

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE NORTHERN DISTRICT OF ALABAMA **OCT 5 PM 3:02**
SOUTHERN DIVISION U.S. DISTRICT COURT
N.D. OF ALABAMA

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UNITED STATES OF AMERICA :
 :
 -v- : CR 00-S-422-S
 :
 ERIC ROBERT RUDOLPH :

**GOVERNMENT’S RESPONSE TO DEFENDANT’S APPLICATION FOR
REVIEW AND APPEAL OF MAGISTRATE JUDGE’S ORDER OF
SEPTEMBER 14, 2004, DENYING DEFENDANT’S MOTION FOR
DISCOVERY OF MATERIALS RELATED TO SCIENTIFIC TESTING
OF ATLANTA BOMBING EVIDENCE**

Comes now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama and William R. Chambers, Jr., Assistant United States Attorney and respectfully files this Response to the defendant’s Appeal of the Magistrate Judge’s Order of September 14, 2004, denying disclosure and production of items related to scientific and laboratory testing of evidence in the Atlanta bombings. Premised on the authorities and arguments previously submitted by the United States in its Memorandum in Opposition to Rudolph’s Request for Discovery of Materials Related to the Scientific Testing of Atlanta Bombing Evidence (Doc. 229) as well as the reasoning of Magistrate Judge Putnam, the United States respectfully submits that the Magistrate’s Order of September 14, 2004, Denying the

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Defendant's Motion for discovery of materials related to scientific testing of evidence in the Atlanta bombings is due to be affirmed and Rudolph's appeal summarily dismissed. In support thereof the United States respectfully submits the following:

BACKGROUND

On April 8, 2004, Rudolph filed a Motion for Discovery of Lab Bench Notes and Other Items, seeking additional discovery materials relating to the government's scientific evidence. Rudolph stated in his Motion that "[t]he present motion merely seeks the predicate materials upon which the [government's] experts' testimony is based." (Rudolph's Mot. at 21.) During a May 18, 2004, hearing on Rudolph's Motion, however, Rudolph's counsel extended his discovery request not only to materials related to the government's designated expert witnesses, but also to materials related to the scientific testing of evidence that will not be introduced in the government's case-in-chief in Birmingham. Specifically, Rudolph sought production of materials relating to the scientific testing of evidence obtained from the scene of three bombings in Atlanta. Pursuant to the liberal discovery policy employed in this case, the United States has already produced to Rudolph exhaustive discovery related to the investigation of the Atlanta bombings. Included in the discovery are lab reports and photos of

scientific testing of the Atlanta evidence. On May 27, 2004, the United States filed its Memorandum in Opposition to Rudolph's Request for Discovery of Materials Related to the Scientific Testing of Atlanta Bombing Evidence. On September 14, 2004, Magistrate Judge T. Michael Putnam entered an Order denying the defendant's request for disclosure of materials relating to scientific testing of the Atlanta bombing evidence. On September 21, 2004, Rudolph filed the present Application seeking review of the Magistrate Judge's Order by this Court.

Rudolph now asserts that the Magistrate's Order denying him access to the requested materials was clearly erroneous as it; (1) incorrectly interpreted Rule 16 and *Brady*, and (2) ignored the substantial showing of materiality made by Rudolph in support of his discovery request. Contrary to Rudolph's claims, advanced on this appeal and in his Motion(s) seeking discovery of information related scientific testing of evidence in the Atlanta bombings, the Magistrate Judge correctly interpreted Rule 16, *Brady*, and the standard of materiality required to justify disclosure under controlling precedent. Furthermore, Rudolph has made no showing of how scientific testing from another case that will not be offered by the government at trial will have any bearing on this case, much less that it is material to the preparation of his defense.

INTERPRETATION OF RULE 16

Federal Rule of Criminal Procedure 16(a)(1)(E) requires the disclosure of materials and items if they are “material to preparing the defense” or they will be used in the government’s case-in-chief at trial. Fed. R. Crim. P. 16(a)(1)(E). Rule 16(a)(1)(F) similarly requires the disclosure of the “results or reports of any ... scientific test or experiment” of an “item in the government’s possession, custody, or control,” so long as the item will be used in the government’s case-in-chief at trial or is otherwise “material to preparing the defense.” Fed. R. Crim. P. 16(a)(1)(F). The United States does not intend to use materials related to the scientific testing of the Atlanta evidence in its case-in-chief. The government’s obligation to produce these materials under either Rule 16(a)(1)(E) or Rule 16(a)(1)(F) therefore hinges solely upon an evaluation of whether they are “material to preparing the defense.”

