

**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
ACCESS TO WIRETAP BINDERS**

Comes now Tom Coker, by and through his undersigned counsel, and respectfully requests this Court to compel the Government to allow him access to the wiretap binders submitted to Judge Hobbs during the course of the wiretaps made in relation to this case. As grounds for and in support of his motion Coker states as follows:

1. On December 1, 2010, the Government notified Coker that it was going to make available the "binders submitted to Judge Hobbs during the course of the wiretaps" made in relation to this case.

2. However, the Government also wrote that "only counsel for Mr. McGregor, Mr. Gilley, and Mr. Massey will have access to the binders for their respective client's phone line(s), as they contain material subject to privilege assertions by those three defendants."

3. On December 8th, Coker's counsel requested access to the binders also. In doing so, the undersigned wrote that "[a]ccording to phone logs you produced, over 80 captured communications involved calls to/from Coker's office or cell phone number." Admittedly, numerous of these communications were voice mail messages or communications with Coker's staff but not Coker himself. Nevertheless, several captured communications involve Coker and he is therefore entitled to access to the binders.

4. Last week, on December 14th, at the hearing before this Court, the Government stated that it was refusing to provide Coker access to these binders.

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

6. Tom Coker is an aggrieved party under the wiretap laws. Under Title III, an aggrieved person is defined as "**a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed**". 18 USC 2510(11) (emphasis added).

7. Further "any aggrieved person ... may move to suppress the contents of any wire or oral communication intercepted ... or evidence derived therefrom, on the grounds that:

- i) the communication was unlawfully intercepted;
- ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

iii) the interception was not made in conformity with the order of authorization or approval.”

18 U.S.C. 2518(10).

8. In order to determine if Coker is going to file such a motion to suppress his counsel is entitled to and needs to have access to these materials.

9. It would promote judicial economy and the interests of justice for the Court to allow counsel access to these binders, in order to determine whether such a motion is appropriate or not. Otherwise, the code provides that such motion (which should be made before trial) may be made when the person becomes aware of the grounds (which could be at or during trial). Such a late disclosure could jeopardize the trial and/or violate Coker’s rights.

WHEREFORE, Coker moves this Court to require compel the Government to allow him access to the wiretap binders submitted to Judge Hobbs during the course of the wiretaps made in relation to this case.

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