

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
APR 07 2010
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UNITED STATES OF AMERICA,	*	CR 08-50079
	*	
Plaintiff,	*	
	*	
vs.	*	ORDER
	*	
VINE RICHARD MARSHALL, a/k/a	*	
Richard Vine Marshall, a/k/a	*	
Dick Marshall,	*	
	*	
Defendant.	*	
	*	

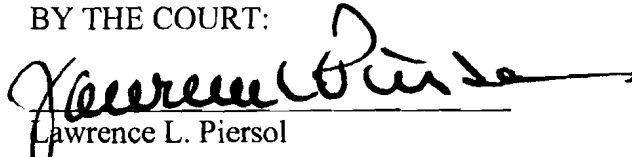
By Order issued March 23, 2010, doc. 705, the government was directed to file a supplemental response to defendant Marshall's renewed Motion to Dismiss Indictment for Destruction of Evidence. The government's response, doc. 717, including the supporting affidavits, reveal Abe Alonzo was acting as an agent of the federal government when he gathered evidence in the course of the federal investigation into the murder of Anna Mae Aquash. Marshall's subsequently filed Affirmation in Support of Motion to Dismiss for Destruction of Evidence, doc. 730, lends further support to the fact that Abe Alonzo was acting as an agent of the federal government at least until Alonzo was taken off the Aquash case by his new Denver Police Force superior in 1999.

The Court must next determine if evidence was destroyed in bad faith. *See United States v. Malbrough*, 922 F.2d 458, 463 (8th Cir. 1990) ("Failure to preserve potentially useful evidence is not a denial of due process unless there is a showing of bad faith.") Commander Priest's email regarding the disposal of evidence once held by the Property Bureau of the Denver Police Department contains information which is important to the Court's inquiry into bad faith. Whatever Commander Priest has to say about destruction of the evidence relating to the murder of Anna Mae Aquash should be in the form of an affidavit and not an email. Accordingly,

IT IS ORDERED that, on or before Monday, April 12, 2010, the government shall serve and file an Affidavit of Commander Jonathyn Priest including everything he has to say about the Denver Police Department's destruction of evidence relating to the murder of Anna Mae Aquash.


Dated this 7th day of April, 2010.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
DEPUTY