

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 08-50079-01, -02
)	
Plaintiff,)	
)	
vs.)	ORDER ON DEFENDANT'S
)	ADMINISTRATIVE MOTIONS
)	
JOHN GRAHAM, aka)	
JOHN BOY PATTON, and)	
VINE RICHARD MARSHALL, aka)	
RICHARD VINE MARSHALL, aka)	
DICK MARSHALL,)	
)	
Defendants.)	

INTRODUCTION

Defendant John Graham moves the court for rulings on various administrative matters relating to the conduct of trial. See Docket 46. The district court, the Honorable Lawrence Piersol, referred Mr. Graham's motion to this court for determination pursuant to 28 U.S.C. § 636(b)(1)(A). Each separate topic raised by Mr. Graham will be addressed in turn.

DISCUSSION

A. MOTION FOR CELLULAR TELEPHONE ACCESS

Mr. Graham's counsel requests that he be allowed to have a cellular telephone on his person during the trial. The government does not object to this request so long as Mr. Graham's counsel's use of his telephone complies

with the Standing Order of the District of South Dakota, issued September 24, 2008. Paragraph 4 of that standing order provides, in pertinent part, as follows:

Cellular phones and portable devices that contain cellular phones will be permitted in all courthouses in the United States District Court for South Dakota. Cellular devices must be turned off or in silent mode when taken into courtrooms. Individuals who take such devices into courtrooms may be asked by court security personnel to demonstrate that the device is either turned off or in silent mode. Use of any camera feature inside the courthouse is prohibited unless specifically authorized.

Good cause appearing, it is hereby

ORDERED that Mr. Graham's motion to be allowed to have a cellular phone with him during the trial is granted. The government counsel, and counsel for both Mr. Graham and Mr. Marshall shall be allowed to have cellular telephones with them during trial so long as they are in compliance with the Standing Order noted above.

B. MOTION TO EXCLUDE THE GOVERNMENT AND ANY LAW ENFORCEMENT OFFICERS FROM COMMUNICATION WITH DEFENSE WITNESSES

Mr. Graham moves for an order excluding the government and any law enforcement officials from entering the defense witness room or communicating with defense witnesses while in the defense room, or otherwise intimidating or threatening defense witnesses during the course of the trial in this matter. The government objects to this motion, noting that many of the witnesses in this case will be subpoenaed by both the government and one or both defendants. In addition, the government notes that no witness is compelled to speak to

either party. Finally, the government notes that any complaints about harassment or intimidation may be brought before the court and dealt with contemporaneously rather than prophylactically in a pretrial order.

No evidence has been presented to the court from which the court may conclude that the government has acted improperly toward any witness.

Accordingly, the court hereby

DENIES Mr. Graham's order in this regard. Any party is free to contact witnesses whose testimony will be presented at trial, and any witness is free to refuse to speak to any party. All parties shall exercise courtesy when dealing with witnesses. If any witness has a complaint about harassment or intimidation from any party, that witness should bring his or her complaint before the court immediately and it will be dealt with accordingly at such time.

C. MOTION TO HAVE PARTIES OTHER THAN DEFENSE COUNSEL SEATED AT COUNSEL TABLE DURING JURY SELECTION

Finally, Mr. Graham's counsel seeks the court's permission to have another lawyer not appointed to represent Mr. Graham, Mr. Robert Van Norman, seated at counsel table with him during the jury selection portion of the trial only. Mr. Van Norman is admitted to practice before this court and is a member in good standing of this court's bar.

Mr. Graham also requests that his counsel's paralegal, Erin Ducheneaux, be allowed to sit with him during the entire trial. Alternatively, Mr. Graham's counsel seeks to have Mr. Van Norman and Ms. Ducheneaux seated inside the

bar behind counsel table. The government does not object to this request, but questions whether it is in violation of established practice in the Western Division.

The District of South Dakota has already addressed this issue. Standing Order No. 93-15, issued November 15, 1993, provides as follows:

Only counsel of record . . . clients, or case representatives shall be permitted to sit at counsel table in the courtroom. No other persons, including legal interns, paralegals, or other office staff of an attorney, shall be permitted to sit at counsel table except by prior permission of the Court.

Although the request made by Mr. Graham's counsel is contrary to Standing Order No. 93-15, the standing order itself allows of exception "by prior permission of the Court."

The court takes note of the fact that the discovery in this case is voluminous and that both Mr. Graham's counsel and Mr. Marshall's counsel are solo practitioners. In addition, the government has found it expedient to have two lawyers representing it in this case, presumably because of the effort it will require to marshal the evidence during the trial. Accordingly, the court finds that good cause exists for the request that Mr. Graham's counsel's paralegal be allowed to sit with him at counsel table during the trial to assist in the location and presentation of exhibits and witnesses, and hereby

ORDERS that both Mr. Graham and Mr. Marshall shall be allowed to have their paralegals seated with their counsel at defense counsel's table throughout the trial.

The basis for Mr. Graham's request to have attorney Van Norman seated with him at counsel table is less evident as Mr. Graham does not elaborate on why Mr. Van Norman's presence is needed. However, Mr. Graham's request as to Mr. Van Norman is also more limited in that he only requests his presence during jury selection. The court finds that Mr. Van Norman could assist Mr. Graham's counsel with a minimum of disruption by sitting inside the bar, but not at counsel table itself, and only during jury selection. Accordingly, it is

ORDERED that Mr. Van Norman may assist Mr. Graham's counsel during jury selection from inside the bar. Any similar request by Mr. Marshall for a single additional lawyer, duly admitted and in good standing with this court, to assist him from inside the bar is also hereby granted. Mr. Marshall shall notify the court at the pretrial conference in this matter of the identity of any such lawyer he intends to have seated inside the bar to assist him during jury selection.

CONCLUSION

Mr. Graham's motion as to administrative matters [Docket 46] is granted in part and denied in part as described more fully above.

NOTICE OF RIGHT TO APPEAL

Pursuant to 28 U.S.C. § 636(b)(1)(A), any party may seek reconsideration of this order before the district court upon a showing that the order is clearly erroneous or contrary to law. The parties have ten (10) days after service of this order to file written objections pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. See Fed. R. Crim. P. 58(g)(2). Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require review by the district court.

Dated October 29, 2008.

BY THE COURT:

/s/ Veronica L. Duffy _____

VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE