FILED
APR 0 6 2009

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

CR08-50079-01

UNITED STATES' REPLY TO DEFENDANT MARSHALL'S OPPOSITION TO UNITED STATES' NOTICE OF *RES GESTAE* EVIDENCE, OR IN THE ALTERNATIVE, RULE 404(b) RE: MONTILEAUX INCIDENT

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 Reply to Defendant Marshall's Opposition to United States' Notice of *Res Gestae* or in the alternative, Rule 404(b) Evidence Re: Montileaux Incident.

I. INTRODUCTION

On March 17, 2009, the United States provided its Notice of *Res Gestae* and Rule 404(b) Evidence Regarding the Montileaux Incident. On March 20, 2009, Defendant Marshall filed his Response in Opposition to the United States' Notice.

The United States' Notice identified the following categories of evidence concerning the Montileaux incident admissible in relation to the criminal venture to murder Annie Mae Aquash: (1) the fact that a .32-caliber revolver was involved in the Montileaux matter; (2) the fact that Defendant Marshall had a pending murder charge in the Montileaux matter on December 12, 1975; and (3) Defendant Marshall's conviction for the premeditated murder of Montileaux. As further demonstrated herein, all three areas of evidence are admissible as *res gestae*, or pursuant to Fed. R. Evid. 404(b).

II. FACTUAL BACKGROUND

As presented in its Notice, the United States anticipates the evidence at trial will generally demonstrate that on or about the early morning hours of December 12, 1975, Defendant John Graham, Arlo Looking Cloud, and Theda Clarke brought Annie Mae Aquash to Defendant Marshall's residence in Allen, South Dakota, house #363. See Graham 04854; DE 95; Exh. 1-4 (Defendant Marshall's statements). Aquash was being held against her will. See Graham 04854; DE 95, Exh. 2 (Defendant Marshall's statement). Defendant Marshall took Defendant Graham, Looking Cloud, and Clarke into his bedroom in which he provided consultation, including the exchange of a handwritten note presented by Clarke asking if he could take care of this "baggage." See Graham 04886-04888. See DE 95, Exh. 3, 4 (Defendant Marshall's statements). Thereafter, Defendant Marshall provided Clarke, Looking Cloud, and Defendant

Graham with a .32-caliber revolver and shells to further the criminal venture. See Graham 04886-04888; DE 95, Exh. 3 (Defendant Marshall's statement).

III. DISCUSSION

The gravamen of Defendant Marshall's response is limited to the .32-caliber revolver and the neck area of victim Montileaux's injury. Significantly, the *intrinsic evidence* concerning "the existence of Defendant Marshall's pending murder charge in the Montileaux matter on December 12, 1975," has not been controverted. Indeed, the existence of Defendant Marshall's pending murder charge in Montileaux was material to several aiders and abettors in developing and carrying out the plan and scheme to murder Aquash. It further affected the role Defendant Marshall ultimately played on December 12, 1975, since it prompted him to not serve as a triggerman in the murder of Aquash.

Accordingly, the existence of Defendant Marshall's pending murder charge in the Montileaux matter on December 12, 1975, and its effect on the criminal venture to murder Aquash is intrinsic and admissible in the prosecution of both Defendant Marshall and Graham. See United States v. Swinton, 75 F.3d 374, 378 (8th Cir. 1996) ("[W]here evidence of other crimes is so blended or connected with the ones on trial as that proof of one incidently involves the others; or explains the circumstances; or tends logically to prove any element of the crime charged, it is admissible as an integral part of the immediate context of the crime charged"). The remainder of this response will

accordingly focus on the Montileaux conviction and H&R .32 caliber revolver evidence.

