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**
	}	
ROBERT B. GEDDIE, JR.,	}	
	}	
Defendant.	}	

DEFENDANT ROBERT GEDDIE'S OBJECTIONS TO THE GOVERNMENT'S EXHIBITS

Robert Geddie (1) generally objects to all of the Government's exhibits until their relevance, admissibility, non-hearsay purpose, and authenticity are established pursuant to Federal Rules of Evidence 401, 402, 403, 802 and 901; and (2) generally objects to all of the exhibits, including transcripts, in which the Government intends to introduce an excerpt of the entire document or recording and, pursuant to Federal Rule of Evidence 106, reserves the right to introduce the complete document or recording in response.

In addition to those general objections and to adopting the objections lodged by his co-defendants, Robert Geddie specifically objects to the following exhibits offered by the Government:

I. OBJECTIONS TO ALL AUDIO AND TRANSCRIPT EXHIBITS

Geddie objects to all Audio Exhibits and their corresponding Transcript Exhibits (collectively, the "Audio Exhibits") for the following reasons.

First, the Audio Exhibits are hearsay and, therefore, inadmissible. Presumably, the Government will rely on the so-called co-conspirator exception,[1] which authorizes the introduction of "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." FED. R. EVID. 801(d)(2)(E). With respect to Geddie, in particular, the Government will be unable to shoulder that burden at trial and establish, by a preponderance of the evidence or otherwise, that the Audio Exhibits satisfy any component of that standard.

Alternatively, even assuming that standard is satisfied, the Audio Exhibits involve individuals not alleged to have been co-conspirators. For example, Transcript Exhibits 1, 3-16, 41, 43, 46-47, 57, 60, 63, 77, 84, 89-90, 100-01, 105-06, 108-12. 114-15, 117-18, 120-21, 126, 134-35, 137, 139, 142-43, 148-49, 152-55, 164-66, 170-71, 176, 187, 196, 198, 200, 206, 209-11, 214, 217-18[2] together involve approximately twenty-seven individuals other than those identified in the Indictment as purported co-conspirators.

In particular, many of those Audio Exhibits involve Legislators 1, 2, and 3, who were recording conversations with cooperation from or at the instigation of the Government. By definition, therefore, those individuals were not members of the purported conspiracy, and their statements are inadmissible hearsay. See, e.g., United States v. Xheka, 704 F.2d 974, 986 n.6 (7th Cir. 1983) ("As [the cooperating witness] was acting on behalf of the Government there is no question that his statements cannot be admitted under Rule 801(d)(2)(E).").

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[1] At present, Geddie is unaware of the exact purpose for which the Government will offer various exhibits at trial. The most obvious purpose would be for the exhibit's truth, and considering Count One, which charges the defendants with conspiracy, the Government's likely justification for admissibility will be Rule 801(d)(2)(E). Nevertheless, Geddie reserves any further objection if and until the Government supplies an alternative basis for admissibility.

[2] Additionally, the corresponding Audio Exhibits suffer from the same defect, and Geddie objects to the Audio Exhibits on the same basis as the Transcript Exhibits.

Accordingly, to the extent that the Government relies on Rule 801(d)(2)(E) to introduce any conversation by any defendant with any person not identified in the Indictment as a purported co-conspirator, Geddie objects on the basis of hearsay.[3]

Second, and for the same reason, the Audio Exhibits are irrelevant to any supposed Pinkerton liability asserted by the Government against Geddie.

The Government has indicated its intention to request a Pinkerton instruction. "Under Pinkerton, each member of a conspiracy is criminally liable for any crime committed by a coconspirator during the course and in furtherance of the conspiracy, unless the crime did not fall within the scope of the unlawful project, or was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement." United States v. Alvarez, 755 F.2d 830, 847 (11th Cir. 1985) (citation omitted); see also United States v. Broadwell, 870 F.2d 594, 603-04 (11th Cir. 1989) ("[T]his extension of criminal liability is narrowly drawn to apply only to conspirators who played more than a minor role in the conspiracy, or who had actual knowledge of at least some of the circumstances and events culminating in the reasonably foreseeable but originally unintended substantive crime.") (citation omitted).

