

EXHIBIT D

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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, RONALD E. GILLEY,
QUINTON T. ROSS, JR., ROBERT B. GEDDIE, JR.
THOMAS E. COKER, LARRY P. MEANS,
JAMES E. PREUITT; JARRELL W. WALKER, JR.
AND JOSEPH R. CROSBY

IN-COURT
STATUS CONFERENCE

* * * * *

HEARD BEFORE: The Hon. Wallace Capel, Jr.

HEARD ON: March 23, 2011

HEARD AT: Montgomery, Alabama.

APPEARANCES: Peter J. Ainsworth, Esq.; Louis Franklin, Esq.;
Joe Espy, III, Esq.; G. Douglas Jones, Esq.; Ronald Wise, Esq.;
Benjamin J. Espy, Esq.; William M. Espy, Esq.; Stephen W. Shaw,
Esq.; Henry L. Gillis, Esq.; Thomas M. Goggans, Esq.; Stephen P.
Feaga, Esq.;

MITCHELL P. REISNER, RMR, CRR
Official Federal Court Reporter
U. S. District Court for the Middle District of Alabama
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1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE THE HON.
2 WALLACE CAPEL, JR. ON MARCH 23, 2011 AT THE UNITED STATES
3 COURTHOUSE IN MONTGOMERY, ALABAMA:

4 THE COURT: Good afternoon.

5 We had the opportunity yesterday, and I understand that
6 a number of documents have been turned over already, correct?

7 MR. BENJAMIN ESPY: That's true, Your Honor.

8 THE COURT: All right. And I've also looked through
9 additional documents that the Government asked me to look
10 through, and I -- Does the Government want to be heard on those,
11 Mr. Feaga?

12 MR. FEAGA: Your Honor, only to the extent that we gave
13 them to the Court so the Court could look at them and make a
14 decision about what to do with them.

15 THE COURT: Okay. I've already returned certain notes
16 to you, documents that I had looked at that I didn't think
17 needed to be turned over that weren't relevant. Those have been
18 returned to you. The other documents that were provided, I do
19 believe these are relevant and should be turned over.

20 MR. FEAGA: Yes, sir.

21 THE COURT: So I'm going to ask to have them made
22 available immediately, if you could. All right?

23 MR. FEAGA: Yes, sir.

24 THE COURT: All right. And I think, based upon a
25 review of the information and from reading through the other

1 things, I don't think this should cause the Defense any problem
2 in still being able to be ready tomorrow. Does anyone have any
3 problem or think that they won't be able to?

4 MR. BENJAMIN ESPY: I think, Your Honor, we can be
5 prepared, but I do somehow would like to address the Court, if I
6 may.

7 THE COURT: Yes, sir?

8 MR. BENJAMIN ESPY: I just want to bring this to the
9 attention of the Court. Mr. Heldman is not here today. The
10 reason he is not here today is because he's back at the office
11 working on another motion to strike. Now we may have jumped the
12 gun on that because we don't know what you have and what you're
13 going to give us. But I did want to bring to the Court's
14 attention that we believe that documents have not been produced
15 in accordance with the Court's order. I didn't want to show up
16 tomorrow and say that for the first time since we have you here
17 today.

18 THE COURT: I will say this. They have given me a
19 pretty complete amount of documents here. I don't see anything
20 that hasn't been provided. And the only other thing that I
21 reviewed also in my review, it was not necessary to provide.
22 But I do believe that everything that we have here has been
23 provided.

24 MR. BENJAMIN ESPY: And I understand, Your Honor. The
25 only reason I bring it to your attention is I didn't want

1 something to come up tomorrow and have this opportunity and you
2 feel like I should have said something it today.

3 THE COURT: Yes. And I certainly don't want to,
4 either. So I think we do have what we need here.

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

6 MR. JOE ESPY: Can I be heard one moment, Your Honor?

7 THE COURT: Yes.

8 MR. BENJAMIN ESPY: Again, we don't know what you have,
9 Your Honor, but we have not been provided any text messages from
10 Keith Baker. Is that something that you had?

11 THE COURT: There are E-mails and other things in here,
12 so I think that will cover those documents that you --

13 MR. JOE ESPY: Judge, let me approach.

14 I thought -- We received, Your Honor, at some point
15 last evening, I believe a pleading filed and I thought it said
16 in there that there were documents relating to Keith Baker,
17 which they weren't giving the Court but were holding in case the
18 Court wanted them.

