

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

**FILED**

MAY 22 2009

  
CLERK

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

MOTION TO COMPEL  
DISCLOSURE  
OF WITNESS

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby moves the court to order the government to seek and disclose certain evidence that is favorable to the defendant, to-wit: the identity of the writer of the hand written notes on pages 1905 and 1906 in the discovery materials provided by the government. The defendant makes this motion on the grounds that he has a due process right to disclosure of favorable evidence and witnesses.

In support of the motion, attorney Dana L. Hanna, attorney for the defendant, hereby affirms:

1. On April 6<sup>th</sup>, 2009 I sent a letter to federal prosecutors in this case requesting the identity of the individual who wrote two pages of handwritten notes which appear to be notes taken from an interview of the key prosecution witness in this case, Arlo Looking Cloud. Those two pages are contained on pages 1905 and 1906 in the discovery materials provided to the

defendant by the government. They are filed along with this motion as “Exhibit A.” I requested the government to identify the writer of those interview notes because I wish to call him as a defense witness to impeach the testimony of prosecution witness Arlo Looking Cloud.

2. If these notes are in fact what they appear to be—notes of statements made to a law enforcement officer or other government agent by Arlo Looking Cloud about his involvement in the kidnapping and murder of Anna Mae Aquash—then the statements made by Looking Cloud to the interviewer are inconsistent with his grand jury testimony, other prior statements to law enforcement, and the testimony he is likely to give at trial.

3. Looking Cloud has repeatedly claimed that he came to the house where Anna Mae Aquash was hiding in Denver in December 1975 without any prior knowledge of a plan to kidnap or otherwise harm Aquash, and that he went there seeking a drinking companion named Joe Morgan. However, page 1905 of the interview notes records that he told the writer of those notes that he had been “contacted” by someone and he then went to the house in Denver from which he and his criminal accomplices kidnaped Aquash. This is impeachment evidence by a prior inconsistent statement that goes to prove that Looking Cloud was acting with criminal knowledge and purpose from the outset.

4. Page 1905 of the handwritten notes records that Looking Cloud told the unidentified witness that his criminal accomplices took Aquash out of the house in Denver and put her in a vehicle with blankets over her head. This conflicts with his testimony and every known prior statement he made to law enforcement investigators.

5. The notes record that Looking Cloud told the unidentified interviewer that from Rapid City, they drove Aquash to a house 1 hour from Rapid City, and that he stayed in the car while

others went into the house. This statement arguably conflicts with testimony Looking Cloud gave to the grand jury and with the testimony he is likely to give in the trial of Richard Marshall on a key contested factual question in the trial: whether Looking Cloud observed Marshall hand a handgun to Theda Clarke in the Marshall house in Allen, South Dakota.

6. For the foregoing reasons, in my professional judgement, the writer of those pages is a potential defense witness who can give testimony that can be used to impeach the testimony of the government's key witness by proof of prior inconsistent statements.

7. In response to my request to the government for the identity of the writer of those two pages of handwritten notes, I received a letter dated April 21<sup>st</sup>, 2009, in which the government's attorney informed me that no further information on pages 1905 and 1906 would be forthcoming. In a subsequent telephone conversation I had with Assistant United States Attorney Robert Mandel, I informed Mr. Mandel that I want to call the writer of those handwritten pages as a defense witness to impeach the testimony of Arlo Looking Cloud. AUSA Mandel stated that he had made efforts to discover those efforts had not been successful. Mr. Mandel informed me that he had "no idea" who wrote those handwritten notes.

8. The information that is requested is solely within the knowledge and the possession of the government or of one or more of its agents. The identity of the witness can be discovered if the government were to make diligent and professional efforts to discover that witness's identity. The government could discover the identity of the witness by distributing the notes to all investigators involved in the case and making reasonable inquiries as to who wrote them.

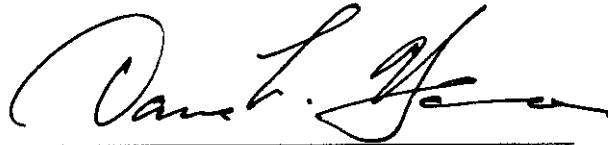
WHEREFORE, the defendant moves the Court to order the government to make diligent efforts to discover and disclose to the defendant the identity of the person who wrote the

interview notes of Arlo Looking Cloud that are identified as pages 1905 and 1906 of the discovery.

Dated this 20<sup>th</sup> day of May, 2009.

RICHARD MARSHALL, Defendant

By:



Dana L. Hanna  
PO Box 3080  
816 Sixth Street  
Rapid City, SD 57709  
605-791-1832  
Attorney for Defendant Marshall

Kilo looking cloud  
contacted went to Poy Lynn's  
Anna Mac downstairs

Theta tells him to help out  
got car backed it up to house

John Boy & Theta bring out w/ blanket over head

Drove to S.H.

to R.C. to Apartment complex

Stayed there - Theta left

Next morning Theta brings Breakfast

then went to a residence 1 hr from R.C.

Theta & John Boy go out to house  
Stays in car

then goes between Kadetka & Wanklee  
John gets out - walked over to spot  
on bluff - John Boy takes out  
silver caver revolver

02121

Graham01905 [D]

EXHIBIT A

she falls over embankment down

At 10  
~~John~~ boy first off set of stairs

then to Martin - Penner

02122

Graham01906

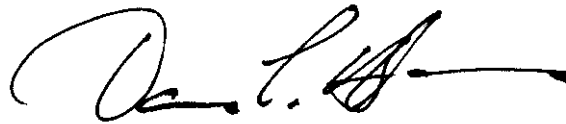
**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Motion to Compel Disclosure of Witness on the other parties in this case by mailing the same, postage prepaid, the attorneys of record at the addresses listed below:

Marty J. Jackley  
United States Attorney  
515 Ninth Street, #201  
Rapid City, SD 57701

John Murphy  
Murphy Law Office  
328 E. New York St., #1  
Rapid City, SD 57701

Dated this 20<sup>th</sup> day of May, 2009.

A handwritten signature in black ink, appearing to read 'Dana L. Hanna', with a long horizontal flourish extending to the right.

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Dana L. Hanna