Because the Government will be unable to show that Geddie criminally conspired with his co-defendants or others, any evidence offered in support of the supposed Pinkerton liability will be (1) irrelevant and, therefore, inadmissible pursuant to Federal Rule of Evidence 402 or

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[3] In the Eleventh Circuit, a third-party's remark to a purported co-conspirator may be admissible for the purpose of contextualizing the purported co-conspirator's statement – that is, the Government cannot introduce the third-party's remark for the truth of the matter asserted, absent some other exception to the hearsay rule. See, e.g., United States v. Price, 792 F.2d 994, 997 (11th Cir. 1986).

Nevertheless, as the proponent of the Audio Exhibits, the Government maintains the burden to establish that every third-party remark, question, comment, etc. contained in the Audio Exhibits is necessary for this purpose. Accordingly, to the extent that the Government offers an alternative basis for introducing any third-party statements through the Audio Exhibits, Geddie reserves further objection.

(2) even if marginally relevant for some other purpose, substantially outweighed by the risk of undue prejudice and, therefore, inadmissible pursuant to Federal Rule of Evidence 403.

Third, introducing the Audio Exhibits would violate Geddie's right to confrontation under the Sixth Amendment to the United States Constitution.

The Sixth Amendment guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." As the Eleventh Circuit has explained, "if hearsay is 'testimonial,' that is, for example, made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial, the Confrontation Clause prohibits its admission at trial unless (1) the declarant is unavailable, and (2) and the defendant has had a prior opportunity to cross-examine the declarant." United States v. Baker, 432 F.3d at 1189, 1203 (11th Cir. 2005) (citation omitted).

The Audio Exhibits with recordings of Legislators 1, 2, and 3 – who, with the Government's technological assistance, recorded conversations and gathered evidence for an ongoing federal and state investigation – qualify as testimonial statements subject to the Confrontation Clause. In particular, an objective witness would reasonably believe that recording conversations between themselves and the FBI's investigative targets likely would yield evidence for subsequent prosecutorial use. Nevertheless, Geddie has not had a prior opportunity to cross-examine the participants in those recordings; accordingly, the Sixth Amendment precludes their introduction at trial.

Short of those statements qualifying as testimonial and as for the balance of the Audio Exhibits, "[a]dmission of non-testimonial hearsay against criminal defendants is not governed by Crawford, but still violates the Confrontation Clause unless the statement falls within a firmly

rooted hearsay exception, or otherwise carries a particularized guarantee of trustworthiness." Baker, 432 F.3d at 1204 (citing Ohio v. Roberts, 448 U.S. 56, 66 (1980)). Here, the Audio Exhibits fail under either prong; consequently, their admission would violate Geddie's confrontation right.

Fourth, the Audio Exhibits are riddled with hearsay-within-hearsay defects, which preclude their admissibility. Federal Rule of Evidence 805 provides that "[h]earsay within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules."

Accordingly, even if the Government establishes that various speakers, such as Geddie and his co-defendants, were members of the purported conspiracy, that showing is insufficient to cure the hearsay embedded within the Audio Exhibits. In particular, any references within the Audio Exhibits to statements or questions made by individuals – who were not members of the purported conspiracy – are hearsay and, therefore inadmissible.

II. OBJECTIONS TO GOVERNMENT EXHIBITS 1045 AND 1046

Geddie objects to the introduction of Exhibits 1045 and 1046, which consist of several tallies for the Alabama House of Representatives and Senate, respectively.

Geddie objects to the authenticity of Exhibits 1045 and 1046. Authentication "involves the process of presenting sufficient evidence to make out a prima facie case that the proffered evidence is what it purports to be." United States v. Caldwell, 776 F.2d 989, 1001-02 (11th Cir. 1985) (emphasis added); see also FED. R. EVID. 901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.").

It is unclear exactly what the Government claims that Exhibits 1045 and 1046 reflect. In particular, the Government describes the documents as "expected vote tallies." Nevertheless, the tallies' date or dates of origin and author or authors are not apparent from the face of the documents, and more significantly, even if the tallies are predictive, the underlying assumptions on which those judgments were based are unknown. Geddie, therefore, objects to Exhibits 1045 and 1046 unless and until the Government provides an adequate predicate for their introduction.

