called, you'll let me
4 know, and I'll delete them from the names that I read to the
5 jury so we don't need to bother about that. If you know any of
6 those names now, I'll be happy to make notes.

7 MR. REICHLING: I believe one of the witnesses we'll
8 be able to eliminate. The name is Dawn Hurley. She's a
9 custodian of record for Bank of America. I believe, in my
10 discussions with defense counsel, they've agreed to stipulate
11 to the authenticity of Bank of America records that also have,
12 of course, business record certifications along with each
13 individual exhibits.

14 THE COURT: She's Number 20 on your amended list.

15 Is the defense in agreement that I not ask the jurors
16 about if they know her?

17 MR. DICKERSON: Yes, Your Honor.

18 THE COURT: I'll delete her name.

19 Anyone else known at this point in time?

20 MR. REICHLING: Not at this moment, Judge.

21 THE COURT: Okay.

22 Normally, also, during voir dire, I give the jury,
23 typically, a paragraph summary of what the case is all about,
24 and the question that I lead into is do you know anything about
25 the case before coming to court today. I would solicit from

1 both sides your statement of what that summary should be. When
2 I say a paragraph, I literally mean that. I don't get into any
3 detail, I just want kind of an overview.

4 It usually ends up with the counts the government has
5 alleged and the statement that the defendant denies all of the
6 offenses, and then ask do you know anything about the case;
7 but, to the extent either of you would like to do a submission,
8 I would consider it, and otherwise you'll get what I make up in
9 my summary of the indictment.

10 What is the current thinking in terms of length of
11 trial, and specifically what I should tell the jury as to the
12 length of trial?

13 MR. REICHLING: Judge, from the government's
14 standpoint, at least as far as what we can predict, as far as
15 presenting our case, we would estimate around four to five days
16 tops. Of course, that could be much shorter in time, depending
17 on how fast we move from witness to witness, and the length of
18 cross-examination, and things of those nature. Also, with jury
19 selection, if we're able to accomplish jury selection the
20 morning of Monday, we believe we could probably get through our
21 case at least by Wednesday evening or Thursday morning, Judge.

22 THE COURT: I guess the question comes down to should
23 I tell jury to plan on being here for a week, or to plan on a
24 couple days extra? That may impact their availability to add
25 two days in the next week.

1 MR. REICHLING: Judge, we believe it's going to be
2 a week, but I would think, to err on the side of caution, it
3 may be best to tell them it may last more than a week. So I
4 think, just for the sake of giving the jury a length of trial,
5 a couple extra days would be good.

6 THE COURT: Always easier to be shorter than it is to
7 be longer with a jury.

8 MR. REICHLING: Right.

9 THE COURT: Any thoughts from the defense in terms of
10 the estimate I should give to the jury?

11 MS. WAID: Your Honor, if the government is going
12 five days, I would say seven days. We would request the
13 defense has a lot of similar witnesses on their list as the
14 government, and if things could move quicker, we would request
15 some leeway in cross so we don't have to recall witnesses,
16 particularly one of the government's witnesses and the defense
17 witnesses from the bank. Kyle DeCicco, he's actually adopting
18 a baby on Wednesday, and I believe his testimony is going to be
19 Tuesday, so if we could have a little leeway on cross so we
20 don't have to recall him, we'd appreciate that and think it
21 would move things along.

22 THE COURT: It would certainly be my preference to
23 have a witness just once and get him done with. And to the
24 extent that that may take some leeway, I mean I can't promise,
25 but I'm inclined to certainly do that.

1 MS. WAID: Thank you, Your Honor.

2 THE COURT: All right. So basically I'm going to
3 tell the jury a week plus, just to be on the safe side.

4 I think Ms. Wade has had a case with me, as I recall,
5 and Mr. Leeman has. Anyhow, let me go through the process how
6 I select a jury. It's a little bit different given the COVID
7 situation. We have a jury box with 16 seats. We'll fill that
8 box. Normally, we'll have the rest of the jury in the
9 spectator's section. We're not going to do that because of the
10 COVID situation. They will remain in the jury assembly room,
11 appropriately spaced.

12 They will hear what's going on via the magic of
13 technology. I don't know if they actually see me with the
14 camera or not, but they see what's with hear what's going on.

15 We'll do the voir dire with the 16. After the
16 challenges, whoever is left will sit to my right in the
17 spectator's section, we'll refill the jury box. That way the
18 jurors will hear what's going on, occasionally they'll give
19 more information in the second round than they do in the first.
20 We'll go through and do as many rounds as we need to, and have
21 the jurors who are selected to remain in the courtroom for the
22 duration.

23 The Court conducts most of the voir dire. I will
24 consider the questions you both have submitted. I do intend to
25 ask some of them. I do allow counsel to ask their own voir

1 dire questions. I underline that I intend that to be follow-up
2 and brief. If you start asking, for example, if you're a tree,
3 what kind of tree would you be, you're done, and I will cut you
4 off.

5 When we finish, normally I do the selection at
6 sidebar, but again, because of this situation, we're not going
7 to do that. We have headphones which, if you haven't seen them
8 yet, we'll have the staff demonstrate them afterwards, that,
9 apparently, I control up here in terms of the on or off button.
10 They're very sensitive. We have a white noise so that you and
11 I will have bench conferences from where we're seated. And
12 I've been told that lawyers tend to think they have to speak
13 loudly, which kind of defeats the purpose having a jury here;
14 but, with the equipment, you don't have to. Apparently, it's
15 very sensitive, and we can play with that and see how that
16 goes. But our sidebars will be from a distance.

