

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

UNITED STATES OF AMERICA, *

PLAINTIFF, *

V. * CR. No. 2:10CR186-MHT

JARRELL W. WALKER, JR., *

DEFENDANT. *

DEFENDANT WALKER'S REQUEST FOR CURATIVE JURY INSTRUCTION

Defendant Walker requests that the following curative instruction be given to the jury prior to completion of the closing argument in this case:

Your will be instructed at the close of the case that the defendants have a constitutional right not to testify, and the fact that the defendants elected not to testify cannot be considered by you for any purpose. Any comment that you may have heard during the government's closing argument that may be taken otherwise should be ignored by you.

During the Government's initial argument to the jury, Government counsel made a comment with reference to a meeting taped by Senator Beason that the jury had heard explanations from 3 of the people present. The only

inference from that comment is that defendant McGregor, who was also present, did not testify to offer any explanation of that event. Later during its initial argument the Government made a comment when referencing the Government witnesses, something to the effect that it takes courage to testify and subject oneself to cross examination, which infers that the defendants did not have courage to do the same.

A defendant is entitled to a failure to testify instruction. Carter v. Kentucky, 450 U. S. 288 ((1981); United States v. Richardson, 764 F 2d 1514, 1529 (11th Cir. 1985). However if it is not given the constitutional harmless error analysis as a "classic trial error" applies. United States v. Burgess, 175 F. 3d 1261, 1266 (11th Cir. 1999).

Defendant contents that Rule 30(b), Fed.R.Crim.P., does not apply since this is a request for a curative instruction.

Counsel has spoken to Government counsel and the Government does object to this request.

Respectfully submitted this 4th day of August, 2011.

s/Jeffery C. Duffey
JEFFERY C. DUFFEY

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Justin Shur, USDOJ and all counsel of record.

s /Jeffery C. Duffey
JEFFERY C. DUFFEY
Attorney for Jarrell Walker