III. OBJECTIONS TO GOVERNMENT EXHIBITS 1018, 1047, 1050, 1060, 1061, 1062, 1063, 1113, 1132, AND 1151

Geddie objects to the introduction Exhibits 1018, 1047, 1050, 1060, 1061, 1062, 1063, 1113, 1132, and 1151, which consist of emails sent by various individuals:

Exhibit 1018: Email sent by Jarrod Massey to Jarrod Massey and dated November 30, 2009.

Exhibit 1047: Emails between Ben Patterson, Scott McMillan, and Lamar Higgins and dated February 1 and 2, 2010.

Exhibit 1050: Email from "Leah" to Cheryl Farrow and dated July 21, 2010.

Exhibit 1060: Email from Rick Heartsill to Jon Gray, Marion Steinfels, Glenn Totten, and Mark White; copied to Robert Geddie and Tom Coker; and dated April 5, 2010.

Exhibit 1061: Email from Rick Heartsill to Harrison Hickman; copied to Bill O'Connor, Steve Raby, and Robert Geddie; and dated October 14, 2009.

Exhibit 1062: Email from Jana Waters to Linda Pittman and dated January 11, 2010.

Exhibit 1063:

(A) Email from Jana Waters to Clark Fine, Ben Patterson, and Lamar Higgins and dated April 17, 2009.

(B) Email from Robert Geddie to Jana Waters and dated April 17, 2009.

(C) Email from Jana Waters to Lamar Higgins and dated August 24, 2009.

(D) Email from Jana Waters to Robert Geddie and dated September 16, 2009.

(E) Email from Jana Waters to Robert Geddie and dated October 23, 2009.

(F) Email from Jana Waters to Lamar Higgins and dated November 11, 2009.

(G) Email from Jana Waters to Robert Geddie and dated March 30, 2010.

(H) Email from Jana Waters to Robert Geddie and dated May 3, 2010.

Exhibit 1113: Email from Helen Hanby to Robert Geddie and dated April 12, 2010.

Exhibit 1132: Email from Helen Hanby to Robert Geddie and dated February 22, 2010.

Exhibit 1151: Email from Helen Hanby to Robert Geddie and dated February 22, 2010.

Emails, like any other document, are subject to ordinary evidentiary standards. On that account, these emails contain out-of-court statements, which the Government presumably will offer for the truth-of-the-matters asserted. The emails are hearsay and, therefore, inadmissible. For the same reasons that the Audio Exhibits are inadmissible, these exhibits are similarly defective and due to be excluded.

IV. OBJECTIONS TO EXHIBIT 1049

Geddie objects to the introduction of Exhibit 1049, which consists of a black-and-white copy of a handwritten ledger maintained by Fine, Geddie & Associates.

In particular, Geddie objects to Exhibit 1040 pursuant to Federal Rule of Evidence 1003, which permits the introduction of a copy unless "in the circumstances it would be unfair to admit the duplicate in lieu of the original."

The original ledger – which Fine, Geddie & Associates produced pursuant to a grand jury subpoena – remains in the Government's custody. Unlike the black-and-white copy in Exhibit 1040, the original ledger includes entries in various pen colors and green-hued pages. Additionally, the manner in which Fine, Geddie & Associates maintained the original ledger cannot be communicated adequately with only Exhibit 1040. The original ledger, therefore, is superior for presenting the circumstances surrounding various events, and the black-and-white copy fails to convey the original ledger's context.

Of course, to the extent that the Government agrees to produce for trial the original ledger upon which Exhibit 1040 is based, Geddie concedes that this objection is moot.

Respectfully submitted,

Dated: Monday, May 16, 2011

/s/ Jackson R. Sharman III
One of the Attorneys for Defendant,
Robert B. Geddie, Jr.

