


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
APR 03 2009


UNITED STATES OF AMERICA,

CR08-50079-01

Plaintiff,

v.

JOHN GRAHAM aka JOHN BOY
PATTON, and VINE RICHARD
MARSHALL aka RICHARD VINE
MARSHALL aka DICK MARSHALL,

Defendants.

**UNITED STATES' MEMORANDUM
OPPOSING DEFENDANT
MARSHALL'S MOTION TO
COMPEL DISCLOSURE OF
GIGLIO AND BRADY
IMPEACHMENT MATERIAL**

COMES NOW the United States of America, by and through United States Attorney Marty J. Jackley and Assistant United States Attorney Robert A. Mandel, and respectfully files its Memorandum Opposing Defendant Marshall's Motion to Compel Disclosure of Giglio and Brady Impeachment Material.

The gravamen of Defendant Marshall's discovery requests that are forming the subject of this Motion were made on November 24, 2008 (Exh. 1) and responded to by the United States on December 22, 2008 (Exh. 2).¹

¹These Defendants have collectively made approaching 100 specific discovery requests commonly repetitive in nature, duplicative and seeking matters that have already been disclosed. See generally, United States' Memorandum in Opposition to Defendant Marshall's Motion for Continuance, DE 158; United States' Response to Defendant Graham's Motion to Compel

As demonstrated herein, Defendant Marshall's discovery requests genuinely lack factual credibility and a supporting record. The United States has received no discovery from either Defendants Marshall or Graham pursuant to their obligations under Fed. R. Crim. P. 16(b) and 26.2, including any discovery that would provide further support or a factual basis for such representations. The United States further specifically responds to the three discovery matters set forth in Defendant Marshall's Motion as follows:

1. Arlo Looking Cloud Agreements

Defendant Marshall's misconceptions are borne out by Exhibit 1 and the attached correspondence of the United States Attorney Marty J. Jackley dated August 8, 2008. Accordingly, Defendant Marshall's request to compel should be denied.

2. Arlo Looking Cloud Discovery

The United States has disclosed all Rule 16 and Brady v. Maryland, 373 U.S. 83 (1963) material to these Defendants. This includes Defendant Looking Cloud's redacted presentence report. See Exh. 3. With respect to any Bureau of Prisons Central Inmate files, Defendant Marshall has failed to demonstrate a factual basis to meet his obligation to support this request, nor has he submitted any legal precedent requiring such disclosures.

Discovery (CR03-50020, DE 254, ¶2; Marshall discovery request of November 11, 2008; November 24, 2008; December 18, 2008, and March 26, 2009).

3. Law Enforcement Officers

With respect to law enforcement officers, including Robert Ecoffey, it is the United States' position that all discoverable Giglio v. United States, 405 U.S. 150 (1972) and other proper impeachment evidence has been disclosed.

Defendant Marshall specifically alleges with respect to a former United States Marshal that "a female cooperating informant, who was given the code-name 'Maverick', and while he was supervising the investigation of the Aquash murder, he entered into an intimate and professionally improper and unethical personal relationship with that informant." See DE 216, ¶6. Based upon the inaccuracy and the nature of this representation, the United States believes it appropriate to require Defendant Marshall to file a supporting record with the Court forming the basis for his representation. Furthermore, Defendant Marshall has presented no Rule 16(b) or Rule 26.2, discovery to the United States regarding or supporting such a claim.

With respect to criminal records of potential witnesses, the United States has and will agree to the longstanding practice in this District to provide the defense with any criminal records of its testifying witnesses that may be properly used for impeachment purposes under the provisions of Fed. R. Crim. 609. In regard to the specific representations made by Defendant Marshall regarding a cooperating witness, the United States is submitting Exhibit 4 for

an *in camera* review to demonstrate there exists no discoverable impeachment evidence under Fed. R. Crim. P. 609.

Accordingly, the United States respectfully requests that all of Defendant Marshall's requests be denied based upon his failure to demonstrate a factual or legal basis in support thereof.

Dated and filed this 3 day of April, 2009.

MARTY J. JACKLEY
United States Attorney



PO Box 2638
Sioux Falls, SD 57101-2638
605.357.2330

CERTIFICATE OF SERVICE

The undersigned hereby certifies on the 3rd day of April, 2009, a true and correct copy of the foregoing was served upon the following person(s), by placing the same in the service indicated, addressed as follows:

John R. Murphy
Dana Hanna

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



Marty J. Jackley
United States Attorney