Defendant Marshall's attempt to draw inconsistencies in relation to the possible whereabouts of the Montileaux H&R .32-caliber revolver on December 12, 1975, fails to provide a legal justification for exclusion. First, despite Defendant Marshall's claims, on March 1, 1975, the evidence demonstrates that Defendant Marshall was as a matter of law in possession of an H&R .32-caliber revolver and ammunition. Following the high-speed chase that ensued after the Montileaux shooting, the officers seized several weapons from the vehicle in which Defendant Marshall was a passenger. See Graham 04962-65; Exh. A, Vol. V, p.29. Specifically, the H&R .32 revolver was found under the *right, front seat* of this vehicle. Exh. A, Vol. V, p.29. At the conclusion of the high-speed chase, Defendant Marshall exited from the *right side* of this vehicle. Exh. A, Vol. V, p.25. Under federal law, knowing possession can be actual or constructive, as well as sole or joint. See United States v. Piwowar, 492 F.3d 953, 955 (8th Cir. 2007) (United States v. Guenther, 470 F.3d 745, 747 (8th Cir. 2006)). Constructive possession of a firearm is established if the possessor had control over the place where the firearm was located, or control, ownership, or dominion over the firearm itself. Id.

Second, the Montileaux evidence receipt of June 1, 1975, clearly provides that the 1968 white Ford convertible was released, along with the "entire

contents that were seized at the time of the arrest of Russell Means and Richard Marshall." See Graham 04964, Exh. C (evidence receipt). While the .22-caliber revolver used by Defendant Marshall to shoot Montileaux was submitted to the FBI laboratory for testing, there is no record that custody of the H&R .32 revolver was transferred for any testing. See Exh. D, Report of Federal Bureau of Investigation dated March 27, 1975. There is no further known record after June 1, 1975, of the location of this .32 caliber weapon in the sheriff's investigation file. The South Dakota Division of Criminal Investigation's [DCI] lab has no evidence that the H&R .32 revolver was ever presented to DCI for reference collection, destruction, or forfeiture. See generally, SDCL § 23A-37-13. There is similarly no known record of this firearm with the Bureau of Alcohol, Tobacco, and Firearms. No H&R .32-caliber revolver was received into evidence at the actual Montileaux trial.

Furthermore, there exists a separate witness' account of Marshall's possession of a gun shortly after his pretrial release on Montileaux. See Exh. E, witness statement dated March 22, 1976. Specifically, the witness stated: "Dick stood up and we went out and came back and he had a gun with him it was a black one, and he told Webster, 'You know' he said, 'this girl here knows alot about things that I have done, and if some day she decides to turn against me, and everybody is going to know what kind of guy that I am and the things that I did.'" Id. at p.4.

In any event, the admissibility of the Montileaux H&R .32-caliber evidence in the Aquash murder case does not require a showing by a preponderance that the weapons were the exact same. The H&R .32-caliber in Defendant Marshall's possession during the Montileaux incident was, at a minimum, similar in kind and tends to logically prove intent, knowledge, and absence of mistake or accident. See Fed. R. Evid. 404(b). The factors used to determine the admissibility of Rule 404(b) evidence are: (1) relevant to a material issue raised at trial, (2) similar in kind and close in time to the crime charged, (3) supported by sufficient evidence to support a finding by a jury that the defendant committed the other act, and (4) not have a prejudicial value that substantially outweighs its probative value. See United States v. Kern, 12 F.3d 122, 124-25 (8th Cir. 1993) (other citations omitted).

It is worthy to note that Defendant Marshall limits his focus upon the "similar in kind" factor in his Rule 404(b) analysis. As demonstrated below, all four factors are satisfied with respect to both Marshall's Montileaux conviction and possession of the Montileaux H&R .32 caliber revolver.

A. Relevant to Material Issue

The evidence regarding the H&R .32-caliber revolver is relevant and material to logically prove intent, knowledge, and absence of mistake or accident. Defendant Marshall's conviction for the murder is relevant and material to logically prove intent, knowledge, plan, scheme, and absence of

mistake or accident. See Rule 404(b). It has been the longstanding practice of the Eighth Circuit to construe Rule 404(b) as a rule of inclusion. See United States v. Kirk, 528 F.3d 1102, 1108 (8th Cir. 2008) (citations omitted).

