

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 9th Street, 2nd 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 this 21st day of August, 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 20th day of August, 2009.

/s/ Dana L. Hanna

Dana L. Hanna

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 1

LAW ENFORCEMENT WITNESSES

You should judge the testimony of a law enforcement officer in the same way that you judge the testimony of any other witness.

7th CIRCUIT INSTRUCTIONS

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 2

3.09 PRIOR INCONSISTENT STATEMENTS - WITNESSES

You have heard evidence that before the trial [a witness[es] made [a] statement[s] that may be inconsistent with the witness[es]'s testimony here in court. If you find that it is inconsistent, you may consider the earlier statement in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. However, if that prior statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement

7th CIRCUIT INSTRUCTIONS

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 3

3.13 WITNESSES REQUIRING SPECIAL CAUTION

You have heard testimony from SERLE CHAPMAN who received benefits from the government in connection with this case, namely payments of more than 72 thousand dollars.

You may give his/her testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

7th CIRCUIT INSTRUCTIONS

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 4

4.05 SEPARATE CONSIDERATION FOR EACH DEFENDANT

Even though the defendants are being tried together, you must give each of them separate consideration. In doing this, you must analyze what the evidence shows about each defendant [, leaving out of consideration any evidence that was admitted solely against some other defendant or defendants]. Each defendant is entitled to have his/her case decided on the evidence and the law that applies to that defendant.

7th CIRCUIT INSTRUCTIONS

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 5

CAUTION AS TO PAID INFORMANT

You have heard the testimony of SERLE CHAPMAN. He provided evidence under an agreement with the government; and received money from the government in exchange for providing information.

Some people in this position are entirely truthful when testifying. Still, you should consider the testimony of these individuals with particular caution. They may have had reason to make up stories or exaggerate what others did because they wanted to help themselves.

First Circuit Criminal Jury Instruction 2.07

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 6

UNCORROBORATED ACCOMPLICE

In this case, you have heard the testimony of Fritz Arlo Looking Cloud, about the killing of Anna Mae Aquash, and who has himself been found guilty of murdering or aiding and abetting the murder of Anna Mae Aquash. The government contends that defendant Richard Marshall was an accomplice of Looking Cloud.

If you find that Looking Cloud's testimony as to the participation of Richard Marshall in the killing of Aquash is not corroborated by other evidence, then I charge you that you should consider the uncorroborated testimony of Arlo Looking Cloud with caution.

See: United States v. Shriver, 838 F.2d 980, 983 (8th Cir.1988) (quoting Esters v. United States, 260 F.2d 393, 397 (8th Cir.1958)); see also Schoenfeld, 867 F.2d at 1062.

[Cases holding there is no absolute right to an instruction that the testimony of an uncorroborated accomplice should be considered with caution; it is a matter of judicial discretion, depending on the evidence in the trial.]

DEFENDANT'S PROPOSED JURY INSTRUCTION-NO. 7

JUDICIAL NOTICE OF ADJUDICATIVE FACTS

The law allows the court to take judicial notice of facts that are not subject to reasonable dispute.

Accordingly, the court takes judicial notice of these facts:

The government's witness Fritz Arlo Looking Cloud was found guilty of first degree murder in the death of Anna Mae Aquash. His conviction was affirmed by the United States Court of Appeals. His guilt of that crime has been proven beyond a reasonable doubt.

In the course of his trial, the government proved, beyond a reasonable doubt, each of the following facts:

1. Arlo Looking Cloud killed or aided and abetted in the killing of Anna Mae Aquash.
2. Arlo Looking Cloud killed or aided and abetted the killing of Anna Mae Aquash with malice aforethought.
3. The killing was premeditated by Arlo Looking Cloud.
4. Arlo Looking Cloud acted with the specific intent to kill Anna Mae Aquash.

You may, but are not required to, accept as conclusive any fact judicially noticed.

Source: Rule 201, Federal Rules of Evidence