

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. 08-50079

DEFENDANT MARSHALL'S
MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION FOR
BILL OF PARTICULARS

Federal Rule of Criminal Procedure 7(f) states:

“The Court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment, or at such time as the Court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.”

“A bill of particulars serves to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial [and] to avoid or minimize the danger of surprise at trial.” United States v. Hernandez, 299 F.3d 984, 989-990 (8th Cir. 2002), *cert. denied*, 537 US 1134 (2000).

The Due Process Clause gives the defendant the right to formal notice of the accusation the government is making against the defendant and that formal accusation must contain sufficient factual particulars to allow the defendant to prepare a defense against the accusation.

Since the indictment itself does not provide sufficient information, the government should be required to give constitutionally sufficient formal notice in a bill of particulars. This will also allow the court to evaluate defendant's pending motion to dismiss the indictment for violation of due process based on the government's inconsistent theories of prosecution.

Here, the indictment is too vague and indefinite to advise the defendant of the particulars of the accusation being made against him by the government. It is not sufficient to either allow the defendant to prepare a defense or to prevent unfair surprise at trial. Each of the requested particulars seeks information that is necessary to prepare his defense.

Therefore, this Court should order the government to file a bill of particulars.

Dated this 26th day of February, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
Attorney for Defendant Marshall
PO Box 3080
Rapid City, SD 57709
(605) 791-1832
dhanna@midconetwork.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Memorandum of Law in Support of Motion for Bill of Particulars 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 26th day of February, 2008.

/s/ Dana L. Hanna

Dana L. Hanna