

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

UNITED STATES OF AMERICA ) Case No. 08-50079  
Plaintiff, )  
)  
vs. ) DEFENDANT MARSHALL'S  
) PROPOSED JURY INSTRUCTIONS  
JOHN GRAHAM, a/k/a )  
JOHN BOY PATTON and )  
VINE RICHARD MARSHALL, a/k/a )  
RICHARD VINE MARSHALL, a/k/a )  
DICK MARSHALL, )  
Defendants.

Attorney for Plaintiff: Marty J. Jackley, United States Attorney  
Robert A. Mandel, Assistant United States Attorney  
515 9<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Rapid City, SD 57701  
605-342-7822

Attorney for Defendant: Dana L. Hanna  
PO Box 3080  
816 Sixth Street  
Rapid City, SD 57701  
605-791-1832

Defendant Richard Marshall files his proposed jury instructions.

Dated May 1, 2009

/s/ Dana L. Hanna

Dana L. Hanna  
PO Box 3080  
816 Sixth Street  
Rapid City, SD 57701  
605-791-1832

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of Defendant Marshall's foregoing Proposed Jury Instructions 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 1st day of May, 2009.

*/s/ Dana L. Hanna*

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Dana L. Hanna

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 1

FALSE IN ONE / PERJURY

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or give it such weight or credibility as you may think it deserves.

The testimony of an admitted perjurer should always be considered with caution and weighed with great care.

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Authority:

U.S. v. Walker  
97 F.3d 253  
C.A.8 (Mo.),1996.

DEFENDANT'S PROPOSED JURY INSTRUCTIONS-NO. 2

The prior statements of the government's attorneys may be used to prove the truth of the matters asserted by the government's attorneys in their prior statements.

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FRE 801 (d)(2)( c ).

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 3

ADMISSIONS BY A PARTY'S AUTHORIZED AGENT-GOVERNMENT ATTORNEYS

You have heard testimony that in the trial of Fritz Arlo Looking Cloud and in that witness's appeal to the U.S. Court of Appeals, attorneys for the government made certain statements about the evidence that the government argued to prove Fritz Arlo Looking Cloud's guilt in the murder of Anna Mae Aquash.

The attorneys for the government are authorized by the government to make statements concerning the facts and evidence in this matter. The government is a party in this case

Although the statements made by attorneys in this trial are not evidence, statements made by attorneys in a prior trial or in a court may be considered by you as evidence.

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Authority: FRE 801 (d)(2)(b)(c) and (d);  
*U.S. v. Martin*, 773 F.2d 579 (4<sup>th</sup> Cir. 1985);  
*U.S. v. Kattar*, 840 F.2d 118 (1<sup>st</sup> Cir. 1988)

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 4

TRANSCRIPT OF TAPE RECORDED CONVERSATION

You have heard tape recordings of conversations that are in evidence, and you were provided with a type written transcript of the tape recordings. Those transcripts also undertake to identify the speakers engaged in the conversation.

You were permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you keep track of the speakers. Differences in meaning between what you hear in the recordings and read in the transcript may be caused by such things as the inflection in a speaker's voice. It is what you hear, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the tape recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 5

TESTIMONY OF INFORMANTS

You have heard evidence that Serle Chapman and Darlene Nichols-Ecoffey have an arrangement with the Government under which they were paid by the Government and received monetary benefits for providing information to the Government. Their testimony was received in evidence and may be considered by you.

You may give their testimony such weight as you think it deserves. Whether or not their information or testimony may have been influenced by such payments and receiving monetary benefits is for you to determine.

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 6

EVIDENCE ADMITTED AGAINST ONLY ONE DEFENDANT

As you know, there are two defendants on trial here: John Graham and Richard Marshall. Each Defendant is entitled to have his case decided solely on the evidence which applies to him. Some of the evidence in this case is limited under the rules of evidence to one of the defendants, and cannot be considered against the other. You must not consider that evidence when you are deciding if the government has proved, beyond a reasonable doubt, its case against the other defendant.

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 7

STATEMENT OF ONE DEFENDANT IN MULTI-DEFENDANT TRIAL

You may consider that statements of Defendants John Graham and Richard Marshall to law enforcement only in the case against the defendant who made that statement and not against the other defendant. What that means is that you may consider a defendant's statement to law enforcement in the case against him and for that purpose rely on it as much or as little as you think proper, but you may not consider or discuss that statement in any way when you are deciding if the Government has proved, beyond a reasonable doubt, its case against the other defendant.

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 8

STATEMENT BY THE DEFENDANT

You have heard testimony that Richard Marshall made a statement to Robert Ecoffey. It is for you to decide:

First, whether Richard Marshall made the statement and

Second, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

## DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 9

### IMPEACHMENT

In Preliminary Instruction No. \_\_\_\_, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” or discredited and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

You have heard evidence that some witnesses have been convicted of a crime. You may use that evidence only to help you decide whether or not to believe those witnesses and how much weight to give their testimony.

Similarly, you have heard evidence that the witness Fritz Arlo Looking Cloud has been convicted and found guilty to a charge that is alleged to have arisen out of the same events for which the defendants are now on trial. You cannot consider that witness's guilt as any evidence of the guilt of the defendant. Rather, you can consider that witness's guilt only for the purpose of determining how much, if at all, to rely upon his testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You have heard testimony from Fritz Arlo Looking Cloud stating that he participated in the crime charged against the defendant. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his desire to please the Government or to strike a good bargain with the Government about his own situation is for you to determine.
  
2. You have heard evidence that Fritz Arlo Looking Cloud is testifying with the hope of receiving a reduction in his sentence in return for his cooperation with the government in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such witness for substantial assistance unless the U.S. attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the U.S. attorney, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so how much to reduce it. You may give the testimony of Fritz Arlo Looking Cloud such weight as you think it deserves. Whether or not the testimony of the government witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves or give it no weight at all.

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 10

ADMITTED PERJURER

You have heard evidence that Fritz Arlo Looking Cloud knowingly gave perjured testimony-that is, he gave false testimony under oath. I charge you that you should treat the testimony of a witness who has given perjured testimony with greater caution and care than that of other witnesses, particularly that testimony which is not corroborated by other reliable evidence or testimony from other witnesses.

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Authority: *U.S. v. Walker*, 97 F.3d 253 (8<sup>th</sup> Cir. 1996)

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 11

TESTIMONY OF ACCOMPLICE

You have heard testimony from witness Fritz Arlo Looking Cloud who stated that he participated in the crime charged against the defendant. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his desire to please the government or to strike a good bargain with the government about his own situation is for you to determine. You should, however, consider his testimony with greater caution and care than that of an ordinary witness.