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

UNITED	STATES	G OF	AMERICA)			
)			
VS.)	CASE	NO.	2:10cr00186-MHT-WC
)			
HORROH.	R CRO	YASC)			

DEFENDANT JOSEPH R. CROSBY'S RESPONSE TO COURT'S ORDER (DOC. 1493)

Defendant Joseph R. Crosby adopts and incorporates by reference the response to this Court's order concerning <u>United</u>

<u>States v. Diez</u>, 515 F.2d 892 (5th Cir. 1975), (Doc. 1493), filed by Defendant Milton E. McGregor, (Doc. 1496), as well as his previously filed memorandum regarding <u>Bruton</u> and related issues.

(Doc. 1485). Defendant Crosby adds his observation that the course of action suggested by the government in its response to the order, (Doc. 1495), would be tantamount to leaving the evidentiary ruling up to the jury. That would be contrary to the requirement of Rule 104(a), F.R.E. that "the judge alone make the determination of the admissibility of the evidence. The jury is to play no role in determining the admissibility of the statements." <u>United States v. James</u>, 590 F.2d 575, 579-580 (5th Cir. 1979).

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the $21^{\rm st}$ day of July, 2011, electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

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