

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  
MOTION FOR PRE-TRIAL HEARING;  
MOTION IN LIMINE #1

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, and pursuant to Rule 104 (a) and (c) of the Federal Rules of Evidence, hereby moves the Court to order that a pre-trial hearing be held so that the Court may determine whether statements made by government witness Serle Chapman and statements which Chapman attributes to Defendant Marshall are admissible as adoptive admissions under Rule 801 (d)(2)(B) of the Federal Rules of Evidence. Defendant Marshall moves the Court to preclude the government from offering such statements as evidence in the trial as they are inadmissible under Rule 801(d)(2)(B). Moreover, such evidence is irrelevant and unfairly prejudicial; whatever minimal relevance it might have is clearly outweighed by the substantial danger of unfair prejudice.

In support of this motion, Dana L. Hanna, attorney for Defendant Marshall, hereby affirms:

1. The government intends to offer a statement attributed to Richard Marshall by government witness Serle Chapman as an admission of the Defendant. According to Chapman, in an unrecorded telephone conversation he had with Richard Marshall several years ago, Richard Marshall made a statement to the effect that "back in day" in the 1970s, when people asked other people to do things, people generally did not ask too many questions. The

government contends that this statement and Chapman's out of court declarations are admissible as admissions by a party opponent under 801(d)(2)(B): a statement of which a party has manifested an adoption or belief in its truth.

2. On information and belief, the government contends--and the Defendant denies--that Defendant Marshall's alleged "back in the day..." statement constitutes an admission that he gave a gun to co-defendant John Graham, Theda Clark, and Arlo Looking Cloud when they, along with Anna Mae Aquash, went to Richard Marshall's home in Allen, South Dakota in December 1975. 3. Defendant Richard Marshall, through counsel, has requested the government to provide the Defendant with specific detailed information as to the statement by Serle Chapman which the government alleges was adopted by Richard Marshall. The Defendant has not yet received from the government a response to that request; the Defendant has not received any formal, definitive notice as to what statement by Chapman the government contends Richard Marshall adopted.

4. Defendant Richard Marshall denies making any statement to Chapman that would constitute an admission under Rule 801(d)(2)(B).

WHEREFORE Defendant Marshall moves the Court to order an evidentiary hearing to determine preliminary questions of fact, to rule that the out of court statements of Serle Chapman and the purported statements of Richard Marshall are inadmissible under Rules 801(d)(2)(B), 403, and 404 of the Federal Rules of Evidence, and to preclude the government from adducing such testimony in trial.

Dated this 8<sup>th</sup> day of December, 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 Motion for Pre-Trial Hearing; Motion in Limine #1 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 8<sup>th</sup> day of December, 2008.

*/s/ Dana L. Hanna* \_\_\_\_\_

Dana L. Hanna