

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

UNITED STATES OF AMERICA,

v.

MILTON E. MCGREGOR  
THOMAS E. COKER  
ROBERT B. GEDDIE JR.  
LARRY P. MEANS  
JAMES E. PREUITT  
QUINTON T. ROSS JR.  
HARRI ANNE H. SMITH  
JARRELL W. WALKER JR.  
JOSEPH R. CROSBY

Criminal No. 2:10CR186-MHT

**UNITED STATES' RESPONSE TO THE COURT'S JULY 20, 2011 ORDER**

The United States, through undersigned counsel, hereby submits this response to the Court's Order dated July 20, 2011, Dkt. No. 1493. The government submits that the 5th Circuit's binding decision in United States v. Diez, 515 F.2d 892 (5th Cir. 1975), is applicable to the facts of this case, and as a result defendant Preuitt's statements to FBI Special Agent Glaser during the April 1, 2010, interview should be considered by the jury as to all defendants. Like the conspiracy in Diez, Count 1 alleges that the defendants endeavored to conceal their criminal conduct---i.e., their corruption of the legislative process in Alabama. Indict. p37. To that end, defendant Preuitt's lies and misdirection during his interview with Special Agent Glaser, just two days after he voted in favor of SB380, were in furtherance of the conspiracy and are therefore admissible against his co-defendants.

Indeed, as Diez makes clear, no lie is told in a vacuum. 515 F.2d at 898. Rather, even facially truthful statements made to investigators may provide necessary context to bolster the

defendant's falsehoods. Id. To that end, not only has Special Agent Glaser testified that defendant Preuitt denied being offered a bribe in connection with his vote or having knowledge of any offers to any other legislator---assertions that other evidence reveals to be lies---he also testified that defendant Preuitt acknowledged that he spoke with Ronnie Gilley the day after the vote and that Gilley congratulated him on the bill's passage. This statement is true, and is confirmed by previously admitted evidence--namely, audio of the conversation between Preuitt and Gilley on defendant Smith's phone.

However, that same evidence also reveals that defendant Preuitt's recounting of his conversation with Gilley to Special Agent Glaser was materially misleading, as defendant Preuitt failed to admit that he specifically referenced his prior conversations with defendants Coker and Walker about the legislation and the things of value they would provide to him in connection with his vote in favor of the bill. Where, as here, a defendant uses half truths to conceal or downplay his role in a conspiracy, Diez counsels in favor of their admission. Similarly, even statements that are wholly truthful but made in connection with a concerted effort to mislead investigators are admissible. These statements are certainly relevant to show the defendant's consciousness of guilt (in relation to the clear falsehoods) and to establish that the defendant was not taken by surprise by the questions which produced misleading responses. As a result, the Court need not parse the alleged lies from the remainder of defendant Preuitt's statements, and all of his statements should be admitted as to all defendants.

However, were the Court to conclude that the overall purpose of defendant Preuitt's responses---true and false---was not to mislead investigators and conceal his and his co-conspirators' conduct, his statements are nonetheless admissible. As the government argued in its earlier filing, defendant Preuitt's alleged lies are not offered for their truth and are admissible

against all defendants. Any remaining statements, however, should be subject to a limiting instruction, requiring the jury to consider them only as to defendant Preuitt.

DATED: July 21, 2011

Respectfully submitted,

JACK SMITH  
Chief

By: /s/ Justin V. Shur  
Justin V. Shur  
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**CERTIFICATE OF SERVICE**

I HERBY CERTIFY that on this date, I caused the foregoing motion to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

DATED: July 21, 2011

/s/ Justin V. Shur \_\_\_\_\_  
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