

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

|                               |   |                         |
|-------------------------------|---|-------------------------|
| UNITED STATES OF AMERICA,     | ) | CRIM. NO. 08-50079-01   |
| Plaintiff,                    | ) |                         |
|                               | ) |                         |
| vs.                           | ) | DEFENDANT GRAHAM'S      |
|                               | ) | MOTION TO DISMISS       |
| JOHN GRAHAM, a/k/a            | ) | COUNT III IN INDICTMENT |
| JOHN BOY PATTON and           | ) |                         |
| VINE RICHARD MARSHALL, a/k/a) | ) |                         |
| RICHARD VINE MARSHALL, a/k/a) | ) |                         |
| DICK MARSHALL,                | ) |                         |
| Defendants.                   | ) |                         |

Defendant John Graham, pursuant to Fed.R.Crim.P. 12(b) moves to dismiss count 3 in the superceding indictment. Mr. Graham asserts this court lacks jurisdiction over count 3 of the indictment. Alternatively, Mr. Graham asserts that count 3 fails to state a charge.

This motion is based on the Memorandum in Support of Motion to Dismiss, incorporated herein by reference.

Dated October 23, 2008.

/s/ John R. Murphy  
John R. Murphy  
328 East New York Street, Suite 1  
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(605) 342-2909

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows:

MARTY J. JACKLEY

- U.S. Mail, postage prepaid
- Hand Delivery
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- Electronic Case Filing

ROBERT A. MANDEL

- U.S. Mail, postage prepaid
- Hand Delivery
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- Electronic Case Filing

DANA HANNA

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

Dated October 23, 2008.

/s/ John R. Murphy  
John R. Murphy