

UNITED STATES DISTRICT COURT
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.

CR 08-50079

UNITED STATES' RESPONSE TO
MOTION TO QUASH SUBPOENA
OF THEDA CLARKE

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, and responds to Motion to Quash Subpoena of Theda Clarke (DE #585) as follows:

1. Theda Clarke was subpoenaed by the United States to testify at trial. In her motion, the witness relies on Fed. R. Evid. 403, 601 and 602 in seeking an order to quash her subpoena. It is the position of the United States that none of these rules provide a basis for quashing the subpoena. Fed. R. Evid. 403 speaks to the exclusion of relevant evidence on the grounds of prejudice, confusion or waste of time. The United States does not believe that this Rule provides a basis for

quashing a subpoena, although if the Court were to make such a finding, such evidence could be excluded. Fed. R. Evid. 601 is the general rule of competency as to witnesses. This Rule provides that “every person is competent to be a witness except as otherwise provided in these Rules.” Again, the United States finds no basis in this Rule or any other, under which the subpoena could be quashed. Finally, the witness refers to Fed. R. Evid. 602, going to lack of personal knowledge. It is the position of the United States that this witness does have personal knowledge regarding the facts of this case.

2. Counsel for the witness also seeks to have her testimony quashed on the basis that she will exercise her Fifth Amendment rights against self-incrimination and will be unwilling to testify. While the witness may seek to exercise this right, again it is the position of the United States that this does not provide a basis on which to quash the subpoena. If she chooses to exercise that right when called as a witness, that matter could be resolved at that time.

Accordingly, the witness’s motion to quash subpoena should be denied.

Respectfully submitted this 1st day of February, 2010.

/s/ Robert A. Mandel

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2010, I served by electronic transmission, a true and correct copy of the foregoing United States' Response to Motion to Quash Subpoena of Theda Clarke on:

Dana Hanna
Attorney at Law

John Murphy
Attorney at law

Gregory Erlandson
Attorney at Law

/s/ Robert A. Mandel

Robert A. Mandel