

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 08-50079-01, -02
)	
Plaintiff,)	
)	
vs.)	ORDER ON
)	DEFENDANT MARSHALL'S
)	MOTION FOR DISCLOSURE &
VINE RICHARD MARSHALL, aka)	PRODUCTION OF EVIDENCE
RICHARD VINE MARSHALL, aka)	
DICK MARSHALL,)	
)	
Defendant.)	

Pending before the court is defendant Richard Marshall's motion for disclosure and production of evidence. [Docket 162]. The government has in its possession audio tapes of recorded conversations. The government previously provided copies of these tapes to defendant John Graham, but now refuses to provide copies to Mr. Marshall, instead requiring Mr. Marshall's counsel to listen to the tapes at the government's offices. The government states that it will allow Mr. Marshall's counsel to make copies of the tapes himself, but the government will not make and provide the copies itself. Mr. Marshall is currently detained in federal custody, so it is not possible for him to accompany his counsel to the federal building to listen to the tapes in question.

Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure requires the government to "permit the defendant to inspect and to copy or photograph

books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is in within the government's possess, custody, or control and: (i) the item is material to preparing the defense; (ii) the government intends to use the item in its case-in-chief at trial . . .” See Fed. R. Crim. P. 16(a)(1)(E). The government's assertion that it must allow defendant to copy, but that the government is not required to copy discovery itself, is borne out by Rule 16.

Accordingly, it is hereby

ORDERED that the government shall immediately turn over all the tapes in question to Mr. Marshall's counsel so that he may make copies of the tapes. Mr. Marshall's counsel shall have possession of the tapes for up to six weeks in order to accomplish the copying, at which time the original tapes shall be returned to the government. Counsel's cost for such copying shall be included on his CJA voucher and he shall be reimbursed for the same. Alternatively, if the government reconsiders its position and agrees to make copies of the tapes itself, the government must make such copies and deliver them to Mr. Marshall within 10 days from the date of this order.

Dated February 24, 2009.

BY THE COURT:

/s/ Veronica L. Duffy

VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE