

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

UNITED STATES OF AMERICA, )

)

Plaintiff, )

)

v. )

CASE NO. 2:10-cr-186-MHT

)

\*UNDER SEAL\*

THOMAS E. COKER, )

)

Defendant. )

DEFENDANT THOMAS E. COKER'S  
MOTION FOR A JAMES HEARING TO DETERMINE  
THE ADMISSIBILITY OF STATEMENTS

Comes now the Defendant, THOMAS E. COKER, and moves this Honorable Court to grant a James Hearing to determine the admissibility of named and unnamed co-conspirators statements. As grounds for and in support of the said Motion, counsel for the Coker would show unto this Court as follows:

1. Rule 104(a) of the *Federal Rules of Evidence* requires that the Judge alone make a determination as to the admissibility of evidence, not the jury. This is clearly applicable to hearsay statements sought to be introduced under Rule 801(d)(2)(e) (“a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy”).

2. Coker would be greatly prejudiced by the admission during the trial of out-of-court statements made by alleged named or unnamed co-conspirators, without a

pretrial hearing to determine the admissibility of such statements. There is an inherent danger that such statements might be admitted in anticipation of a later showing or offer of proof of a conspiracy that never materialized. See, *United States v. James*, 590 F.2d 575 (5th Cir. 1979).

3. Both the Fifth and Eleventh Circuits have endorsed a preferred order of proof in which the trial judge makes a pre-trial determination of co-conspirator declaration admissibility before the alleged hearsay statement is introduced to the jury. See, *James*, supra; *United States v. Lippner*, 676 F.2d 456 (11<sup>th</sup> Cir. 1982).

4. A pretrial hearing to determine the admissibility of out-of-court statements made by alleged named and unnamed co-conspirators will not only prevent a possible mistrial due to prejudice in having admitted such statements without the proper foundation or proof; but is also necessary in this case because of the number of defendants, and the number of alleged overt acts involving both indicted and unindicted, named and unnamed co-conspirators, which allegedly occurred over a period of several years.

5. In any event, because of the very nature of the allegations, Coker submits that his right to a fair trial will be undermined without a pretrial hearing to determine the admissibility of named and unnamed co-conspirators' statements.

WHEREFORE, the premises considered, Coker respectfully moves this Honorable Court to conduct a pretrial hearing to determine the admissibility of named and unnamed

co-conspirators' statements that might be admitted with regard to Count One Conspiracy charges brought against him.

Respectfully submitted,

/s/ David McKnight

David McKnight

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 4, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ David McKnight

Of Counsel