Evidence of Defendant Marshall's prior acts in relation to the Montileaux .32-caliber revolver and the ensuing conviction is admissible based in part upon Defendant Marshall's failure to express with sufficient clarity a decision to not dispute state of mind. See United States v. Thomas, 58 F.3d 1318, 1321-22 (8th Cir. 1995) ("evidence of prior bad acts is admissible unless a defendant expresses with sufficient clarity a decision not to dispute state of mind"). This is borne out in Defendant Marshall's vast pretrial filings. With respect to his Motion to Dismiss Due to Pre-Accusatory Delay, he sets forth the claim that he could not have had firearms in his possession or in his home on the night of Aquash's murder based upon the bond conditions of the pending Montileaux murder case. See Defendant Marshall's Motion to Dismiss Due to Pre-Accusatory Delay, DE 97, p.4.

Consistent therewith, Defendant Marshall's own statements, at a minimum, place Aquash, Clarke, and "two other young guys" at his residence with him the evening in question. See Defendant Graham's Memorandum in Support of Motion for Separate Trials, DE 80, Exh. 3. See also, DE 80, Exh. 1 (statement of Defendant Marshall dated July 27, 2001, confirming Aquash's presence at his home during the time in question); DE 80, Exh. 3 (Defendant

Marshall discussing the "baggage" note, the .32-caliber weapon, and providing the response of "back in the day when you was asked to do something, somebody asks you for something, you didn't ask too many questions"); DE 80, Exh. 2 (Defendant Marshall describing Aquash as possibly being tied up and further indicating that she did not want to be there). To be sure, "'A defendant denies both knowledge and intent when he asserts the 'mere presence' defense, that he was present, but did not know the presence of illegal [activity].'" See United States v. Strong, 415 F.3d 902, 905 (8th Cir. 2005) (quoting United States v. Tomberlin, 130 F.3d 1318, 1320 (8th Cir. 1997); United States v. Hawthorne, 235 F.3d 400, 404 (8th Cir. 2000) (holding defendant's mere presence defense put his knowledge and intent at issue)).

Evidence that a defendant possessed a firearm on a previous occasion can be relevant to show knowledge and intent, irrespective of whether they are the same firearm. See generally United States v. Walker, 470 F.3d 1271, 1274 (8th Cir. 2006); United States v. Lucas, 521 F.3d 861, 865 (8th Cir. 2008) ("evidence that Lucas possessed a firearm on a previous occasion is also relevant to show knowledge and intent"); United States v. Johnson, 535 F.3d 892, 897 (separate Glock firearm evidence was relevant to defendant's knowing possession of a separate Raven Arms handgun which was at issue at trial); Strong, 415 F.3d at 905 (citing United States v. Jernigan, 341 F.3d 1273, 1281 (11th Cir. 2003) ("the case law in this and other circuits establishes clearly the

logical connection between a convicted felon's knowing possession of a firearm at one time and his knowledge that a firearm is present at a subsequent time (or, put differently, that his possession at the subsequent time is not mistaken or accidental)."). Defendant Marshall's claims and denials in relation to possession and ownership of firearms in the Aquash murder further underscores the relevance and probative value of Defendant Marshall's possession of the .32 H&R revolver during the Montileaux incident.

Despite Defendant Marshall's contentions, "When admitted to show intent, the prior acts need not be duplicates, but must be sufficiently similar to support an inference of criminal intent." See Lucas, 521 F.3d at 866 (quoting United States v. Walker, 470 F.3d 1271, 1274 (8th Cir. 2006) (other citations omitted)). Since at least at this stage in the proceedings Defendant Marshall has put knowledge and intent at issue, both the Montileaux conviction and his possession of an H&R .32-caliber firearm are admissible to prove, among others, knowledge and intent, or absence of mistake. See United States v. Lucas, 499 F.3d 769, 781 (8th Cir. 2007); United States v. Love, 419 F.3d 825, 828 (8th Cir. 2005); United States v. Foster, 344 F.3d 799, 801 (8th Cir. 2003).

