

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

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	
vs.)	DEFENDANT GRAHAM'S
)	MOTION IN LIMINE REGARDING
JOHN GRAHAM, a/k/a)	GRAND JURY TESTIMONY
JOHN BOY PATTON,)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL,)	
Defendants.)	

Defendant John Graham moves this Court for its Order prohibiting the government from introducing any evidence obtained during grand jury proceedings that occurred after the indictment of Vine Richard Marshall and John Graham for the offenses charged in this file. This motion is based on the summary of facts and law set forth below.

SUMMARY OF FACTS

It is Defendant Graham's information and belief that since he and Vine Richard Marshall were indicted on October 7, 2008, the government has continued to run grand juries to build its case against Graham and Marshall. The government has confirmed that it has continued to convene grand juries subsequent to the issuance of the superceding indictment in this case. No

additional defendants have been charged by these recently convened grand juries.

The government has not provided Graham with any transcripts from these recently convened grand juries. Therefore, Graham cannot make a specific objection to any particular testimony or information that was obtained therefrom. Because the Court has set a filing deadline for motions in limine, Graham files this motion at this time, and intends to supplement it orally and/or in writing once the government provides him with materials obtained from the recent grand juries.

SUMMARY OF LAW

A grand jury should not be convened if its dominant or primary purpose is to gather evidence strengthening the government's case against a defendant that has already been indicted. U.S. v. Wadlington, 233 F.3d 1067, 1073 -1074 (8th Cir. 2000); United States v. Puckett, 147 F.3d 765, 770 (8th Cir. 1998). Grand juries should be directed at new offenses. Id.

Materials obtained from a post-indictment grand jury are only admissible against an indicted defendant if those materials were collateral to the focus of the grand jury and obtained during the investigation of other crimes. See U.S. v. Wadlington, 233 F.3d 1067, 1073 -1074 (8th Cir. 2000); United States v. Sellaro, 514 F.2d 114, 122 (8th Cir.1973). To show that evidence relating to pending case was collateral to grand jury purpose, the government should be required to show

that, as a result of the grand jury, new charges were brought or new defendants were charged. See U.S. v. Wadlington. 233 F.3d 1067, 1073 -1074 (8th Cir. 2000).

In this case, no new charges have been brought against Graham or Marshall, and no new defendants have been indicted. It appears that the focus of the recent grand juries was the same crime allegedly committed by Graham and Marshall. Therefore, the government should not be allowed to introduce or admit any evidence or testimony obtained as a result of the recently conducted grand jury proceedings.

Dated April 28, 2009.

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

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

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

Dated April 28, 2009.

/s/ John R. Murphy
John R. Murphy