

EXHIBIT B

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UNITED STATES DISTRICT COURT
FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA

DOCKET NUMBER:

vs.

2:10-CR-186-MHT

MILTON E. MCGREGOR, et al.

DEFENDANTS' MOTIONS FOR APPROPRIATE RELIEF
RE: TESTIMONY OF SPECIAL AGENT CARR

* * * * *

HEARD BEFORE: The Hon. Wallace Capel, Jr.

HEARD ON: March 18, 2011

HEARD AT: Montgomery, Alabama.

APPEARANCES: Peter J. Ainsworth, Esq.; Brenda K. Morris, Esq.;
Eric Olshan, Esq.; Louis V. Franklin, Sr., Esq.; Joseph C Espy,
III, Esq.; Benjamin J. Espy, Esq.; Tom Butler, Esq.; Ron Wise,
Esq.; James Pruitt, Esq.

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1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE THE HON.
2 WALLACE CAPEL, JR. ON MARCH 18, 2011 AT THE UNITED STATES
3 COURTHOUSE IN MONTGOMERY, ALABAMA:

4 THE COURT: Good morning.

5 There have been a number of motions filed concerning
6 motions for appropriate relief regarding the testimony of
7 Special Agent Carr.

8 Mr. Espy, is there anything you want to add to your
9 motion at all, sir?

10 MR. BENJAMIN ESPY: I would, Your Honor. I don't know
11 how thoroughly you want to go through these, but I assume you
12 want to hear argument on it. At this point, we have concerns
13 about the testimony of Agent Carr. There are e-mails and
14 testimony which we certainly would have used to cross examine.
15 There's a great body of material in there that would directly
16 contradict his testimony.

17 We were provided last night, Your Honor, three
18 additional E-mails which implicate issues related to both Mr.
19 Carr, Mr. Baker and Agent Doell, who we would cross examine with
20 those E-mails. There are some things in there that, quite
21 frankly, make our case, in my opinion.

22 We were denied the ability to do so, as they were
23 delivered late. And we give get no excuse from the Government
24 why we received this late provision other than "sorry". So we
25 have been greatly prejudiced by not being able to cross examine

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1 all three witnesses with those E-mails, and we would ask that
2 Agent Carr's testimony be stricken.

3 Mr. Baker was copied on a number of those, and you'll
4 recall that Mr. Baker provided his materials after -- he
5 provided no E-mails. We would ask the Court to have the
6 Government go back and check Mr. Baker's E-mails to see if they
7 are relevant documents that we should have been provided. And
8 if there are, we would ask that Mr. Baker's testimony be
9 stricken as well.

10 THE COURT: Anyone else for the Defense?

11 MR. BUTLER: Tom Butler on behalf of Mr. Gilley.

12 I certainly adopt everything that Mr. Espy said. As
13 well, I would just like to say that I think the filing that came
14 late last night was sent to Mr. Jones, my co-counsel. I didn't
15 know about it until this morning. I briefly, here, looked at it.
16 If we go into the record if you ask about that, I would like
17 some time to look at it. But it was just filed with the
18 attachments there.

19 THE COURT: Thank you.

20 Any response from the Government as to this?

21 MR. AINSWORTH: Your Honor, the Government is not going
22 to make any excuses here. A mistake was made, and we take full
23 responsibility. But importantly for the Court to know, and for
24 the defendants to know, we have taken steps to remedy this. I
25 don't have to tell the Court we live in a different age now.

1 Information that was accessible, E-mails, texts, what have you,
2 that were not accessible yesterday are accessible today. We
3 were, unfortunately, a step behind.

4 But the important thing is, this created a learning
5 experience for us. I have set a system into place. Mr. Espy's
6 suggestion about Mr. Baker checking his E-mails again has
7 already been implemented. I have now ordered that all
8 attorneys, as well as agents, do a review of their E-mail to
9 include both the archives as well as those that appear in the
10 inboxes and the sent-message boxes that the late discovery of
11 E-mails were a part of and the E-mails that we found in the
12 archives. Archives that we didn't even know existed.

13 So the bottom line is, I've asked everyone to scour the
14 system again; that any parts of the system new to us, at least,
15 as well as the parts that we've already looked through to do it
16 a second time to make sure that this does not recur.

17 I can go through the history of how it happened if the
18 Court wants that. I can go through the remedial steps or
19 procedures that I've required to be put in place, but this is
20 important. It's our position that the E-mails that have been
21 found corroborate Doug Carr's testimony. I understand Mr.
22 Butler and Mr. Espy disagrees, respectfully, and I think the way
23 to remedy this, we have Mr. Carr in the wings, Special Agent
24 Carr in the wings, prepared to come forward and to answer any
25 questions that anybody has about the E-mails and what the impact

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1 they may have on his previous testimony and provide any
2 information, additional information to the Court about what they
3 mean.

