

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

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

DEFENDANT MARSHALL'S
MOTION AND AFFIRMATION FOR THE
ISSUANCE OF A SUBPOENA
PURSUANT TO RULE 17(C) OF THE
FEDERAL RULES OF CRIMINAL
PROCEDURE

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and pursuant to Rule 17 (c) of the Federal Rules of Criminal Procedure, respectfully petitions this Court for an Order directing the issuance of a subpoena directing the Sheriff of Lawrence County to appear as a witness in the trial of the defendant and to produce certain tape-recordings and records in his possession. Said subpoena is to be issued at the expense of the United States government.

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

1. On August 20, 2008, the defendant Richard Marshall was charged in an indictment with the crime of first degree murder. He has pleaded not guilty and is awaiting trial. The government's key witness against Mr. Marshall is Fritz Arlo Looking Cloud, who is serving a life sentence for the murder of Anna Mae Aquash. After he began cooperating with the

government in August 2008, the government had Looking Cloud removed from federal penitentiary and allowed him to be held in county jails in South Dakota.

2. Looking Cloud was being held in the Lawrence County jail in Deadwood from April 4, 2009 to some unknown date, believed to be in August.

3. I have previously subpoenaed, received and listened to tape-recordings of telephone calls Looking Cloud made from the Lawrence County jail in Deadwood, as well as recordings of calls made earlier from the Meade County jail in Sturgis. Looking Cloud has no expectation of privacy in these calls: each and every call made by prisoners in those jails is preceded by a recording warning the prisoner that his call is subject to recording and monitoring.

4. The recordings of calls made by Looking Cloud from the Lawrence County jail that I received and listened to were made between April 4 and April 21, 2009. I am now seeking to subpoena recordings of calls made after April 21, 2009.

5. While Looking Cloud was incarcerated in the Meade and Lawrence County jails, he regularly telephoned members of his family and friends. Pursuant to the Sheriff's regular jail policy, telephone calls made by prisoners in the Lawrence County jail are recorded and saved by jail personnel. In the recordings of Looking Cloud's calls from jail I have listened to, I have heard him make statements that he expects to benefit from his co-operation and testimony for the government, that he expects to "get out," and make other statements that can be used as favorable trial evidence for Defendant Richard Marshall. I have good reason to believe and do in fact believe that recordings of statements made by Looking Cloud in his telephone calls from jail made after April 21, 2009 will also constitute evidence that is favorable to the defendant Richard Marshall.

6. Moreover, based on my own investigation, I have reasonable cause to believe that Looking Cloud was transferred from Lawrence County jail to the South Dakota State penitentiary some months ago, for approximately two months, presumably as punishment for some serious disciplinary offense while he was incarcerated in the Lawrence County jail. His phone conversations are likely to provide evidence concerning that misconduct that can be used to further impeach his credibility.

7. The audio-tape recordings of Looking Cloud's calls made from the Lawrence County jail after April 21, 2009 are necessary and essential to the defendant's right to present a defense, to present exculpatory evidence and to cross-examine his accuser. They are necessary to show Mr. Looking Cloud's motive for testifying and his expectations of receiving benefits and reward as a result of his cooperation with the prosecution.

8. Therefore, undersigned defense counsel requests issuance of a subpoena as follows:

To: RICHARD MOWELL, SHERIFF
LAWRENCE COUNTY SHERIFF'S OFFICE AND JAIL
78 SHERMAN STREET
DEADWOOD, SD 57732

PRODUCE ALL TAPE-RECORDINGS OF TELEPHONE CALLS AND CONVERSATIONS OF LAWRENCE COUNTY JAIL PRISONER FRITZ ARLO LOOKING CLOUD, FROM APRIL 21, 2009 TO THE PRESENT DATE; AND ALL RECORDS, REPORTS, MEMORANDA, NOTES, LOGS AND OTHER DOCUMENTS IN THE POSSESSION OF THE SHERIFF'S DEPARTMENT AND/OR THE LAWRENCE COUNTY JAIL PERTAINING TO DISCIPLINARY OFFENSES, WRITE-UPS, VIOLATIONS OR POSSIBLE CRIMES INVOLVING FRITZ ARLO LOOKING CLOUD AT ANY TIME DURING HIS INCARCERATION IN THE LAWRENCE COUNTY JAIL.

8. Counsel requests that the order should provide that the materials should be produced to defense counsel on or before December 11, 2009.

9. I was appointed defense counsel under the Criminal Justice Act (CJA). The Defendant, Richard Marshall, is indigent and seeks service of this subpoena by the United States Marshall or Deputy Marshall, pursuant to Federal Rule of Criminal Procedure Rule 17(b), with expenses and fees to be paid by the United States government.

Dated this _____ day of November, 2009.

RICHARD MARSHALL, Defendant

By

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

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Motion and Affirmation for the Issuance of Subpoena on the government by e-mailing a copy of the same to AUSA Robert Mandel (Robert.Mandel@usdoj.gov) and John Murphy (jmurphysd@hotmail.com) on the 13th day of November, 2009.

/s/ Dana L Hanna

Dana L. Hanna