

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

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

THOMAS E. COKER,)

Defendant.)

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

**TOM COKER'S MOTION TO COMPEL
PRODUCTION OF COMPLETE 302s OF JARROD MASSEY**

Comes now Tom Coker, by and through his undersigned counsel, and respectfully requests this Court to compel the Government to produce non-redacted copies of five 302s of Jarrod Massey. As grounds for and in support of his motion Coker states as follows:

1. On December 20, 2010, Jarrod Massey changed his plea to guilty in the above-styled matter. In doing so, he agreed to plead guilty to Counts 1, 2, 4, 5, 8 and 10 (one conspiracy count and five bribery counts).¹

2. That same day, the Government provided six 302s of Jarrod Massey, not previously provided, which were notes from proffers provided on October 12th (entitled

¹ Coker is also named in Counts 1, 8 and 10.

“first proffer”), October 14th (“second proffer”), October 21st (“third proffer”), November 9th (“fourth proffer”), November 18th (“fifth proffer”) and December 2nd (“sixth proffer”).

3. Each of these proffers have been redacted by the Government except the second proffer dated October 14th. The other proffers have been, in some cases, significantly and substantially redacted, including entire pages being obscured and hidden.

4. Also on that same day, the undersigned requested to be provided complete copies of the 302s without any redaction.

5. The Government refused to produce the same.

6. Also on that same day, the undersigned requested that the Government provide an explanation of why the 302s were redacted.

7. The Government refused to provide any legal basis for the redactions.

8. Accordingly, having attempted in good faith to resolve this issue with the Government, counsel now is required to seek the intervention of this Court.

9. As Massey is a cooperating witness with the Government (and apparently has been for some time) his credibility is at issue. *Fed.R.Evid.* 607. As such, Coker is entitled to test all alleged facts he has provided the Government and to gauge that against benefit the Government has promised him in exchange for his testimony.

10. The Government’s Plea Agreement with Massey makes this especially true as it contains various provisions concerning Massey’s testimony reflecting on the credibility (or lack thereof) with regard to his statements. For example:

A). Paragraph 11(b)(iv) provides that his acceptance of responsibility points may be taken away if he “gives conflicting statements”;

B). Paragraph 12(a) requires him to “provid[e] truthful and complete information and testimony...”;

C). In Paragraph 13 “[t]he United States reserves the right to evaluate the nature and extent of the defendant’s cooperation” This evaluation is further subjected to “the sole and unreviewable judgment of the United States....”

11. Coker should be allowed to also see everything that Massey has provided the Government in order to assess his credibility and compliance. The Government is not entitled to be the sole determiner of a witnesses truthfulness when its Coker’s liberty and constitutional rights which are at issue.

12. It is well known that testimony of persons entering plea agreements with the Government has a great potential for being unreliable. Chief Justice Warren wrote that the incentives facing informants create "a serious potential for undermining the integrity of the truth-finding process in the federal courts." *Hoffa v. United States*, 385 U.S. 293, 320 (1966) (Warren, C.J., dissenting). See also *United States v. Cervantes-Pacheco*, 826 F.2d 310, 315 (5th Cir. 1987) ("It is difficult to imagine a greater motivation to lie than the inducement of a reduced sentence."); *United States v. Meinster*, 619 F.2d 1041, 1045 (4th Cir. 1980) (“promises of immunity or leniency premised on cooperation ... may

provide a strong inducement to falsify..."); Trott, "Words of Warning for Prosecutors Using Criminals as Witnesses," 47 Hastings L.J. 1381, 1383 (1996).

13. Defendants have a Constitutional right under the 6th Amendment to confront the witnesses against them. The rules of evidence provide various means of doing so with relation to prior statements of the witnesses. These include but are not limited to testing the witnesses general character for truthfulness (FRE 608 and 609); establishing prior inconsistent statements (FRE 613 and 801); and bias.

14. These foregoing safeguards are especially necessary when the informant pleading guilty is charged in a conspiracy count with the remaining defendants and his statement could be subject to 801(d)(2)(E) exclusions from the hearsay rule.

15. Coker should be allowed to test the credibility of the Government's witnesses in order that a true verdict may be reached in this matter. The Government's refusal to produce full and complete copies of Massey's 302s, coupled with its refusal to explain why it did so, requires the filing of this motion.

WHEREFORE, Coker moves this Court to compel the production of the entire non-redacted copies of Massey's 1st, 3rd, 4th, 5th and 6th proffers.

Respectfully submitted,

/s/ David McKnight
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2010, 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