

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

UNITED STATES OF AMERICA	)	CRIM. NO. 08-50079-01
Plaintiff,	)	
	)	DEFENDANT GRAHAM'S
vs.	)	MEMORANDUM IN SUPPORT
	)	OF MOTION FOR DISCLOSURE
JOHN GRAHAM, a/k/a	)	OF PRE-SENTENCE
JOHN BOY PATTON and	)	INVESTIGATION REPORT
VINE RICHARD MARSHALL, a/k/a)	)	
RICHARD VINE MARSHALL, a/k/a)	)	
DICK MARSHALL	)	
Defendant.	)	

Defendant John Graham has moved this Court for its Order requiring the United States Probation to disclose to him those portions of Arlo Fritz Looking Cloud's pre-sentence investigation report (PSR) in which Mr. Looking Cloud's mental health history, chemical dependency history, or any other fact or circumstance bearing on Mr. Looking Cloud's ability to perceive or recall events, is discussed. Defendant has alternatively asked the Court to conduct an in camera review of Mr. Looking Cloud's PSR and disclose all portions of that report in which these matters are referenced or discussed.

FACTS

Defendant incorporates herein the statement of facts and citations to the sentencing record contained within Defendant Marshall's Motion for In-Camera

Inspection and Disclosure of Pre-Sentence Investigation Report.

### ARGUMENT AND AUTHORITY

The requirements of Brady v. Maryland, 373 U.S. 83, 87 (1963), are well established: Brady requires the government to disclose exculpatory and impeachment evidence to the accused. United States v. Conroy, 424 F.3d 833, 837 (8<sup>th</sup> Cir. 2005). This includes facts contained within a PSR that are exculpatory or may serve as impeachment evidence. See United States v. McGee, 408 F.3d 966, 974 (7<sup>th</sup> Cir. 2005); United States v. Strifler, 851 F.2d 1197, 1201 (9<sup>th</sup> Cir.1988) (“A defendant is entitled to material in a probation file that bears on the credibility of a significant witness in the case.”); United States v. Figurski, 545 F.2d 389, 391-92 (4<sup>th</sup> Cir. 1976) (exculpatory evidence within a PSR must be disclosed to co-defendant; impeachment evidence within a PSR must be disclosed if there is a reasonable likelihood it will affect fact finder).

Mr. Looking Cloud is a material witness. His credibility will be placed before the jury. Any evidence that raises substantial questions about his ability to accurately perceive and recall events should be disclosed to the defense. Cf. United States v. Lindstrom, 698 F.2d 1154, 1163-64 (6<sup>th</sup> Cir. 1983) (defendants should not have been limited in cross-examination of government witness based on witness’s mental health history as this went directly to credibility and bias).

Therefore, all information within Mr. Looking Cloud's PSR relating to facts and circumstances bearing on his ability to perceive or recall events should be disclosed to Mr. Graham.

Dated November 24, 2008.

/s/ John R. Murphy  
John R. Murphy  
328 East New York Street, Suite 1  
Rapid City, SD 57701  
(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	<input type="checkbox"/>	U.S. Mail, postage prepaid
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ROBERT A. MANDEL	<input type="checkbox"/>	U.S. Mail, postage prepaid
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	<input type="checkbox"/>	Facsimile at
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DANA HANNA

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

Dated November 24, 2008.

/s/ John R. Murphy  
John R. Murphy