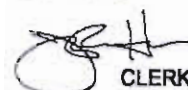


**FILED**

APR 12 2010

  
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

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UNITED STATES OF AMERICA

Plaintiff,

vs.

CR 08-50079

UNITED STATES' COMPLIANCE  
WITH COURT'S ORDER (DE #741)

VINE RICHARD MARSHALL a/k/a  
RICHARD VINE MARSHALL a/k/a  
DICK MARSHALL,

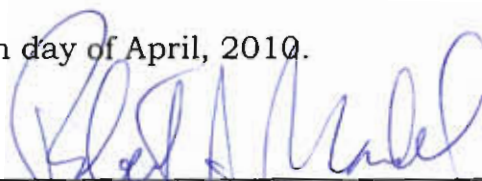
Defendant.

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Comes now the United States of America by and through United States Attorney Brendan V. Johnson and Assistant United States Attorney Robert A. Mandel, and respectfully files its Compliance With Court's Order (DE #741).

On April 7, 2010, the Court ordered the United States to file an affidavit from Commander Jonathyn Priest of the Denver Police Department regarding the destruction of evidence relating to the murder of Anna Mae Pictou Aquash. Accordingly, Commander Priest's affidavit is attached.

Respectfully submitted this 12th day of April, 2010.



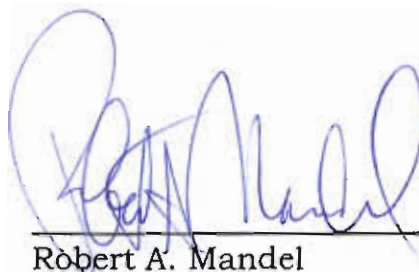
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ROBERT A. MANDEL  
Assistant United States Attorney  
515 9<sup>th</sup> Street #201  
Rapid City, SD 57701  
605-342-7822  
Robert.Mandel@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2010, I served via fax, a true and correct copy of the foregoing United States' Compliance With Court's Order on:

Dana Hanna  
Attorney at Law  
816 Sixth Street  
Rapid City, SD 57701  
FAX: 791-1834



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Robert A. Mandel

**AFFIDAVIT**

**STATE OF COLORADO**        )  
  ) **ss.**  
**COUNTY OF DENVER**        )

I, Jonathyn Priest, having been sworn, do hereby state and depose as follows:

I am the Commander of the Major Crimes Section of the Denver Police Department, which includes the Homicide Unit. Our evidence and property protocol provides that when we prepare to dispose of evidence held in relation to a death investigation, all invoices related to that evidence come through me for final sign-off.

The Homicide Unit of the Denver Police Department investigates all unattended, accidental, suicidal, homicidal, and equivocal deaths occurring in the City and County of Denver, with the exception of traffic fatalities. Because of this, we maintain a list of all deaths occurring in the City and County of Denver that meet this criterion on a computer within the unit.

In late 2001 (October/November), I received a notice from the Property Bureau requesting a review of evidence held in relation to what was titled a homicide case under property invoice #590402. The invoice date showed September 26, 2000, with a location of recovery as 2900 Federal Blvd. The invoice listed no case number or assigned investigator. The invoice indicated that there were seventeen items maintained under this invoice number. Fifteen of the items were audio tapes, while the remaining two were video tapes. Many

of the tape entries listed a name (possibly the person interviewed perhaps).

Upon receipt of this invoice I researched (through our in-house computer and the department case computer) the unknown case by invoice number, location (and surrounding locations), date (and surrounding dates), and names listed with many of the recovered tapes. I found nothing that matched. I also reviewed homicide cases occurring near this time and crosschecked the names to seek a match, with no results. I contacted the Property Bureau and asked if there was any additional information related to this invoice. They stated that they did not have anything additional. Occasionally, the investigating detective, or Property Bureau employee, may list 'attempt murder cases' as "homicide" on the invoice. Because of this, I researched this possibility as well, without success.

On January 7, 2002, I signed the request for disposition from the Property Bureau authorizing the disposal of the items under invoice #590402. The Property Bureau disposed of the items on January 30, 2002.

In early 2003 (January/February), Detective Abe Alonzo contacted me and inquired as to the disposal of these items. I advised him that I received the invoice for a case that I could not locate within the records database of the Denver Police Department and subsequently approved the disposal of the items. Detective Alonzo told me at that time that the items related to an ongoing homicide investigation that he was conducting as a detective in the Intelligence Bureau. I was familiar with the case, and had consulted on it previously; however, I always believed that authorities in South Dakota were

investigating and that Detective Alonzo was assisting with that endeavor. I never believed that we held physical evidence for the case.

While speaking with Detective Alonzo about the items disposed of, I remembered that we had a box in our records archive labeled "Aquash." The records archive room is in the basement of Denver Police Headquarters. Detective Alonzo and I responded to the file room and looked in the box. There, we observed several audio and video tapes (many with the same names listed on the property invoice). Detective Alonzo related that he would make copies of these tapes and pass them on to Federal prosecutors.

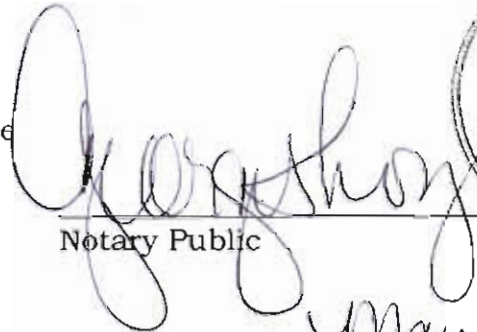
I made notice to the command staff of the Criminal Investigations Division about this incident and heard nothing further until late December 2009. On January 11, 2010, I again went to the archive room of the Denver Police Department and located the box containing files from the Aquash case. Within this box are tapes. I do not know the content of the tapes, however, believe that many could be copies (or originals) of the missing tapes.

There was never any intent by myself or the members of the Denver Police Department to dispose of evidence related to an on-going criminal investigation. Prior to disposal, I made reasonable efforts to match the items to cases investigated by the Homicide Unit (due to the evidence title) of the Denver Police Department, never realizing another police unit held the items for a Federal agency.

Dated: April 8, 2010.

  
\_\_\_\_\_  
JONATHYN PRIEST

SUBSCRIBED and SWORN to before me  
this 8 day of April, 2010.

  
\_\_\_\_\_  
Notary Public



My Commission expires: May 11, 2013

(SEAL)