

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	No. 05-CR-00344-01-W-ODS
)	
GARY EYE,)	
)	
Defendant.)	

**DEFENDANT EYE’S MOTION FOR AN ORDER DIRECTING THE
UNITED STATES PROBATION OFFICE TO DISCLOSE THE
PRESENTENCE REPORT OF REGINNA RIOS TO DEFENDANT
TOGETHER WITH ALL NOTES, DOUCMENTS AND
MEMORANDA GATHERED BY THE REPORT WRITER
WITHOUT REGARD TO WHETHER SUCH PRELIMINARY
INFORMATION APPEARED IN THE DRAFT OR FINAL REPORT
OR NOT WITH SUGGESTIONS IN SUPPORT**

On May 12, 2006 Ms. Reginna Rios entered a plea of guilty to making a false statement to the FBI in violation of 18 U.S.C. 1001. The plea was made after Rios entered into a plea agreement with the government which was apparently executed on the same date and later filed in the case on May 16, 2006 (See *U.S. v. Rios*, 4:06-cr-00182-ODS, documents 2-1 and 5). The Rios plea agreement at pages two and three sets forth the factual basis for the plea and indicates: 1) Rios was interviewed by the FBI in May 2005; 2) Rios testified before the grand jury in July 2005 and “left out

certain events”; and, 3) Rios was re-interviewed on September 26, 2005 and allegedly provided false information to the FBI during a pre-grand jury interview.

Based on the foregoing and other evidence pieced together by the defense team it seems that Ms. Rios has testified at least twice before the grand jury and has been interviewed on at least two occasions by the FBI and possibly multiple times taking into consideration that the case was investigated by the local authorities before it became a federal prosecution. Defendant has some of the police department interviews but has been denied access to the FBI reports and grand jury transcripts as of this date.

Rule 32(c), Federal Rules of Criminal Procedure, sets forth what the presentence report must contain as well as specific information that must be excluded. As the court well knows from experience, the report must contain a recitation of the facts as determined by the report writer gleaned from review of government files, input from the accused, and information supplied by third parties. The report also contains criminal history and other information as to the character and background of the defendant.

Also highly significant in this case is information that was likely provided and which is likely memorialized in the report writer’s notes and office memoranda which by law could not be included in the report:

- (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;
- (B) any sources of information obtained upon a promise of confidentiality; and

(C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

The government will contend at trial that Rios was present at the crime scene and observed the crime first hand and that she simply lied on previous occasions when she stated she had merely heard about it after the fact. Her credibility is paramount to the government's case as she is the only alleged eye witness to the charged offense. She has provided multiple versions and varied accounts of events covering the 24 to 48 hours in question. She has been at the scene of previous shootings one of which involved a death and is, by all accounts, a person of bad moral character unworthy of belief who, according to her plea agreement, "left out certain events" when she testified before the grand jury.

Defendant submits that the presentence report writer has been made privy to critical impeaching information that will be of extreme value to defendant Eye in the presentation of his case and the cross-examination of Rios. Both the report in final written form and the notes of the report writer constitute evidence indispensable to the defense case and should be ordered disclosed to defendant as exculpatory and impeaching evidence. *United States v. Shyres*, 898 F.2d. 647 (8th Cir. 1990); *United States v. McKnight*, 771 F.2d 388 (8th Cir. 1985). Also see *United States Department of Justice v. Julian*, 486 U.S. 1 (1988), citing *McKnight*.

The aforesaid authority collectively supports the proposition that there is no longer anything sacred about the presentence report and information provided to the report writer if there are legitimate grounds to disclose such information, either to the accused himself or to third parties. These cases together discuss the evolving practice of full disclosure to the accused defendant and the defense attorney and reject older arguments advanced by some members of the judiciary that such reports and information must remain secret for policy reasons.

In light of the foregoing, this information must be made available to defendant Eye, even though he is a third party, if it meets the standards of a **Brady** claim. In **Strickler v. Greene**, 527 U.S. 263 (1999) the Supreme Court once again stated:

There are three essential components of a true **Brady** violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.

Failure to strictly comply with **Brady** requests are particularly troublesome to the courts when the case is capital. **Banks v. Dretke**, 540 U.S. 668 (2004); also see **Calderon v. Thompson**, 532 U.S. 538 (1998) and **Kyles v. Whitley**, 514 U.S. 419 (1995).

Defendant submits that he is entitled to the requested information. At the very minimum, counsel should be allowed to review the information under seal and thereafter

be allowed to supplement this motion in a sealed pleading with specific reasons as to why relevant portions of the requested information constitute **Brady** material and why and how it is relevant to defendant Eye's defense.

WHEREFORE, defendant Eye moves the Court to enter an order granting disclosure of the requested information.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri through use of the Electronic Court Document Filing System on Thursday, November 02, 2006.

/s/
JOHN R. OSGOOD