

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	
vs.)	DEFENDANT GRAHAM'S
)	PROPOSED JURY INSTRUCTIONS
JOHN GRAHAM, a/k/a)	
JOHN BOY PATTON,)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL,)	
Defendants.)	

Attorney for Plaintiff: Marty J. Jackley, United States Attorney
Robert A. Mandel, Assistant United States Attorney
515 9th Street, 2nd Floor
Rapid City, SD 57701
605-342-7822

Attorney for Defendant: John R. Murphy
328 E. New York Street
Suite 1
Rapid City, SD 57701
605-342-2909

Defendant John Graham files his proposed jury instructions.

Dated January 13, 2009.

/s/ John R. Murphy
John R. Murphy
328 East New York Street, Suite 1
Rapid City, SD 57701
(605) 342-2909

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows

MARTY J. JACKLEY

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

ROBERT A. MANDEL

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

DANA HANNA

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

Dated January 14, 2009.

/s/ John R. Murphy
John R. Murphy

Defendant's Proposed Jury Instruction No. 1

In Count I of the Indictment, John Graham is alleged to be “an Indian.” The government must prove beyond a reasonable doubt that Mr. Graham is an Indian for him to be guilty of the offense. If the government does not prove to you by evidence beyond a reasonable doubt that Mr. Graham is an Indian, it is your duty to find him not guilty of the offense.

To determine whether Mr. Graham is an Indian requires that the government proves two things to you beyond a reasonable doubt.

1. The government must prove beyond a reasonable doubt is that Mr. Graham has “Indian blood.” To have Indian blood means to have some blood from an American Indian tribe, within the United States of America, and that the tribe has an existing recognized relationship with the United States government. If Mr. Graham only has blood from a Canadian Indian tribe, or some other country other than the United States of America, he does not have Indian blood as that term is used in this case.
2. The government must also prove beyond a reasonable doubt that Mr. Graham is legally recognized as an Indian. To be recognized as an Indian, a person must be enrolled in or affiliated with an American Indian tribe located in the United States that is formally recognized by the United States government. It is not required that Mr. Graham be enrolled in a federally recognized tribe to be “recognized as an Indian.” It is important for you to note that social or spiritual involvement with members of a federally recognized tribe alone is not sufficient to find that Mr. Graham is “recognized as an Indian.”

Recognition requires that the government prove that Mr. Graham have some Indian blood, that the tribe from which he received his Indian blood is recognized by the United States government, and that he was enrolled in, recognized by or affiliated with that tribe.

If you find that the government has not proven beyond a reasonable doubt that Mr. Graham has “Indian blood” or is not recognized as an Indian, it is your duty to find Mr. Graham not guilty of Count I.

Defendant's Proposed Jury Instruction No. 2

In Count II of the Indictment, Annie Mae Aquash a/k/a Annie Mae Pictou is alleged to be "an Indian." The government must prove beyond a reasonable doubt that Ms. Aquash was an Indian for Mr. Graham to be guilty of the offense. If the government does not prove to you by evidence beyond a reasonable doubt that Ms. Aquash was an Indian, it is your duty to find Mr. Graham not guilty of the offense.

To determine whether Ms. Aquash is an Indian, the government must prove two things to you beyond a reasonable doubt. Both things must be proven to you beyond a reasonable doubt for you to find that Ms. Aquash is an Indian.

1. The government must prove beyond a reasonable doubt is that Mr. Graham has "Indian blood." To have Indian blood means to have some blood from an American Indian tribe, within the United States of America, and that the tribe has an existing recognized relationship with the United States government. If Ms. Aquash only has blood from a Canadian Indian tribe, or some other country other than the United States of America, she does not have Indian blood as that term is used in this case.
2. The government must also prove beyond a reasonable doubt that Ms. Aquash is legally recognized as an Indian. To be recognized as an Indian, a person must be enrolled in or affiliated with an American Indian tribe located in the United States that is formally recognized by the United States government. It is not required that Ms. Aquash be enrolled in a federally recognized tribe to be "recognized as an Indian." It is important for you to note, however, that social or spiritual involvement with members of a federally recognized tribe alone is not sufficient to find that Ms. Aquash is "recognized as an Indian."

Recognition requires that the government prove that Ms. Aquash have some Indian blood, that the tribe from which she received her Indian blood is recognized by the United States government, and that she was enrolled in, recognized by or affiliated with that tribe.

If you find that the government has not proven beyond a reasonable doubt that Ms. Aquash has "Indian blood" or is not recognized as an Indian, it is your duty to find Mr. Graham not guilty of Count II.