17 In terms of back striking, no back striking after you
18 pass 12. You can exercise your peremptories to anybody in any
19 order; but if you pass 2 jurors, absent new information, you
20 can't back strike.

21 What am I missing, if anything, about jury selection?
22 Questions? No? Okay. I can't think of anything else there.

23 MR. REICHLING: Your Honor, one thing I'd just ask.
24 Just Your Honor's position on alternate jurors. Obviously,
25 given the COVID situations.

1 THE COURT: In part, it depends on how many more
2 bodies we have. Given a five to seven-day trial, everything
3 else being equal, I'd select two alternate jurors. Of course,
4 they wouldn't serve if they're still here at the end of the
5 trial, but I'd have the two -- do you think that's enough, or
6 do you think that's too many?

7 MR. REICHLING: That should be sufficient, Judge.

8 MS. WAID: It's fine for us, as well.

9 THE COURT: Okay. All right. I think That's what I
10 had on my list of things to talk about. What do you have on
11 your list?

12 MR. REICHLING: Judge, just so Your Honor is aware,
13 we foresee our opening statement lasting 30 minutes, tops, just
14 for purposes of scheduling and going about Monday. We
15 anticipate it to be about 30 minutes from the government, just
16 so Your Honor is aware.

17 THE COURT: Does the defense anticipate giving an
18 opening statement or reserving? And I'm not going to hold you
19 to it, but in terms of planning.

20 MS. WAID: We anticipate giving an opening statement;
21 and it wouldn't be anymore than 30 minutes as well, Your Honor.

22 THE COURT: It would be my preference to have both
23 opening statements at the same session; in other words, not to
24 break for lunch after hearing from the government, break for
25 lunch and then hearing from the defense. I would just as soon

1 do them together. I guess it makes a difference how we go
2 about picking a jury, but that would be my preference.

3 Anything else from the government?

4 MR. REICHLING: Nothing, Judge. Thank you.

5 THE COURT: From the defense?

6 MR. DICKERSON: Your Honor, I just have one question,
7 and it's so we can flow with the evidence easier in the trial.

8 In the Court's order, Document 101, related to the
9 404(b) notice by the government dealing with the horse wire,
10 for clarity, to make sure we're on the same page moving
11 forward, on Page 2 in the order, the Court states the
12 government's proffer, Document 86, Pages 2 through 4, indicates
13 that the June 1st, 2020, wire transfer was one with of a series
14 of wire transfer requests whereby the defendant obtained funds
15 from PPP loan proceeds which were deposited in a segregated
16 bank account.

17 THE COURT: I see that.

18 MR. DICKERSON: So what my question is, what our
19 question is, was the Court's analysis based upon the belief
20 that that horse wire came out of the segregated PPP loan
21 account? Because it did not. And the government's actual
22 opposition, Document 86, Page 4, specifically states that that
23 wire -- Crowther indicated the purpose of the wire was for a
24 quotation on materials. 65,000 was then wired from Target
25 Roofing's main operating account to HM.

1 THE COURT: If I misstated it, so be it; but what I
2 was relying upon was your motion and the government's response,
3 and nothing else. So if the government's response said
4 something different than I said, so be it.

5 MR. DICKERSON: But that's where -- I guess that's
6 the analysis of whether it's intrinsic versus extrinsic,
7 because the Court made a determination it's PPP segregated
8 account, therefore that wire definitely relates to a PPP
9 account and the government's claim in their superseding
10 indictment -- second superseding indictment. That would be
11 different than if the money came from a separate account that
12 is not the PPP segregated account. That's the issue.

13 THE COURT: I guess the issue, in general, to me,
14 with these in limine motions, is that all of them are -- you're
15 kind of playing with sand, because I have no idea what's going
16 to come in. And I think the law is pretty clear that you have
17 to make your objection at trial in order to preserve it.

18 So, you know, I don't take offense if you stand up at
19 trial and object, and, you know, say the evidence isn't what
20 you said it was going to be.

21 MR. DICKERSON: Okay. Thank you, Your Honor.

22 THE COURT: So did that answer your question?

23 MR. DICKERSON: That answered my question, because
24 then we can deal with it at trial, and whether it's extrinsic
25 or intrinsic.

1 THE COURT: I think that's the way all these in
2 limine motions go, because I think it may be different than
3 anyone thought.

4 MR. DICKERSON: Thank you very much, Your Honor.

5 THE COURT: Anyone else from, I think we're with
6 defense?

7 MS. WAID: Nothing from us, Your Honor.

8 THE COURT: All right. I'm going to try to get
9 started 9:00 o'clock Monday morning. I'd suggest we meet
10 at 8:30 to see what else we need to talk about, for example,
11 with regard to exhibits, perhaps any last minute housekeeping.
12 And unless you've got something else, I don't.

13 MR. REICHLING: Nothing further from the government,
14 Judge. Thank you.

15 THE COURT: Okay.

16 MS. WAID: Nothing further from the defense,
17 Your Honor. Thank you.

18 THE COURT: All right. I'll see you Monday then.

19 -- -- -- -- --

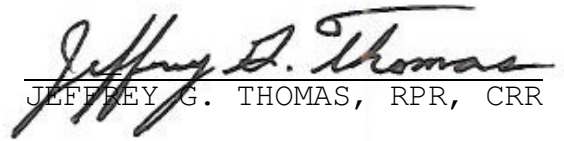
20 (Thereupon, at 3:27 p.m., the above-entitled matter was
21 concluded.)

22 -- -- -- -- --
23
24
25

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 3rd day of January, 2022.


JEFFREY G. THOMAS, RPR, CRR