

FILED

2003

  
CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

---

UNITED STATES OF AMERICA,

CR 08-50079

Plaintiff,

MOTION TO SEAL CASE

vs.

VINE RICHARD MARSHALL a/k/a  
RICHARD VINE MARSHALL a/k/a  
DICK MARSHALL,

Defendant.

---

Comes now the United States of America, by and through United States Attorney Marty J. Jackley and Assistant United States Attorney Robert A. Mandel, and pursuant to Federal Rule of Criminal Procedure 6(e)(4), respectfully prays the Court to issue an order sealing the case in the above-entitled matter, and as grounds therefor states as follows:

Federal Rule of Criminal Procedure 6(e)(4) provides in pertinent part: "The magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial."

The Eighth Circuit Court of Appeals has confirmed that "[a] magistrate to whom an indictment is timely returned may direct that it be sealed." *United States v. Lakin*, 875 F.2d 168, 170 (8th Cir. 1989). In *Lakin*, the Court cites with approval a series of cases holding that "the magistrate may grant the government's motion to seal an indictment for any legitimate prosecutorial need." *Id.* (Emphasis added.)

Chief among the reasons deemed sufficient is the necessity of taking the defendant into custody. *United States v. Richard*, 943 F.2d 115, 119 (1st Cir. 1991); *United States v. Srulowitz*, 819

F.2d 37, 40 (2d Cir. 1987). *Accord, Lakin*, 875 F.2d at 170 (holding that “reasons other than taking the defendant into custody may support the sealing of an indictment.”) (Citations omitted).

Other grounds found sufficient in various circuits include:

1. The need for time to gather additional evidence. *Lakin*, 875 F.2d at 170;
2. Concern for pretrial publicity before all the defendants are notified. *United States v. Sharpe*, 995 F.2d 49, 52 (5th Cir. 1993); *Richard*, 943 F.2d at 119;
3. To facilitate the cooperation of co-conspirators and to preclude the disclosure of their identities, protecting them from undue influence. *United States v. Ramey*, 791 F.2d 317, 318 (4th Cir. 1986);
4. To permit the filing of additional charges. *United States v. Edwards*, 777 F.2d 644, 648 (11th Cir. 1985); and
5. To accommodate counsel for a defendant. *Sharpe*, 995 F.2d at 52 (in conjunction with other grounds).

In this matter, the United States submits that the following factors justify sealing the case pending the arrest of the defendant or further order of the Court:

1. The District Court for the District of South Dakota utilizes the PACER electronic filing system.
2. When PACER was first employed in this district, only counsel of record in a criminal proceeding could access the filings in that case through the PACER system.
3. Recently, the District Court Clerk changed the system to allow any person with PACER authority to access filings in a criminal case.

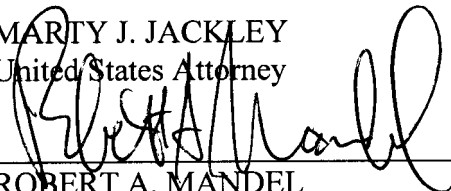
These facts go directly to the concern for pretrial publicity prior to the defendant being notified. Pretrial publicity of indictments creates a real risk of the flight of defendants prior to arrest. More importantly, the safety of the agents involved in serving arrest warrants on defendants is severely compromised when defendants are made aware of the indictments prior to arrest.

Due to the seriousness of the crime, there is concern in protecting the safety of any witnesses who have or who may provide information regarding the circumstances surrounding the murder of the victim.

WHEREFORE, the United States prays that this Court seal the case until the defendant is brought before the court for an initial appearance in this matter, and that it further seal this Motion and the Order to seal.

Dated this 20th day of August, 2008.

MARTY J. JACKLEY  
United States Attorney



---

ROBERT A. MANDEL  
Assistant United States Attorney  
515 9th Street #201  
Rapid City, SD 57701  
(605)342-7822