19 THE COURT: I've reviewed those, and I have already
20 determined that those will not be necessary. So they have
21 provided that to me. I have already reviewed them as part of
22 this, and I think with these documents you'll have everything
23 you need.

24 MR. JOE ESPY: Okay. And, Judge, the Court is aware
25 that at about eleven-thirty today we were provided additional

1 documents?

2 THE COURT: I am.

3 MR. JOE ESPY: That may cause a problem, but we've
4 spoken to that. We're working on that, and we will try our best
5 to have everything ready. By we'll be ready, Judge.

6 THE COURT: Well that's what I wanted to know. If it's
7 going to be a problem being ready we can prove it to Friday.
8 But I'm hoping that we'll be able to do it tomorrow.

9 MR. BENJAMIN ESPY: Can you show us how big the stack
10 of stuff you're going to give us, Judge?

11 THE COURT: It's this big. But most of it is not going
12 to be that relevant. There's not that many documents in there
13 that I think you would find that relevant. That's why I was
14 saying that I think you would be able to be prepared to go
15 tomorrow.

16 If not, though, I'd rather set it for Friday if we need
17 to so we can do it if you needed the additional day. What we
18 want to do is be able to finish up this hearing and get back to
19 writing on this so we can get this out.

20 MR. BENJAMIN ESPY: We'll be ready tomorrow, Your
21 Honor.

22 THE COURT: All right.

23 MR. JONES: Your Honor, may I say one thing, Your
24 Honor?

25 Your Honor, in addition, we made a point yesterday of

1 asking the Court about the Court's definition for "relevant
2 documents". And what appears to be is that we're still getting
3 documents that are primarily Jencks act type of material
4 documents.

5 THE COURT: These documents here I think will cover the
6 areas that you need to go into.

7 MR. JONES: Yes, Your Honor.

8 And in addition to that, Your Honor, yesterday again I
9 renewed a request based on documents that we've seen and the
10 statements of state agents, A. B. I. agents that are involved in
11 this process, that we be given a copy of the Memorandum of
12 Understanding that was testified to that was entered in February
13 of two thousand ten shortly before the wiretaps went up in early
14 March.

15 We also asked for other documents, and I'd like a
16 representation as to whether or not the State of Alabama, who
17 was a joint member of this task force in this investigation, if
18 they have also done a search of state documents, the various
19 offices, to see if there any state documents that would comply
20 with the request and the Court's order.

21 THE COURT: Mr. Feaga, can you address that at all?

22 MR. FEAGA: Your Honor, if I may have just a moment? I
23 believe I'm prepared to, but I want to be sure.

24 THE COURT: All right.

25 (whereupon, Mr. Feaga conferred with Mr. Olshan and the

1 case agent off the record and out of the hearing of the other
2 courtroom participants.)

3 MR. FEAGA: Your Honor, I am prepared to tell the Court
4 that there is nothing in the possession of the state that
5 relates to the wire or the minimization protocols.

6 I also want to say, Your Honor, just -- If we had a
7 smoking gun, if we had something that we thought would help
8 these attorneys with what they're currently seeking to do, we
9 would be turning over the Earth trying to get it to them. We're
10 trying to turn over everything that we possibly can to them that
11 will help them litigate this issue properly for the Court and
12 for their clients.

13 We're just not aware of anything that's going to change
14 the picture that the Court currently has, and that's where we
15 are. But we thank the Court for its patience.

16 THE COURT: I do think that these documents were
17 documents that probably should have been turned over before. At
18 this point in time, I think that this will satisfy what we need
19 in order to do this hearing.

20 MR. FEAGA: Yes, sir.

21 THE COURT: And let's give those documents over to the
22 defendants, and I think this will take care of it.

23 All right, gentlemen?

24 MR. BENJAMIN ESPY: Do they have copies of those for us
25 now? We'd like to get started on them.

1 THE COURT: How soon can they pick those up, Mr.
2 Olshan?

3 MR. OLSHAN: Your Honor, we're going to have to scan
4 our copy of what we provided to the Court and get them to the
5 defendants. But we will E-mail them as soon as we can.

6 THE COURT: What's that mean? Because look, they've
7 got to start preparing and getting ready for tomorrow's hearing.
8 So what type of time are you telling me?