B. Similar in Kind and Close in Time to the Crime Charged

The Montileaux murder is indisputably close in time to the Aquash murder, with only nine months separating the two murders. While the Eighth Circuit has generally voiced concern to uphold admissions of evidence of prior

acts occurring more than thirteen years prior to the charges, it has approved admissions of prior convictions under Rule 404(b) that were sixteen, eighteen, and twenty years apart. See generally, Walker, 470 F.3d at 1275 (citing Strong, 415 F.3d at 905).

The United States has demonstrated at a minimum, the H&R .32 caliber revolver in Marshall's possession in Montileaux was "similar in kind" to the .32 caliber revolver he possessed nine months later and provided to further the criminal venture to murder Aquash. The similarities further include the .32 caliber ammunition also in his possession in both criminal ventures.

Defendant Marshall's further claim that the Montileaux murder is not similar in kind because "the bullet was fired by an individual who was evidently standing in front of Montileaux, facing him" is misplaced. First, both the Aquash and Montileaux murders involved premeditation, a scheme and modus operandi of a victim being shot with a small caliber handgun in the head/neck regions. Both shootings involve an unarmed victim with no evidence of a struggle.

Evidence at the Montileaux trial was introduced that Montileaux's neck wound was in the front part to the right side of the mid-line. See Exh. B, Vol. IV, p.16. The bullet was found in the left base of Montileaux's neck. Id. at p.37. Furthermore, the bathroom he was shot in was only approximately 4' x 6'. Id. at p.71. As recounted by Montileaux's own words: "No, I started to

take a pee, so then he poked me in the back, I said 'hello' and was going to talk and then I saw this guy shoot me." See Exh. F, statement of Martin Montileaux dated March 5, 1975. Indeed, there exists probative and strong similarities between two premeditated murders involving the use of small revolvers on unarmed victims with no evidence of any struggle.

C. Supported by Sufficient Evidence

The Montileaux shooting is supported by sufficient evidence, including a jury convicting Defendant Marshall of premeditated murder, which was affirmed by the South Dakota Supreme Court. See State v. Marshall, 264, N.W. 2d 911 (S.D. 1978). Defendant Marshall's possession of the H&R .32-caliber revolver is well-documented with photographs and reports, as well as testimony from his trial. See Graham04962-65.

D. Probative Value of Montileaux Evidence Not Substantially Outweighed by any Prejudicial Effect

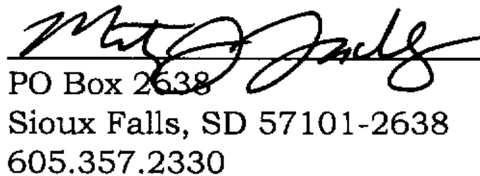
Defendant Marshall's ultimate conviction for the Montileaux matter and his possession of the H&R .32 caliber revolver has significant probative value that is not substantially outweighed by any prejudicial effect. Indeed, any unfair prejudice can be sufficiently diminished by proper limiting instruction. Lucas, 521 F.3d at 866.

IV. CONCLUSION

The United States has sufficiently demonstrated that the jury is entitled to hear the effect the Montileaux pending charge played in both the planning and scheming of the Aquash criminal venture, and the ultimate roles carried out by Defendants Marshall and Graham in the Aquash murder. The jury is further entitled to hear of Defendant Marshall's ultimate conviction for the materially similar murders only nine months apart. Both murders involved a scheme of unarmed victims being shot with small caliber handguns in the head/neck regions without any evidence of a struggle. Similarly, in light of Defendant Marshall's lack of sufficient clarity on state of mind, his possession of a .32-caliber revolver during the Montileaux matter is probative and admissible to show intent, knowledge, and absence of accident or mistake.

