

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,	)	
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.,	)	
and	)	
JOSEPH R. CROSBY,	)	
	)	
Defendants.	)	
_____	)	

**UNITED STATES’ MOTION REGARDING FED. R. EVID. 608(a)**

The United States files this motion to preclude the use of Special Agent McEachern’s cross examination for the purpose of impeaching the credibility of the government’s other witnesses, other than in conformity with the strict requirements of Fed. R. Evid. 608(a).

As a general matter, “the evaluation of witness credibility is the province of the jury.” United States v. Thomas, 453 F.3d 838, 846 (7th Cir. 2006); see also Snowden v. Singletary, 135 F.3d 732, 739 (11th Cir. 1998). Consequently, “[t]he Federal Rules of Evidence preclude a witness from testifying as to the credibility of another witness.” United States v. Henderson, 409 F.3d 1293, 1299 (11th Cir. 2005); see also Thomas, 453 F.3d at 846 (“it is improper to ask one witness to comment on the veracity of the testimony of another witness”).

To be sure, Fed. R. Evid. 608(a) permits the credibility of a witness to be attacked or supported, but with strict limits. As the Eleventh Circuit has held, “Rule 608(a) restricts a party

from attacking or supporting a witness' credibility save through evidence 'refer[ring] only to character for truthfulness or untruthfulness.'"

Indeed, as recently as four months ago, the Eleventh Circuit held that "[w]hile Rule 608(a) permits a witness to testify, in the form of opinion or reputation evidence, that another witness has a general character for truthfulness or untruthfulness, that rule does not permit a witness to testify that another witness was truthful or not on a specific occasion." United States v. Schmitz, 634 F.3d 1247, 1268 (11th Cir. 2011).

As applied specifically to the cross examination of Agent McEachern regarding Ronnie Gilley's character for truthfulness, defense counsel's questions must be limited strictly to Agent McEachern's opinion of whether or not Ronnie Gilley has a truthful or untruthful character. The cross examination cannot delve beyond that and cannot explore whether or not Agent McEachern believes that Ronnie Gilley was truthful or not in specific instances of conduct or whether Agent McEachern believes that Gilley was truthful or not when he made certain statement or testified in a particular way.<sup>1</sup> Allowing cross examination into specific occasions or regarding specific instances of conduct or statements would run afoul of Fed. R. Evid. 608, as well as the Schmitz opinion.

---

<sup>1</sup> This would apply equally to cross examination of Agent McEachern regarding any of the other government witnesses, including Jarrod Massey, Jennifer Pouncy, Scott Beason, Benjamin Lewis, and Barry Mask.

For these reasons, the government respectfully requests that the Court grant this motion.

Respectfully submitted,

LANNY A. BREUER  
Assistant Attorney General, Criminal Division  
Attorney for the United States  
Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief  
Public Integrity Section

By: /s/ Barak Cohen  
Barak Cohen  
Trial Attorney  
Public Integrity Section  
U.S. Department of Justice  
1400 New York Ave., NW, 12th Floor  
Washington, DC 20005

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 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.

/s/ Barak Cohen

Barak Cohen

Trial Attorney

Public Integrity Section

U.S. Department of Justice

1400 New York Ave., NW, 12th Floor

Washington, DC 20005