

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
V. ) CR NO. 2:10cr186-MHT  
)  
LARRY P. MEANS, )  
)  
Defendant. )

**DEFENDANT LARRY P. MEANS' BRIEF IN SUPPORT OF  
MOTION TO ALLOW SUBMISSION OF "THEORY OF DEFENSE"  
PROPOSED JURY INSTRUCTIONS AT OR NEAR THE END OF TRIAL**

Comes now the Defendant, Larry P. Means, in the above-styled cause, and submits the following brief in support of the previously-filed motion (Doc. # 873) requesting this Court to allow proposed "theory of defense" jury instructions to be submitted at or near the end of trial.

Defendant Means has the right to have the jury instructed on his theory of defense. United States v. Sirang, 70 F.3d 588, 593 (11th Cir. 1995). A defendant is entitled "to have presented instructions relating to a theory of defense for which there is any foundation in the evidence." United States v. Young, 464 F.2d 160, 164 (5th Cir. 1972). Once a foundation is established through the evidence presented at trial, a defendant "is entitled to jury instructions on that defense theory." United States v. Kottwitz, 614 F.3d 1241, 1271 (11th Cir. 2010). Such instruction should be specifically and precisely tailored to the evidence presented at trial, rather than a general or abstract statement of the defense's theory. Id. Further, one of the court's considerations in whether to give a theory of defense instruction

ought to be whether there has been any evidence introduced to support it. Id. at 1272.

Because it has been held to be reversible error to refuse a theory of the defense instruction, see United States v. Edwards, 968 F.2d 1148, 1153 (11th Cir. 1992), and because such instructions need to be precise and specific, rather than general or abstract, see United States v. Morris, 20 F.3d 1111, 1117 (11th Cir. 1994), logic dictates that proposed theory of the defense instructions ought to be submitted by defendants at or near the end of trial. This allows defendants to submit instructions based upon the evidence that has actually been admitted at trial, and specifically tailored to the events that have transpired in front of the jury.

Defendant Means therefore would respectfully request that this Court grant the previous motion (Doc. # 873) and fix a time for submission of theory of the defense jury instructions that is at or near the end of trial, so as to best comply with Eleventh Circuit case law regarding this particular type of jury instruction.

Dated this the 29th day of April, 2011.

s/ William N. Clark  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following and all counsel of record electronically on this the 29th day of April, 2011.

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