

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN GRAHAM, a.k.a.
JOHN BOY PATTON, and
VINE RICHARD MARSHALL, a.k.a.
RICHARD VINE MARSHALL, a.k.a.
DICK MARSHALL,
Defendants.

Case No. CR 08-50079

DEFENDANT MARSHALL'S
MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION
FOR IN-CAMERA INSPECTION
AND DISCLOSURE OF PRE-SENTENCE
INVESTIGATION
REPORT

Disclosure of a Pre-Sentence Investigation Report of a cooperating government witness to the Defendant is required if the report constitutes impeachment material under Brady v. Maryland. In this case, Defendant Richard Marshall's right to due process of law, fundamental fairness, and his right to confront his accuser overrides any interest that the government or Arlo Looking Cloud may have in keeping his Pre-Sentence Investigation Report confidential. If a defendant requests disclosure of a cooperating witness's Pre-Sentence Investigation Report and shows a reasonable likelihood that such report will contain impeachment material that can be used to attack the credibility of a cooperating witness, the Court should conduct an in-camera inspection of the PSR, and if the Court finds that the Pre-Sentence Investigation Report contains impeachment material, then the Court should order disclosure. United States vs. DeVore, 839 F.2d 1330 (8th Cir. 1988).

Pre-Sentence Investigation Reports, their content and the circumstances under which they

may be disclosed are governed by Rule 32 of Federal Rules of Criminal Procedure. The Rule is silent regarding the disclosure of such reports to third persons.

In the interests of insuring the free flow of information so that the District Court has a complete set of facts in fashioning an appropriate sentence, Pre-Sentence Investigation Report are generally not made public. However, they should be disclosed to defendants if the defendant can demonstrate that disclosure is required to meet the ends of justice. United States vs. McKnight, 771 F.2d 388 (8th Cir. 1986). Here, Defendant Marshall is not relying on speculation, but rather can point to evidence in the record that indicates that Looking Cloud's Pre-Sentence Investigation Report contains evidence relevant to his mental ability to perceive, to remember, and to comprehend reality. Moreover, the report contains an accurate and comprehensive history of Looking Cloud's criminal convictions, which is impeachment material for Richard Marshall. There is evidence in the report of Looking Cloud's mental inability and his long, chronic history of drug and alcohol abuse, which also goes to his memory and ability to perceive and communicate facts accurately. The Defendant has shown that the interest of justice require the Court to conduct an in-camera examination of Looking Cloud's Pre-Sentence Investigation Report and to disclose all information within that report to counsel for Defendant Richard Marshall.

Dated this 20th day of November, 2008.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
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CERTIFICATE OF SERVICE

I hereby certify that I a true and correct copy of the foregoing Memorandum of Law in Support of Motion for In-Camera Inspection and Disclosure of Pre-Sentence Investigation Report was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
kim.nelson@usdoj.gov

Robert Mandel, Assistant United States Attorney
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 20th day of November, 2008.

/s/ Dana L. Hanna _____

Dana L. Hanna