OF COUNSEL:

Samuel H. Franklin
sfranklin@lightfootlaw.com
Jackson R. Sharman, III
jsharman@lightfootlaw.com
Jeffrey P. Doss
jdoss@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203
Telephone: (205) 581-0700
Facsimile: (205) 581-0799

James P. Judkins
jjudkins@readyfortrial.com
Larry D. Simpson
lsimpson@readyfortrial.com
JUDKINS, SIMPSON, HIGH & SCHULTE
1102 North Gadsden Street
Tallahassee, Florida 32303
Telephone: (850) 222-6040
Facsimile: (850) 561-1471

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following counsel of record through the court's electronic filing system this 16th day of May, 2011:

Richard Martin Adams
James Woodfin Parkman, III
William Calvin White, II
Parkman, Adams & White, LLC
505 20th Street North, Suite 825
Birmingham, Alabama 35203

Donald Mayer Briskman
Briskman & Binion, PC
P.O. Box 43
Mobile, Alabama 36601

Joshua Logan McKeown
The Cochran Firm Criminal Defense-Birmingham, LLC
505 20th Street North, Suite 825
Birmingham, Alabama 35203

Attorneys for Harri Anne H. Smith

Ronald Wayne Wise
Law Office of Ronald W. Wise
2000 Interstate Park Drive, Suite 105
Montgomery, Alabama 36109

Attorney for James F. Preuitt

Sandra Payne Hagood
7660 Fay Avenue, Suite H-526
La Jolla, California 92307

Gordon Douglas Jones
Thomas Julian Butler
Anil A. Mujumdar
Haskell Slaughter Young & Rediker
2001 Park Place North, Suite 1400
Birmingham, Alabama 35203

Attorneys for Ronald E. Gilley

Justin Shur
Eric Olshan
Barak Cohen
Brenda K. Morris
Emily Rae Woods
U.S. Department of Justice
Public Integrity Section
1400 New York Avenue – NW 12th Floor
Washington, DC 20005

Stephen P. Feaga
Louis V. Franklin, Sr.
U.S. Attorney's Office
P.O. Box 197
Montgomery, Alabama 36101-0197

Attorneys for United States of America

Joseph James Basgier, III
Bloomston & Basgier
1330 21st Way South, Suite 120
Birmingham, Alabama 35235

Brett Michael Bloomston
Brett M. Bloomston, Attorney at Law
1330 21st Way South, Ste. 120
Birmingham, Alabama 35205

Attorneys for Jarrod D. Massey

Samuel H Heldman
The Gardner Firm
2805 31st Street NW
Washington, DC 20008

Robert David Segall
Shannon Lynn Holliday
James David Martin
Ashley Nicole Penhale
Clayton Rushing Tartt
Copeland Franco Screws & Gill
P.O. Box 347
Montgomery, Alabama 36101-0347

Fred D. Gray, Sr.
Walter Edgar McGowan
Gray Langford Sapp McGowan Gray, Gray & Nathanson PC
P.O. Box 830239
Tuskegee, AL 36083-0239

Benjamin Joseph Espy
Joseph Cleodus Espy, III
William Martin Espy
Melton Espy & Williams, PC
P.O. Drawer 5130
Montgomery, Alabama 36103-5130

Attorneys for Milton E. McGregor

William Joseph Baxley
Stewart Davidson McKnight, III
Joel Evan Dillard
Baxley, Dillard, Dauphin McKnight & Barclift
2008 Third Avenue South
Birmingham, Alabama 35233

Attorneys for Thomas E. Coker

Thomas Martele Goggans
Thomas M. Goggans, Attorney it Law
2030 East Second Street
Montgomery, Alabama 36106

Attorney for Joseph R. Crosby

Tyrone Carlton Means
Henry Lewis Gillis
Latasha Meadows Nickle
Thomas Means Gillis & Seay, PC
3121 Zelda Court
P.O. Drawer 5058
Montgomery, Alabama 36103

John Mark Englehart
Englehart Law Offices
9457 Alysbury Place
Montgomery, Alabama 36117-6005

Attorneys for Quinton T. Ross, Jr.

Susan Graham James
Denise Arden Simmons
Susan G. James & Associates
600 South McDonough Street
Montgomery, Alabama 36104

Jeffery Clyde Duffey
Law Office of Jeffery C. Duffey
600 South McDonough Street
Montgomery, Alabama 36104

Attorneys for Jarrell W. Walker, Jr.

William N. Clark
Stephen Wesley Shaw
Redden, Mills & Clark, LLP
505 North 20th Street, Suite 940
Birmingham, Alabama 35203

Attorneys for Larry P. Means

/s/ Jackson R. Sharman III
OF COUNSEL