

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

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 2:10cr186-MHT
)	
MILTON E. MCGREGOR,)	
JAMES E. PREUITT,)	
QUINTON T. ROSS, JR.,)	
JOSEPH R. CROSBY,)	
LARRY P. MEANS,)	
ROBERT B. GEDDIE, JR.,)	
and THOMAS E. COKER.)	

**UNITED STATES' RESPONSE TO DEFENDANT MCGREGOR, PREUITT, ROSS,
CROSBY, MEANS, GEDDIE, AND COKER'S MOTIONS FOR ORDER
ALLOWING PROPOSAL OF "THEORY OF DEFENSE" JURY
INSTRUCTIONS AT OR NEAR THE END OF TRIAL**

The United States of America, through undersigned counsel, hereby responds to defendants McGregor, Preuitt, Ross, Crosby, Means, Geddie, and Coker's motions, Dkt. Nos. 830, 836, 839, 882, 1030, 1032, and 1035, respectively, for permission to submit "theory of defense" instructions to the jury at or near the end of trial.

Currently, the deadline for proposing jury instructions is seven days before trial commences on June 6, 2011. See Dkt. No. 316. In their motions, however, the defendants argue that they are entitled to propose "theory of defense" jury instructions at or near the end of trial. "Theory of defense" jury instructions must satisfy two threshold requirements: They must (1) have a proper foundation in the evidence as well as the law, and (2) tie into the theory of defense with both precision and specificity. United States v. Kottwitz, 614 F.3d 1241, 1271, vacated in part on other grounds, 627 F.3d 1383 (11th Cir. 2010). Only after the admission of all evidence will it be possible to assess the fulfillment of these dual prerequisites. Conversely, premature submission will prevent

the Court from assessing whether the instructions per se merit approval. The United States therefore agrees with the defendants that the proper time to submit “theory of defense” jury instructions is at the close of evidence, and reserves the right to oppose the substantive instructions.

CONCLUSION

For the foregoing reasons, the United States does not oppose defendants McGregor, Preuit, Ross, Crosby, Means, Geddie, and Coker’s motions for an order allowing the submission of “theory of defense” proposed jury instructions at or near the end of trial.

Respectfully submitted,

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Acting Under Authority of 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 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 attorneys of record.

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