

CLERK

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

UNITED STATES OF AMERICA,
Plaintiff,

Case No. 08-50079

vs.

MOTION TO SUPPRESS
STATEMENTS

JOHN GRAHAM, a.k.a.
JOHN BOY PATTON, and
VINE RICHARD MARSHALL, a.k.a.
RICHARD VINE MARSHALL, a.k.a.
DICK MARSHALL,
Defendants.

NOW COMES Defendant Richard Marshall, by and through counsel, and hereby moves the Court to suppress statements allegedly made by him to a federal investigator, Robert D. Ecoffey, on December 26th, 2003, on the grounds that said statements were elicited in violation of Richard Marshall's Sixth Amendment right to counsel.

In support of the motion, Dana L. Hanna, attorney for Defendant Richard Marshall, hereby affirms:

1. I make these affirmations on the basis of information and belief, the sources of which are discovery materials provided to me by the government and information provided to me by attorney Charles Abourezk.

2. The government intends to offer into evidence statements allegedly made by Defendant Marshall to a federal investigator, Robert D. Ecoffey, on December 26th, 2003. At that time and on that date, both Ecoffey and federal prosecutors knew that Marshall had actually invoked his

Sixth Amendment right to counsel in the matter under investigation and that he had retained attorney Charles Abourezk to act as his legal counsel.

3. On January 3rd, 2003, attorney Charles Abourezk gave actual notice to both Robert Ecoffey, Director of Bureau of Indian Affairs Law Enforcement Services and Robert Mandel, Assistant United States Attorney, that he was representing Richard Marshall in the matter of the government's investigation into the death of Anna Mae Aquash. On January 15th, 2003, Marshall testified as a witness before the Grand Jury in that matter. Mr. Abourezk was there with him as his legal counsel.

4. At all times between January 3rd, 2003 and December 26th, 2003, both the government's attorneys and its investigator, Robert Ecoffey, were on notice that Richard Marshall was represented by attorney Charles Abourezk in all matters related to the investigation of this case. [See: Exhibit "A", Affidavit of Charles Abourezk].

5. In spite of the government's actual knowledge that Marshall was represented by counsel, on December 26th, 2003, Robert D. Ecoffey, acting as an investigator for the government, approached Richard Marshall in Pine Ridge, South Dakota and questioned him about events and facts involved in this case, without the presence or knowledge of Marshall's attorney and without any valid waiver of his right to counsel. The government contends that Marshall made statements to Ecoffey that the government now intends to offer as evidence against Richard Marshall in its case in chief.

6. All statements made by Richard Marshall to Ecoffey were elicited by the government's agent in willful violation of the Defendant's Sixth Amendment right to counsel.

WHEREFORE, the Defendant moves this Court to suppress all evidence and statements

made by Richard Marshall to Ecoffey on December 26th, 2003, and further moves for an evidentiary hearing on this motion.

Dated this 4th day of June, 2009.

RICHARD MARSHALL, Defendant

By



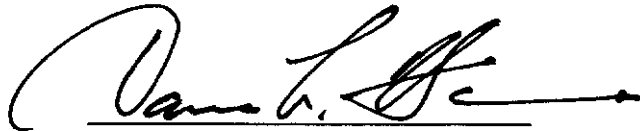
Dana L. Hanna
PO Box 3080
816 Sixth Street
Rapid City, SD 57709
605-791-1832
Attorney for Defendant Marshall

CERTIFICATE OF SERVICE

I hereby confirm that I have served a true and correct copy of the foregoing Motion to Suppress Statements on the other parties in this case by hand delivering to the attorneys of record at the addresses listed below:

Marty J. Jackley, United States Attorney and
Robert Mandel, Assistant United States Attorney
515 Ninth Street, #201
Rapid City, SD 57701

Dated this 4th day of June, 2009.



Dana L. Hanna