Dated and electronically filed this 6th 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 April 6, 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

11906

1 STATE OF SOUTH DAKOTA)
)SS.
2 COUNTY OF PENNINGTON)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

3

4 STATE OF SOUTH DAKOTA,)
)
5 Plaintiff,)
)
6 -vs-)
)
7 RICHARD MARSHALL,)
)
8 Defendant.)

JURY TRIAL

Volume V

9

12982

10

11 BEFORE: Honorable Marshall Young
12 Circuit Court Judge
Seventh Judicial Circuit
13 Pennington County Courthouse
Rapid City, South Dakota

14 APPEARANCES: Jack Klauck
15 States Attorney
Pennington County Courthouse
16 Rapid City, South Dakota
Representing the State of
17 South Dakota

18 Laurence Zastrow
19 Public Defender
519 Kansas City
20 Rapid City, South Dakota

21 -and-

22 John S. Connolly of
Connolly and Heffernan Ltd.
23 Attorneys at Law
100 McColl Building
24 St. Paul, Minnesota
Representing the Defendant,
25 Richard Marshall

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OCT 15 1980

[signature]
Clerk

Exhibit A

1 Q Where were you at that time?

2 A I was down in the ditch, immediately west of the vehicle

3 and to the south of the patrol car.

4 Q Did the occupants exit the vehicle?

5 A Yes, they did.

6 Q Can you tell me how many people exited?

7 A Yes, there were eight.

8 Q Were these men and women?

9 A Yes, sir.

10 Q Do you know how many men there were?

11 A Three men, five young women.

12 Q Were you able to identify any of the men?

13 A Yes, sir.

14 Q Who were they?

15 A The men were Richard Marshall, Russell Means and

16 David Clifford.

17 Q Were you able to determine -- strike that.

18 Was this a two-door or four-door vehicle?

19 A Two-door.

20 Q Were you able to determine from which door the Defendant

21 exited?

22 A Yes, sir.

23 Q Which door?

24 A The right side.

25 Q And Russell Means?

1 A After recording serial numbers, et cetera, I turned all
2 these weapons over to Deputy Sheriff Duane Plucker.
3 Q State's Exhibit No. 8, would you examine it and can you
4 identify that?
5 A Yes, I can.
6 Q Would you do so?
7 A This is the 32 revolver that I found under the right
8 front seat of this vehicle.
9 Q After you examined that weapon, what did you do with it?
10 A I also turned this over to Deputy Sheriff Plucker.
11 Q That weapon was fully loaded?
12 A Yes, sir.
13 Q State's Exhibit 9, would you identify that for me, if
14 you can?
15 A Yes, sir. This is a 357 Ruger revolver which I found
16 on the front seat of this vehicle.
17 Q Did you also turn that weapon over to Deputy Sheriff
18 Plucker?
19 A Yes, I did.
20 Q Was that fully loaded?
21 A Yes, sir.
22 Q And State's Exhibit 10?
23 A Yes, this is a 30 caliber Carbine I found on the rear
24 seat of this vehicle. I turned it over to Deputy Sheriff
25 Plucker, also.

11906

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS.
2 COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

3

4 STATE OF SOUTH DAKOTA,)
)
5 Plaintiff,)
)
6 -vs-) JURY TRIAL
)
7 RICHARD MARSHALL,) Volume IV
)
8 Defendant.)

12982

9

10 BEFORE: Honorable Marshall Young
11 Circuit Court Judge
Seventh Judicial Circuit
12 Pennington County Courthouse
Rapid City, South Dakota

13 APPEARANCES: Jack Klauck
14 States Attorney
Pennington County Courthouse
15 Rapid City, South Dakota
Representing the State of
16 South Dakota

SUPREME COURT
STATE OF SOUTH DAKOTA
F I L E D

OCT 15 1980

[signature]
Clerk

17 Laurence Zastrow
Public Defender
18 519 Kansas City
Rapid City, South Dakota

19 -and-

20 John S. Connolly of
21 Connolly and Heffernan Ltd.
Attorneys at Law
22 100 McColl Building
St. Paul, Minnesota
23 Representing the Defendant,
Richard Marshall