4 So I would respectfully request that rather than go
5 through the past, we move to the present, which is Mr. Carr's
6 testimony and let's try to remedy that and give the defendants
7 an opportunity to ask those questions that they admittedly
8 weren't allowed to ask because they didn't have the E-mails.

9 THE COURT: I appreciate the fact that the Government
10 is not coming with an excuse of what the problem is. This has
11 been a repeat problem through this case, is that we set aside
12 three days for those hearings with everyone here, and all of the
13 defendants, except for I believe two, maybe two, maybe one,
14 filed motions concerning the suppression of these wiretaps.

15 We had a hearing set at that time. We knew who was
16 going to testify at that time. But this is what bothers me with
17 it. I saw other documents that were submitted afterward because
18 those weren't prepared and given at another time, or they were
19 offered after the hearing when they should have been offered
20 during the hearing.

21 We had the problem with the agent when they were
22 supposed to be on standby. That agent was in Mobile which,
23 frankly, the Court was rather bothered by that at the time.
24 When I say that I want someone ready and available, it doesn't
25 mean wait three hours for that person to be able to come. Then

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1 we have this situation now where it should have been done a lot
2 sooner. And I agree, you know, that you're implementing new
3 procedures and that's a good thing, but this is something that
4 should have been done beforehand.

5 Now we're talking about -- It doesn't help to have
6 Agent Carr here today, because all of those defendants that
7 filed that motion to suppress need to be able to cross examine
8 them. And the Court is in the process of writing these motions
9 now. That puts everyone behind, having to have another hearing,
10 having to have those transcripts and that stuff done. All
11 because of the fact that the Government was not doing what it's
12 supposed to do. The lack of professionalism and the lack of
13 being prepared to do what you need to do.

14 At some point I start to wonder whether or not it's
15 either negligence, or you just don't care enough. We just play
16 stupid about it, then, you know, we can get off without doing
17 what we need to do. I don't know. I really don't. But what I
18 do know is this is not the way a prosecution should be
19 conducted.

20 We're going to set this for Tuesday at ten o'clock.
21 This is for -- we're going to send out an order for all of the
22 defendants to be there so we can have Agent Carr reexamined. I
23 want to make sure that by the end of the day today, any of your
24 databases or searches as far as any of the information as far as
25 Agent Carr and Agent Baker is concerned, you provide that to the

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1 defendants by the end of the day.

2 Be prepared to go forward on Tuesday.

3 MR. AINSWORTH: Thank you, Your Honor.

4 MR. JOE ESPY: Your Honor, can I make one comment? I'm
5 not trying to pile it on the Government, but I do think this is
6 important if we're going to have something Tuesday. It appears
7 to us that yesterday around two-twenty the response to our
8 motion was filed with the Court. We got the response three
9 hours later after five o'clock, after Mr. Wise had left his
10 office and others had. Three hours after the fact it was filed
11 with the Court. So we just want to call that to the Court's
12 attention, and would ask the Government -- and he's apologized
13 for it, but it doesn't help to apologize when we're trying to
14 get ready for a hearing and to be prepared like we think we're
15 supposed to be prepared.

16 So I want to call that to the Court's attention, that
17 that happened yesterday, Your Honor.

18 THE COURT: Mr. Espy, I don't know if that -- if they
19 filed at two-twenty, I don't know when it was sent out or filed
20 by our court.

21 MR. JOE ESPY: Your court didn't send it because it was
22 under seal. They filed it under seal so the Court didn't send
23 it to us. They sent it to us three hours later at five-ten, and
24 we're trying to prepare for this hearing this morning. That's
25 the kind of thing that we can't have, Your Honor, if we're going

1 to be prepared.

2 THE COURT: Well that's what I'm -- Mr. Espy, I
3 appreciate that. What I'm trying to make clear here is I have
4 not been pleased with how things have gone with some of this.
5 My patience is running thin with it. That's all I'm going to
6 say, is my patience is running very thin with it.

7 We're going to have this all out Tuesday. We'll deal
8 with it then. All right.

9 MR. BENJAMIN ESPY: One of the E-mails produced last
10 night related to Agent Doell, and we ask that he be present as
11 well.

12 THE COURT: All right.

13 MR. BENJAMIN ESPY: Thank you, Your Honor.

14 (Whereupon, the proceedings were concluded.) I
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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter as prepared by me to the best of my ability.

I further certify that I am not related to any of the parties hereto, nor their counsel, and I have no interest in the outcome of said cause.

Dated this 18th day of March 2011.

/s/ Mitchell P. Reisner
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

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