

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

LAWRENCE L. PIERSOL, UNITED STATES DISTRICT JUDGE, PRESIDING

Jeana Holso, Deputy Clerk
April 13, 2010

Judy Thompson, Court Reporter
Court Time: 9:12 a.m. to 10:37 a.m.

CR. 08-50079-02

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINE RICHARD MARSHALL,
a/k/a Richard Vine Marshall,
a/k/a Dick Marshall,

Defendant.

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Robert Mandel
Rod Oswald

Dana Hanna

9:00 a.m.

Enter **MOTIONS HEARING AND PRETRIAL CONFERENCE PROCEEDINGS**
before the Honorable Lawrence L. Piersol, United States District Judge, presiding

Counsel note their appearances for the record

PENDING MOTIONS:

[89] Dfdt's First Motion In Limine (filed 12/08/08) to preclude government from offering evidence of statements made by Serle Chapman and statements which Chapman attributes to the defendant are admissible as adoptive admissions under Rule 801(d)(2)(B) of the Federal Rules of Evidence Mr. Hanna argues in support and requests hearing with Serle Chapman prior to testimony
Mr. Mandel argues in opposition
Mr. Hanna responds
The Court makes inquiry of Mr. Mandel
Enter ORDER **denying** motion

Mr Hanna moves the comments are hearsay and should be precluded
Mr. Mandel argues in opposition
Mr. Hanna replies
Enter ORDER that Mr. Hanna provide the Court with authority for that position

[132] Dfdt's Second Motion In Limine (filed 01/07/2009) to preclude government from offering testimony from Serle Chapman re: a woman nicknamed "Choach" claimed she had seen Ana Mae Aquash tied up at home of dfdt and that Dfdt replied by saying that "'Choach' got it right".
The Court makes inquiry of Mr. Mandel
Mr. Hanna argues in support
Mr. Mandel responds
Enter ORDER **reserving ruling** until out-of-court hearing is held and Directs counsel to provide the cd and transcript

- [440] Dfdt's Motion In Limine (filed 08/21/2009) to preclude government from offering testimony as follows:
- 1) Arlo Looking Cloud re: house he and his accomplices stopped at in Rosebud, SD, belonged to any named individual
Mr. Mandel argues in opposition
Mr. Hanna responds
Enter ORDER **denying** motion, but may re-addressed during trial
 - 2) Evidence re: Dfdt's prior conviction or alleged bad acts or the specific charge of a prior offense
Mr Hanna argues in support
Enter ORDER **granting** motion, but may be re-addressed during trial
 - 3) Statements made by co-defendant John Graham;
Mr. Mandel indicates this issue is moot
Enter ORDER **denying as moot**
 - 4) Questioning Arlo Looking Cloud as to his belief concerning whether or not it appeared to him that Theda Clarke had previously observed a piece of paper
 - 5) Testimony from Robert Ecoffey as to his opinion about ligature markings on the wrists of Anna Mae Aquash and his opinion re: post-mortem markings
Mr Mandel argues in opposition
Mr. Hanna responds
Enter ORDER **Reserving Ruling**
 - 6) Precluding govt from making reference in opening statement re: substance of an alleged note referring to "baggage" until after the testimony of Cleo Gates
Enter ORDER **denying** motion
- [568] Motion In Limine (filed 01/19/10) to:
- 1) Preclude govt from using any other name than Vine Richard Marshall, when reading the Indictment -
Enter ORDER **denying** motion
 - 2) Preclude govt from offering any testimony from Cleo Gates or any other witness reference contents of a writing -
Government argues in opposition
Defense responds
Government replies
Enter ORDER **denying** motion
 - 3) Preclude govt from offering or making reference to an out-of-court statement by a deceased out-of-court declarant, namely Myrtle Poor Bear
Mr. Mandel indicates this issue is moot
Enter ORDER **denying as moot**.

- 4) Preclude Cleo Gates testimony as to why 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
Mr. Mandel argues in opposition
Enter ORDER reserving ruling
- 5) Preclude government from making reference or eliciting/offering testimony concerning events re: any arrest of the dfdt or any other case other than the one charged in indictment
Mr. Hanna argues in support
Enter ORDER **granting** motion, but may be re-addressed during trial
- 6) Preclude testimony of any FBI agent, Ecoffey or any witness other than a qualified pathologist as to their opinion as to whether marks on AMA's body were "ligature marks"
Mr Mandel argues in opposition
Mr. Hanna responds
Enter ORDER **Reserving Ruling**
- 7) Prohibit govt from offering any theories, opinions or testimony that Anna Mae Aquash was or may have been raped
Mr. Mandel argues in opposition
Mr. Hanna responds
Enter ORDER **Granting** motion, but may be re-addressed during trial

Mr. Mandel, on behalf government, moves in limine to prohibit the mention or or results of any polygraph examination.

Mr. Hanna, on behalf defendant, indicates he does intend to offer testimony of person who made a polygraph investigator but does not intend to ask any questions regarding the results of the polygraph examination.

10:37 a.m.
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Court in recess.