24

25

Exhibit B

1 Q All right. I want to direct your attention to the early
2 morning hours of March 2nd, 1975, and ask if you had an
3 occasion to examine an Indian man at that time?
4 A I did.
5 Q And where did this examination take place?
6 A The emergency room, St. John's Hospital, or Rapid City
7 Regional East, as it's known now.
8 Q Would you describe this individual as you observed him
9 that morning?
10 A Yes. The patient was in the emergency room. He was
11 responsive, in the sense that he was able to verbalize
12 and follow commands. He had a wound in his neck, in
13 the front part of his neck, to the right side of the
14 midline. There was very little bleeding from the
15 wound. The patient spoke in a whisper, in a very hoarse
16 voice. He was unable to move his lower extremities at
17 all and his upper extremities only in parts. He had
18 loss of sensation corresponding with the injury to the
19 spinal cord, which he'd sustained, resulting in loss of
20 function from the standpoint of movement and sensation
21 below the level of the spinal cord injury.
22 Q All right. And what, if any, remedial measures were
23 taken, Doctor?
24 A There were no remedial measures to be taken. The
25 patient had sustained a complete injury to the cervical

1 that.

2 MR. CONNOLLY: There's no

3 question.

4 THE COURT: Mr. Klauck, you

5 should proceed with your next question.

6 BY MR. KLAUCK:

7 Q Doctor, did you remove any missiles from the body of

8 the deceased?

9 A I did.

10 Q Where did you find this missile?

11 A I found a metallic object that was in the left base

12 of the neck.

13 MR. KLAUCK: Your Honor, I have

14 no further questions, other than I'd like to recall him

15 if necessary.

16 THE COURT: Mr. Klauck, as I

17 understand it, you've completed your direct examination

18 with the exception of the identification of an exhibit?

19 MR. KLAUCK: That's correct,

20 Your Honor.

21 THE COURT: You may proceed.

22 MR. KLAUCK: Excuse me, Your

23 Honor. I have one other question.

24 THE COURT: Proceed.

25 BY MR. KLAUCK:

1 Q What did he do?
2 A He went to the bathroom and looked at Martin and spoke to
3 him. At that time, he had come conscious.
4 Q Now, when Don Phillips spoke to Martin in the bathroom,
5 were you present there in the bathroom?
6 A I was. I wasn't in the bathroom, because that's awful
7 small, you know.
8 Q Yes. How big is that bathroom?
9 A Oh, gee, I forget now. I measured that, too. It's
10 small. It seems to me it's about four by six, something
11 like that. I could be wrong on that. I know it's small.
12 It's big enough for its purpose, you know.
13 Q Now, who else was in the bathroom when you were standing
14 there and Don Phillips was there?
15 A Don Phillips leaned down and questioned Martin and
16 Twyla -- she was there, too. All the time after every-
17 body left, she was administering or trying to administer
18 first aid to Martin, you know -- covering him with
19 blankets, put things under his head.
20 Q Did you hear what Don Phillips said to Martin?
21 MR. CONNOLLY: Object, Your
22 Honor. I understand Mr. Phillips is under subpoena. It's
23 hearsay. Anything Phillips said to Martin would be hearsay.
24 I understand he'll be available to testify.
25 THE COURT: Objection sustained.

RECEIPT Date 1 June 1975 **4181**

Received From Penn. Co. Sheriffs Dept.

~~Address~~ One 1968 white Ford Convertible Lic# 45.065-2079

And entire contents that were seized at the time of

For arrest of Russell Means & Richard Marshall.

ACCOUNT			HOW PAID		
AMT. OF ACCOUNT			CASH		
AMT. PAID			CHECK		
BALANCE DUE			MONEY ORDER		

By Rosalie Janis

BK608 Rediform

Exhibit C

7-1a (Rev. 11-26-74)

REPORT
of the

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

To: Sheriff of Pennington County
Rapid City, South Dakota 57701

Attention: Mr. Duane Plucker
Deputy Sheriff

March 27, 1975
AIRMAIL

FBI FILE NO. 95-199535

LAB. NO. PC-L6649 MT

Re: RUSSELL MEANS AND RICHARD MARSHALL, SUSPECTS;
MARTIN MONTILEAUX, VICTIM;
MURDER

YOUR NO.

