

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. CR 08-50079

DEFENDANT MARSHALL'S
SUPPLEMENTAL MOTIONS IN LIMINE

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, and pursuant to his constitutional rights to a fair trial, and to Rules 401, 402 and 403 of the Federal Rules of Evidence, hereby moves in limine for the following orders:

1. To preclude the government from using any name other than Vine Richard Marshall, the defendant's legal name when reading the indictment. Use of other names is prejudicial.

2. To preclude government from offering any testimony from Cleo Gates or any other witness making any reference to the contents of a writing that has never been seen by Cleo Gates or any other government witness. On information and belief, the government may seek to ask questions calling for speculation as to the contents of a writing that will not be introduced in evidence and which neither Cleo Gates or any other government witness would claim to have read. Testimony speculating as to the contents of an out of court writing is inadmissible hearsay, not relevant or probative, and unfairly prejudicial.

3. To preclude the government from offering or making any reference to an out of court statement by a deceased out of court declarant— Myrtle Poor Bear on the grounds that such out of court declaration would be inadmissible, irrelevant and prejudicial hearsay.

4. Cleo Gates will testify that some weeks prior to December 1975, rifles belonging to

Richard Marshall were removed from the Marshall home and taken to Mr. Marshall's father and stepmother. The Defendant moves to preclude the government from questioning the witness Cleo Gates as to the reason why defendant Marshall had his rifles removed from his home and taken to the home of his mother and stepfather. Such questioning would lead to the introduction of testimony that is inadmissible, not probative, and unduly prejudicial.

5. To preclude the government from making any reference to or eliciting or offering any testimony or evidence concerning events regarding any arrest of the defendant or any case other than the one charged in the indictment, as such testimony would be irrelevant, without probative value and unduly prejudicial.

6. To preclude the testimony of any FBI agent, Ecoffey or any witness other than a qualified pathologist as to their opinion as to whether marks on Anna Mae Aquash's body were "ligature marks" or any testimony as to the origin of any alleged marks, on the grounds that only a qualified expert witness such as a forensic pathologist would be competent to give such an opinion.

7. To prohibit the government from offering any theories, opinions or testimony that Anna Mae Aquash was or may have been raped, on the grounds that such a theory would be entirely speculative, lacking in any probative value as to contested issues in this case and would create a substantial likelihood of undue prejudice.

WHEREFORE, the defendant moves in limine for the above-described orders.

Dated this 19th day of January, 2010.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Motion was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Robert Mandel, Assistant United States Attorney
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 19th day of January, 2009.

/s/ Dana L. Hanna _____

Dana L. Hanna