

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

United States of America,

v.

Russell Lucius Laffitte,

Defendant.

Case No. 9:22-cr-00658-RMG

Defendant's Motion to Seal
(Affidavit of Juror No. 55)

Defendant Russell Lucius Laffitte moves the Court to seal a third juror affidavit—that of the foreperson, Juror No. 55—under Fed. R. Crim. P. 49.1(d), Local Crim. R. 49.01 (D.S.C.), and the Standing Order Regarding Sealing Documents in Criminal Matters, ECF No. 1, No. 3:14-mc-00333-TLW (Oct. 28, 2014). The grounds for this motion are:

1. On November 22, 2022, a federal jury returned a verdict convicting Mr. Laffitte, on six counts: (1) conspiracy to commit wire fraud and bank fraud, in violation of 18 U.S.C. § 1349 (Count 1); (2) bank fraud, in violation of 18 U.S.C. § 1344(2) (Count 2); wire fraud, in violation of 18 U.S.C. § 1343 (Count 3); and three counts of misapplication of bank funds, in violation of 18 U.S.C. § 656 (Counts 4, 5, and 6).

2. As outlined in Defendant's motion for a new trial (ECF No. 224), two of the jurors were dismissed by the Court and replaced with alternates after deliberations began. Those two jurors prepared affidavits and are the subject of Mr. Laffitte's pending motion to seal (ECF No. 230). Now, Mr. Laffitte also seeks to submit an affidavit under seal that was prepared by the foreperson of the jury.

3. The purpose of the Defendant's request to seal is to protect the personal information contained within the document and to avoid public disclosure of the juror's name. In response to

the Court's order, Mr. Laffitte will submit a memorandum of law explaining why admission of the juror affidavits does not run afoul of Federal Rule of Evidence 606(b).

4. Mr. Laffitte addresses the factors governing sealing of documents reflected in *Ashcroft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (citing *In re Knight Publishing Co.*, 743 F.2d 231, 235–36 (4th Cir. 1984)), as follows:

a. Public notice of this request to seal and to allow interested parties a reasonable opportunity to object will be provided by the Clerk of Court under the requirements set forth in Local Crim. R. 49.01(4) (D.S.C.).

b. There is no less drastic alternative to sealing this information for *in camera* review. The Court conducted an anonymous jury empanelment, preventing media from attending jury selection and keeping the juror questionnaires under seal. Publicly releasing the affidavit, containing the full name of a juror would cause irreparable harm in exposing this individual to harassment and scrutiny.

c. Granting the request to seal is appropriate because it would permit the Court and the Government to review the affidavit in conjunction with Defendant's motion for a new trial, without publicly disclosing the name and private information of the juror.

5. As required by Local Crim. Rule 49.01(B)(2), this motion is accompanied by

a. **Exhibit 1:** the non-confidential descriptive index, which identifies the document proposed to be filed under seal as an exhibit;

b. **Exhibit 2:** counsel's certification of compliance with Local Crim. R. 49.01 (D.S.C.); and

c. The unredacted document Defendant requests that the Court consider, which the Defendant will provide to the Court through its ECF email address.

Conclusion

Therefore, having complied with the requirements of Fed. R. Crim. P. 49.1(d), Local Crim. R. 49.01(B)(2)(a) (D.S.C.), and the Standing Order Regarding Sealing Documents in Criminal Matters, ECF No. 1, No. 3:14-mc-00333-TLW (Oct. 28, 2014), and for the reasons explained in its forthcoming memorandum of law explaining why the affidavits are admissible, Defendant respectfully requests that the Court grant its motion to seal.

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December 27, 2022

Defendant's Motion to Seal

Exhibit 1

Non-Confidential Descriptive Index
(Local Criminal Rule 49.01(B)(2)(a) (D.S.C.))

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In accordance with Fed. R. Crim. P. 49.1(d), Local Crim. R. 49.01(B)(2)(a) (D.S.C.), and the Standing Order Regarding Sealing Documents in Criminal Matters, ECF No. 1, No. 3:14-mc-00333-TLW (Oct. 28, 2014), the following non-confidential descriptive index is filed contemporaneously with the Motion to Seal filed by Mr. Laffitte:

| Exhibit | Document | Description |
|---------|---------------------------|---|
| A | Affidavit of Juror No. 55 | An affidavit signed by Juror No. 95, the foreperson describing the Court's communications during deliberation and removal, and his lack of involvement with the group note. |

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December 27, 2022

Defendant's Motion to Seal

Exhibit 2

Attorney Certification
(Local Criminal Rule 49.01(B)(2)(b) (D.S.C.))

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Local Criminal Rule 49.01 Attorney Certification

I, E. Bart Daniel, attorney for Defendant, certify in accordance with Local Crim. R. 49.01(B)(2)(a) (D.S.C.) and the Standing Order Regarding Sealing Documents in Criminal Matters, ECF No. 1, No. 3:14-mc-00333-TLW (Oct. 28, 2014) that I have complied with the requirements of the Local Criminal Rules in requesting that the court seal filings.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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