Examination requested by: Addressee

Reference: Letter 3/10/75

Examination requested: Firearms - Fingerprint

Specimens:

Q1 Bullet
Q2 Cartridge case

K1 .22 caliber German revolver, Serial Number 151899

Result of examination:

Specimen Q1 is a .22 Long Rifle caliber lead bullet. Due to extensive surface mutilation, it was not possible to determine the general rifling characteristics of the weapon from which it was fired. The only area on the Q1 bullet which bears sufficient individual microscopic marks of value for comparison purposes is referred to as the "sheared" area which is caused by cylinder misalignment. Although test bullets obtained from the K1 revolver exhibit

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

CMKelley

Clarence M. Kelley
Director

(Over)

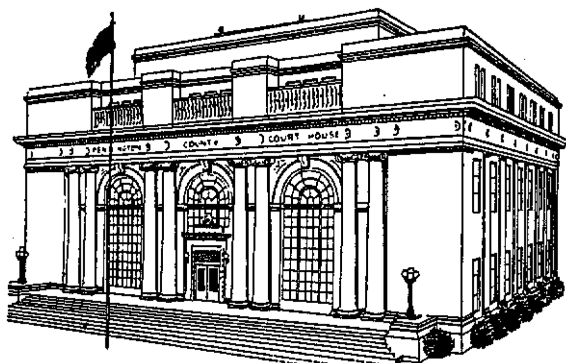
Exhibit D

shearing due to cylinder misalignment, no conclusion could be reached as to whether or not Q1 had been fired from K1. It should be noted that consecutive test bullets from K1 could not be identified with each other due to the changing nature of the individual microscopic marks left in the "sheared" area.

The Q2 cartridge case was identified as having been fired in the K1 revolver.

You are being separately advised regarding the results of the requested latent fingerprint examination.

Specimens Q1, Q2 and K1 are being returned to your office under separate cover by registered mail.



Pennington County

SHERIFF'S DEPARTMENT

RAPID CITY, SOUTH DAKOTA 57701

March 10, 1975

Federal Bureau of Investigation
U. S. Department of Justice
FBI Laboratory
Washington, DC 20537

Re: Suspect: Russell Means and Richard Marshall
Victim: Martin Montileaux
Offense: Murder

Gentlemen:

The evidence described below is being forwarded under separate cover for examination by the FBI Laboratory.

This evidence is being submitted in connection with an official investigation of a criminal matter. It was not, nor will it be, subjected to the same type of technical examination by other experts.

Sincerely,

MEL LARSON, SHERIFF
Pennington County Courthouse
Rapid City, SD 57701

Duane Plucker, Deputy Sheriff

Description of evidence:

1. Item identified as A-4, being a German made six-shot revolver, serial number 151399;
2. Item identified as A-9, one (1) spent round;
3. Item identified as A-10, that being projectile removed from the deceased, one Martin Montileaux.

Examination requested:

Request ballistics test of evidence marked A-4 and A-10 to determine if projectile was from evidence marked A-4;

Request firing pin indentation mark on the one spent round on evidence marked A-9 to be checked in comparison with evidence marked A-4;

Request that Item identified as A-4 to be printed and compared with the FBI file number latent prints of Russell Means, FBI No. 877277C and Richard Marshall, FBI No. 114289N9.

Statement of Facts:

On the early morning hours of March 2, 1975, a Martin Montileaux was feloniously shot in the neck. This office is presently holding two suspects, number 1, Russell Means, number 2, Richard Marshall. On March 7, 1975, one Martin Montileaux expired from the above named gunshot wound in the neck. This office is presently investigating murder charges against both the above named subjects.

Enclosures (3)
Registered Mail

DEP/cjm

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

March 14, 1975

AIRMAIL

To: Sheriff of Pennington County
Attention: Mr. Duane Plucker
Deputy Sheriff
Rapid City, South Dakota 57701

In Reply, Please Refer to File No. PC-L6649 MT

Re: RUSSELL MEANS AND RICHARD MARSHALL, SUSPECTS;
MARTIN MONTILEAUX, VICTIM;
MURDER

From: Director, Federal Bureau of Investigation

The FBI Laboratory has received the evidence which you sent for examination in connection with the above-entitled case. A Laboratory report will be sent to you after the examination has been completed.