9 MR. OLSHAN: Two-thirty, three o'clock.

10 THE COURT: Fine. All right.

11 MR. JONES: Your Honor, with all due respect to Mr.
12 Feaga, he didn't address whether or not we're going to get the
13 memorandum of understanding. And, quite frankly, the apologies
14 or the representations about turning over everything are lost on
15 the --

16 THE COURT: Counsel, I've looked through these myself.
17 As far as Mr. Feaga is saying there is no copy of Memorandum of
18 Understanding, Mr. Feaga, or is there?

19 MR. FEAGA: Do you have an answer for that?

20 MR. OLSHAN: Your Honor, there is, it just has nothing
21 to do with the wiretaps.

22 THE COURT: All right. What does it have to do with?
23 If you could tell me.

24 MR. JONES: Your Honor, we don't know at this point,
25 but all we know is that state agents were working these

1 wiretaps. If that Memorandum of Understanding also discussed
2 using wiretaps, who would be involved, whether there's a
3 reporting chain --

4 THE COURT: Let me get an answer to that, please.

5 MR. JONES: Yes, sir.

6 MR. OLSHAN: Your Honor, we will provide to the Court
7 in the next hour a copy of that so the Court can review it. But
8 it's our position that it has nothing to do with the matters
9 before the Court on this suppression issue.

10 THE COURT: All right. And what we will do is take a
11 look at it. And you can E-mail that also, correct?

12 MR. OLSHAN: Correct.

13 Your Honor, a couple of housekeeping points. There
14 were documents that we provided to the Court that were sensitive
15 in nature, and is it the Court's position -- actually, if the
16 Court would allow me may I approach briefly?

17 THE COURT: You may.

18 MR. OLSHAN: Thank you.

19 (Whereupon, an off-the-record bench conference was held
20 between all counsel and the Court.)

21 THE COURT: All right. As far as the first
22 twenty-eight pages of that report, I agree with Mr. Olshan. The
23 rest will be turned over in its entirety.

24 MR. JOE ESPY: Judge, I apologize. Just for
25 clarification purposes, we've talked with Mr. Feaga and I think

1 in the documents that the defendants received at approximately
2 five yesterday, a hundred and fifty to two hundred pages,
3 something of that nature, it appears that some of those were
4 redacted but that Your Honor was given the complete copy. I was
5 trying to determine with Mr. Feaga, and maybe it should be
6 directed to Your Honor, if we are entitled to the redacted
7 portion, we just want to make sure we got it. But I didn't know
8 if the Court knew we had gotten the redacted.

9 THE COURT: You would be getting the redacted one.
10 That's my understanding is that was provided. Correct?

11 MR. JOE ESPY: Yes, sir. The redacted one was
12 provided.

13 THE COURT: The only thing that the redacted part
14 didn't have was source names and things of that type. And I
15 agree with them, the Government, as far as that. The rest of
16 the material has been provided.

17 MR. JOE ESPY: Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. OLSHAN: Your Honor, one moment if we may discuss
20 for just a moment?

21 THE COURT: All right.

22 (Whereupon, Mr. Olshan conferred with Mr. Franklin, Mr.
23 Ainsworth and Mr. Feaga off the record and out of the hearing of
24 the other courtroom participants.)

25 MR. OLSHAN: Your Honor, with respect to some of the

1 content of the information that's already been provided to the
2 Defense as well as what's been provided to the Court, and that
3 will be provided as well as to the Defense, there is some
4 information that's sensitive generally in the sense that it's
5 people's personal phone numbers and things like, as well as
6 potentially information that might pertain to other
7 investigations --

8 THE COURT: We can put that under a protective order in
9 terms of it not being disclosed, things of that type. But it
10 will be a little hard to take it out of the materials.

11 MR. OLSHAN: Understood.

12 So the Government's position is that we would like a
13 protective order as to everything that --

14 THE COURT: We already have a protective order in place
15 right now in this case over a majority of this material, and I
16 think that would cover this material also. We have a protective
17 order as to a couple of different things, and I think we can use
18 that same formatted one for this one also regarding any
19 sensitive type of material.

20 MR. OLSHAN: The protective order so far is somewhat
21 piecemeal, it's focused on particular documents. But we can
22 generate one that's in line --

23 THE COURT: That covers it. All right? Is that fine
24 with everyone?

25 MR. JOE ESPY: Yes, Your Honor.

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THE COURT: All right.

MR. OLSHAN: Thank you, Your Honor.

THE COURT: Thank you very much.

We'll see you tomorrow.

(Whereupon, the proceedings were concluded.)

* * * * *

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 23rd day of March 2011.

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

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