MATERIALITY

As correctly stated and applied by Magistrate Putnam, the applicable standard for assessing materiality of requested discovery items requires more than a showing that the evidence in question bears some abstract logical relationship to the issues in the case. There must be some indication that the pretrial disclosure of the disputed evidence would have enabled the defendant to alter the quantum of

proof in [her] favor.” United States v. Holloway, 971 F.2d 675, 680 (11th Cir. 1992). *See also* United States v. Ross, 511 F.2d 757, 762-63 (5th Cir.), cert. denied, 423 U.S. 836, 96 S.Ct. 62 (1975) and United States v. Buckley, 586 F.2d 498 (5th Cir. 1978), cert. denied, 440 U.S. 982, 99 S.Ct. 1762 (1979). As recently as 2003, the Eleventh Circuit reaffirmed these earlier holdings, describing the limitations imposed by the term “material” as used in Rule 16. “A general description of the item will not suffice; neither will a conclusory argument that the requested item is material to the defense. . . . Rather, the defendant must make a specific request for the item together with an explanation of how it will be ‘helpful to the defense.’” United States v. Jordan, 316 F.3d 1215, 1250 (11th Cir.), cert. denied, ___ U.S. ___, 124 S.Ct. 133 (2003).

Rudolph again relies on his own interpretation of controlling case law to create a “lower standard of materiality for preliminary showings of materiality” that, he claims, must be applied in pre-trial questions involving *Brady* or Rule 16. In fact, no Eleventh Circuit authority supports the proposition that a lower standard of materiality exists when such an examination of materials is conducted prior to trial. The proper standard is set forth in Jordan, which was correctly stated and applied by Magistrate Putnam in his Order.

Rudolph has made no showing of the materiality of the requested

discovery, falling far short of the prima facie showing required by Buckley, Ross, and Jordan. Rudolph argued in his Motion for Discovery of Lab Bench Notes and Other Items that “[t]he present motion merely seeks the predicate materials upon which the [government’s] experts’ testimony is based.” Rudolph’s Mot. for Discovery of Lab Bench Notes and Other Items, at 21. In his Motion to Reconsider Trial Date, Rudolph further explained:

Without the bench notes and other items requested in the discovery motion, the defense is unable to move forward on its examination of the government’s expert testimony and its preparation of appropriate pretrial motions challenging the admissibility of the government’s forensic evidence.

Rudolph’s Mot. to Reconsider Trial Date, at 15. Rudolph thus sought the requested materials in order to challenge the validity and reliability of the government’s expert witness evidence. The government’s expert witness testimony in this case, however, has nothing to do with the scientific testing of evidence obtained from the Atlanta bombings. Rudolph therefore has made no showing that the requested discovery is material to the preparation of his defense, and the record otherwise lacks any factual basis for an order compelling production of these materials.

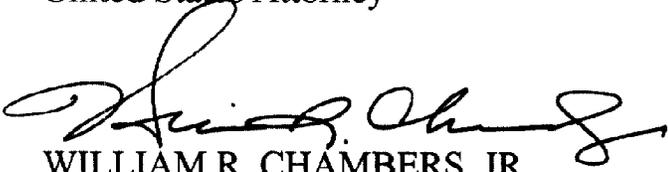
Rudolph’s other rationales offered in support of his claim that documents related to scientific testing of the Atlanta bombing evidence are material to the

preparation of his defense in this case are equally unpersuasive. As stated by Magistrate Putnam, “While the evidence from the Atlanta bombings may bear ‘some abstract logical relationship to the issues in the case,’ it would not ‘significantly...alter the quantum of proof in his favor’ in this case. (Mag. Order at p. 4). Rudolph’s arguments reveal a fundamental flaw in his reasoning. Because the government has repeatedly indicated that it will offer no evidence relating to the Atlanta bombings, how can discovery of such evidence of scientific testing be material to the defense in rebutting evidence that will not be offered. As noted by Magistrate Putnam, evidence in the Atlanta bombings, “says nothing about the evidence against [Rudolph] in the Birmingham case.” (Mag Order at p. 6).

The United States respectfully submits that Magistrate T. Michael Putnam correctly applied and interpreted the standards under Rule 16, *Brady*, and controlling precedent governing discovery. Rudolph has not and cannot establish that discovery of the scientific testing of evidence in the Atlanta bombings is material in any way to the preparation of his defense against the present charges, relating solely to the Birmingham bombing. The Magistrate’s Order of September 14, 2004, is not erroneous and is due to be affirmed.

Respectfully submitted this the 5th day of October, 2004.

ALICE H. MARTIN
United States Attorney

A handwritten signature in black ink, appearing to read "William R. Chambers, Jr.", written in a cursive style.

WILLIAM R. CHAMBERS, JR.
Assistant United States Attorney

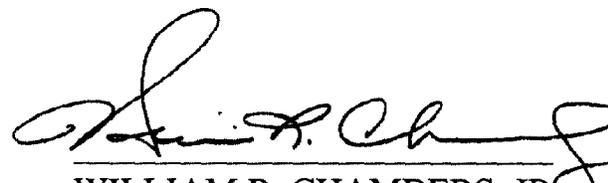
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date, October 5, 2004, by First Class, United States mail, postage prepaid, to his attorneys of record:

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