

FILED
DEC 17 2009
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,	*	CR 08-50079
	*	
Plaintiff,	*	
	*	
vs.	*	ORDER
	*	
JOHN GRAHAM, a/k/a/ John Boy Patton,	*	
VINE RICHARD MARSHALL, a/k/a	*	
Richard Vine Marshall, a/k/a	*	
Dick Marshall,	*	
	*	
Defendant.	*	
	*	

Pending before the Court is a Motion to Compel Disclosure of Witness, doc. 380, filed by Defendant Marshall. Marshall asks the Court to order the government to investigate, discover and disclose the identity of an individual who wrote two pages of notes contained in discovery materials provided to Marshall by the government. Marshall speculates that the notes were taken during an interview of Arlo Looking Cloud. He wishes to call the writer as a witness to impeach Looking Cloud's testimony at trial because he believes Looking Cloud made statements which are inconsistent with the notes. In the motion to compel, Marshall's lawyer talks about communications he had with the Assistant United States Attorney, Robert Mandel, regarding the handwritten notes. Mandel informed Marshall's lawyer that his efforts to locate the writer of the two pages of notes have been unsuccessful, and that he has "no idea" who wrote the notes.

The Court reviewed the two pages of notes and cannot determine whether they are from an interview of Looking Cloud. The notes could be from a variety of things. The government provided the defense with the notes, and there is no indication that the government is withholding any favorable evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Marshall cites no

authority for the proposition that the government is required to find the author of the notes, and the Court finds that the government does not have a duty to conduct further investigation to determine who wrote the notes. Accordingly,

IT IS ORDERED that the Motion to Compel Disclosure of Witness, doc. 380, is denied.

Dated this 17th day of December, 2009.

BY THE COURT



Lawrence L. Piersol

United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
DEPUTY