

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

UNITED STATES OF AMERICA, *

Plaintiff, *

vs. * Case No.: 2:10-CR-186-MHT-WC

HARRI ANNE SMITH., *

Defendant.

**DEFENDANT HARRI ANNE SMITH'S
MOTION TO ALLOW SUBMISSION OF
"THEORY OF DEFENSE" PROPOSED JURY INSTRUCTIONS
AT OR NEAR THE END OF TRIAL**

Defendant Harri Anne Smith respectfully requests that the Court enter an Order allowing Smith to submit "theory of defense" jury instructions at or near the end of trial.

Smith is entitled to a theory of defense instructions, and such instructions would be properly submitted at or near the close of trial. A proper theory of defense instruction is required to have two qualities.

As emphasized in United States v. Kottwitz, 614 F.3d 1241, revised on other grounds on rehearing, 627 F.3d 1383 (11th Cir. 2010), a good "theory of defense" instruction should have two qualities: (1) it should have some foundation in the actual evidence admitted at trial, and (2) it should be specifically and precisely tailored to the evidence at hand. *Id.* at 1271.

The crucial question in the Court's decision whether to give a proposed theory-of-defense instruction is whether there is any evidence to support such instruction. The Court does not weigh or determine the credibility of that evidence, but determines only whether any such evidence (even if slim) exists. *Id.* at 1272-74.

Allowing the submission of theory-of-defense instructions at or near the end of trial will enhance the fairness and efficiency of the process, for the parties and for the Court. Smith will be able to ensure that she is proposing charges that actually do have the required connection to evidence submitted at trial. Additionally, she will be able to ensure that her proposed charges are precisely and specifically tailored to the case as it has been presented, rather than being too general or abstract. *Id.* at 1271 (emphasizing that theory-of-defense instructions should "precisely and specifically, rather than merely generally or abstractly, point to the theory of defense") (alterations omitted). Similarly, the Court would benefit from the presentation of proposed instructions that are specific and factually-grounded in this respect.

Also, there is no compelling reason to require defendants to submit theory-of-defense charges on an earlier schedule. The Court will be unable to assess effectively whether such proposed charges should be given – or how they should be modified – until the Court has heard the evidence.

Furthermore, Smith has requested additional discovery than that provided by the Government. Until receipt of all discovery, and a determination as to that

evidence's admissibility, it would be impossible for Smith to accurately submit a theory-of-defense at this time.

For the foregoing reasons, Smith respectfully requests an Order allowing theory-of defense instructions to be submitted at or near the end of trial.

Dated this the 29th day of April, 2011.

/s/ William C. White, II
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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 29th day of April, 2011, electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification to all counsels of record.

s/ William C. White, II
OF COUNSEL