

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 IN LIMINE #2

NOW COMES defendant Richard Marshall, by and through his attorney Dana L. Hanna, and pursuant to Federal Rules of Evidence 104 and 801(d)(2)(B), hereby moves the Court to preclude the government from offering certain testimony from prosecution witness Serle Chapman. Defendant Marshall further moves the Court to order a pre-trial hearing in which the Court will determine questions of foundation and admissibility. Grounds for the motion are that the government cannot satisfy the foundational requirements of FRE Rule 801(d)(2)(B), and that Chapman's testimony as to his own statements to the defendant would be inadmissible hearsay.

In support of this motion, Dana L. Hanna, attorney for the defendant, hereby affirms:

1. The government has given notice that it intends to offer a statement made by Serle Chapman and an alleged response by Richard Marshall as admissions of the defendant under Rule 801. Chapman, who was acting as a government informant, conducted an interview with Richard Marshall in 2001. The government contends that Chapman made a statement to defendant Marshall, in which Chapman asserted that a woman nicknamed "Choach" claimed that she had seen Anna Mae Aquash tied up at the home of Richard Marshall, and that Marshall replied to that statement by saying that "'Choach' got it right."

2. Richard Marshall unequivocally denies making any such statement to Chapman.

3. The government evidently intends to offer, through Chapman, Richard Marshall's alleged statement as an adoptive admission of Chapman's statement under Rule 801(d)(2)(B). The defendant is entitled to challenge the admissibility of these statements in an evidentiary hearing, outside the presence of the jury, in which the government would have the burden of establishing the facts, foundation, and admissibility of such evidence.

WHEREFORE the defendant moves the Court to schedule a pre-trial hearing to make preliminary findings of fact and to determine whether the government's proffer satisfies the evidentiary foundational requirements of Rule 801(d)(2)(B), and if the government fails to meet its burden, to enter an order precluding the government from offering such evidence at trial.

Dated this 7th day of January, 2009.

VINE RICHARD MARSHALL, Defendant

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

I hereby certify that I served a true and correct copy of the foregoing Motion in Limine #2 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 7th day of January, 2009.

/s/ Dana L. Hanna

Dana L. Hanna