The examination is being made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

If any developments occur in this case such as dismissal of charges or guilty pleas which would eliminate the necessity for conducting the requested examinations, please advise the FBI Laboratory immediately.

1-336 (Rev. 7-16-73)

FEDERAL BUREAU OF INVESTIGATION

Washington, D. C. 20537

REPORT

of the

IDENTIFICATION DIVISION

LATENT FINGERPRINT SECTION

YOUR FILE NO.
FBI FILE NO.
LATENT CASE NO. B-7667

March 26, 1975

AIRMAIL

TO: Mr. Melvin Larson
Sheriff of Pennington County
Rapid City, South Dakota 57701

Attention: Mr. Duane Plucker
Deputy Sheriff

RE: RUSSELL MEANS;
RICHARD MARSHALL;
MARTIN MONTILEAUX - VICTIM
PENNINGTON COUNTY, SOUTH DAKOTA
MURDER

REFERENCE: Letter March 10, 1975
EXAMINATION REQUESTED BY: Addressee
SPECIMENS: .22 caliber German revolver, serial #151899, K1

No latent prints of value for identification purposes appear or were developed on the specimen.

The results of the laboratory examinations and the disposition of the items submitted in connection with this case, are being set forth in a separate report.

C M Kelley

Clarence M. Kelley, Director

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STATEMENT FROM MARTIN MONTILEAUX

Date typed: 3/11/75
By: Carolyn McClain

TAPED: 3/5/75, Approximately 11:20 A.M.

Re: Shooting at the Scenic Bar
Date: 3/2/75
Victim: Martin Montileaux

Don Phillips, Deputy Sheriff

Q. Martin, can you talk so we can hear in this thing?

A. What is this for, what is this for?

Q. This is just for my records so that each time that I talk to you, as you improve a little bit I just keep a record of it so that I don't forget cause I don't want to keep coming up here and asking the same questions all the time, is this okay with you?

A. I ain't going to sign anything.

Q. You're what?

A. Ain't going to sign no papers.

Q. You're not going to say no more?

A. I ain't going to sign them.

Q. No, you don't have to sign any papers, and we'll wait until you're out of the hospital or whatever before we ever ask you to sign anything or testify in court, is that okay?

A. Yeah, yeah.

Q. Now, last time I was up here, you were telling me that you don't, you didn't know the fellow that shot you?

A. No.

Q. Had you ever seen him before?

A. No, I never did.

Q. Okay, and you said Russell was, had come in the bathroom with the other guy?

A. They were in there already.

Q. They what?

A. They were in there.

Q. Who wasn't in there?

A. They were in there.

Q. They were just in there?

A. Yeah, both of them.

Exhibit F

Q. Did Russell say anything to you?

A. No, I started to take a pee, so then he poked me in the back, I said hello and was going to talk and then I saw this guy shoot me.

Q. Well did, did Russell hold you or say anything?

A. No, huh-uh, huh-uh, he didn't say othing.

Q. He didn't.

A. Huh-uh.

Q. Did the other guy say anything?

A. I don't know, he just stood there, I was drunk then, too.

Q. Uh-huh, but...

A. They were both drunk.

Q. They were drunk?

A. Yeah, everybody was drunk.

Q. Okay, but, they didnt' say any, did either one of them say any words at all?

A. No they just, just hello there, I said where are you guys going, just started conversation and started talking and then that's when that guy shot me.

Q. And Russell didn't say anything to you?

A. Oh, yeah, just, we didn't, we didn't, we didn't even hardly get to talk.

Q. And you, did you say anything to Russell?

A. Yeah, just hello.

Q. What did you say, I didn't hear that.

A. I said hello.

Q. Just hello?

A. Yeah, I said where are you guys going.

Q. Uh-huh, did you, did you know Russell quite well or.

A. No, this is the first time that I talked to him

Q. Okay.

WITNESSES:

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Martin Montileaux

cjm

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Don Phillips, Deputy Sheriff