

# United States District Court

## District of South Dakota

Office of the Clerk  
Room 128, Federal Building  
400 S. Phillips Ave.  
Sioux Falls, SD 57104-6851

Joseph Haas  
Clerk of Court

Telephone  
(605) 330-6600

April 30, 2009

### TRANSMITTAL OF NOTICE OF APPEAL IN A CRIMINAL CASE (Prepare a separate Transmittal Form for each defendant.)

1. **Case Number & Title:** CR08-40079-01 & 02 USA v. John Graham, a/k/a John Boy Patton & Vine Richard Marshall, a/k/a Richard Vine Marshall, a/ka/ Dick Marshall
2. **Defendant/Appellee:** John Graham, a/k/a John Boy Patton  
**Is Defendant incarcerated?:** yes, Pennington County Jail
3. **Date Notice of Appeal filed:** 04/30/2009
4. **Document being appealed and document number:** #304 Order granting motion to dismiss Count 3 of Indictment; denying motion to dismiss all counts
5. **Sentence imposed:** n/a case has not gone to trial yet  
**Charges:** Count 1 - 18 USC 1111, 1153 & 2 First Degree Murder & Aid & Abet  
Count 2 - 18 USC 1111, 1152 & 2 First Degree Murder & Aid & Abet
6. **Co-Defendant(s):** Vine Richard Marshall  
**Co-Defendant Case Nos.:** CR08-40079-02  
**Have any Co-Defendants filed a Notice of Appeal?:** no
7. **Date of Plea/Verdict:** n/a - case set for trial 5/12/2009
8. **Date Transcript ordered:** n/a
9. **Court Reporter:** n/a
10. **Assistant U.S. Attorney:** Marty Jackley  
United States Attorney  
PO Box 2638  
Sioux Falls, SD 57101-2638  
Robert Mandel  
Asst. U.S. Attorney  
PO Box 2638  
Sioux Falls, SD  
57101-2638

11. **Defense Counsel:** John Richard Murphy  
328 E. New York St., Suite 1  
Rapid City, SD 57701  
(605) 342-2909

**Was Defense Counsel appointed/retained?:** appointed

**Is there any reason why Defense Counsel should not be appointed on appeal?** no

12. **Has the filing fee been paid?:** no - ifp continued from District Court
13. **Is there a pending motion for IFP:** no - ifp continued from District Court
14. **Are there any other pending motions?** yes

**If yes, list pending motions and document numbers:**

#92 - Motion for Joinder to Defendant Marshall's Motion for pretrial hearing and motion in limine

#166 - Motion for Order to Supplement Record

#270 - Motion to Compel Disclosure of Leniency Agreements

#313 - Sealed Motion to Compel Un-Redacted Grand Jury Transcript

#319 - Motion for In-camera review re: Exhibit A to USA's Response Opposing Defendant Graham's Motion in Limine re: Grand Jury Testimony

(These are the pending motions for defendant Graham who has filed this notice of appeal. There are other pending motions filed by co-defendant Marshall.)

15. **Additional comments:** This case is set to begin for trial May 12, 2009 and is a highly publicized case being watched closely by the press. This defendant was previously charged in CR03-50020, USA v. Fritz Arlo Looking Cloud & John J. Graham. Charges against defendant Graham were dismissed and the Government filed a notice of appeal in that case on 10/31/2008. That appeal has not yet been mandated. Your case number is 08-3580.

JOSEPH A. HAAS, CLERK

BY:           /s/ Jackie Meisenheimer            
Jackie Meisenheimer  
Deputy Clerk