


UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH DAKOTA
 WESTERN DIVISION

FILED
 MAY 01 2009

 CLERK

UNITED STATES OF AMERICA,

CR 08-50079

Plaintiff,

vs.

ORDER REGARDING
 NOTICE OF APPEAL
 AND
 MOTION TO SEVER

JOHN GRAHAM, a/k/a John Boy Patton,
 and VINE RICHARD MARSHALL, a/k/a
 Richard Vine Marshall, a/k/a
 Dick Marshall,

Defendants.

The government has filed a Notice of Appeal of this Court's Order on Motions to Dismiss Indictment. (Doc. 323.) In light of its rulings in the Order on Motions to Dismiss Indictment (doc. 304), the Court intended to hear argument from the parties at the hearing on Tuesday regarding whether or not the decision to deny a severance of the trials should be revisited. Because the government has filed a Notice of Appeal challenging this Court's order dismissing Count III of the Superseding Indictment, the Court will ask the parties to brief the following issues:

1. Does the Court have authority to reconsider defendant Marshall's motion to sever? The Court refers the parties to the unpublished decision of *United States v. Weber*, 1997 WL 61442 (W.D.Mo. 1997).
2. If the Court concludes there is authority to reconsider its prior decision regarding the motion to sever, should the Court hold separate trials of the defendants in this case and proceed with the trial of defendant Marshall?

Accordingly,

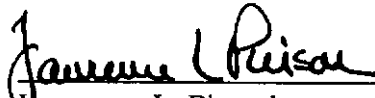
IT IS ORDERED:

1. That on or before noon on Monday, May 4, 2009, the parties shall serve and file briefs on the above issues.

2. A hearing will be held on these issues at 1:00 p.m. on Tuesday, May 5, 2009 at 1:00 p.m. (Mountain Daylight Time) in the Magistrate Judge's courtroom in the Federal Courthouse in Rapid City, South Dakota.


Dated this 1st day of May, 2009.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 

DEPUTY