

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

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

Case No. CR 08-50079

DEFENDANT MARSHALL'S
ADDITIONAL MOTIONS IN LIMINE

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, and pursuant to his constitutional rights to a fair trial, and to Rules 401, 402 and 403 of the Federal Rules of Evidence, hereby moves in limine for the following orders:

1. To preclude the government from offering testimony from Arlo Looking Cloud that the house that he and his accomplices stopped at in Rosebud, South Dakota belonged to any named individual. Grounds for the motion are that there is no foundation for such evidence in that the witness has no basis for the belief that the house belonged to any particular person; he has repeatedly stated to federal law enforcement officers that he did not know whose house they stopped at. But he was asked in the grand jury presentation if he had come to learn whose house it was, and he said yes, and gave a name. He was being asked to repeat hearsay that was told to him by federal investigators. His hearsay as to who he has been told owned the house is unduly prejudicial, entirely speculative, and has no probative value.

2. To preclude the government from making any reference to, adducing or offering any testimony or evidence concerning Richard Marshall's prior conviction or alleged bad acts or the specific charge of a prior offense. The grounds are that there is no basis under FRE Rule 404(b) for the introduction of such evidence. Richard Marshall denies having committed the act he is

accused of by the government—that is, the act of providing a gun and ammunition to Theda Clarke. Since he denies the act itself this evidence is not admissible to prove intent, plan or motive. *See United States v. LeCompte*, 99 F.3d 274 (8th Cir. 1996). Moreover, the fact and circumstances of the defendant’s prior offense are entirely dissimilar to the facts alleged by the government in this case. There is no probative value to such evidence, and the undue prejudicial effect would substantially outweigh the non-existent probative value of such evidence, which the government would only be offering for purposes prohibited by Rule 404(b).

3. To preclude the government from offering any out of court statements made by Co-Defendant John Graham. Grounds for the motion are that they would deny the defendant his right to cross-examine, and they are unduly prejudicial and have no probative value as to the contested facts in the case against Richard Marshall.

4. To preclude the government from questioning Arlo Looking Cloud as to his belief concerning whether or not it appeared to him that Theda Clarke had previously observed a piece of paper. He was asked that question in the grand jury and such a question calls for pure speculation on his part.

5. To preclude Robert Ecoffey from testifying as to his opinion about ligature markings on the wrists of Anna Mae Aquash and his opinion concerning “post-mortem markings”, on the grounds that there is no basis for this witness to give an expert opinion in a matter involving forensic pathology, a field of expertise for which he is not qualified to give an opinion.

6. Preclude the government from making reference in opening statement regarding the substance of an alleged note referring to “baggage” until after the testimony of Cleo Gates. No such alleged note will be offered into evidence. No witness will testify that they have ever seen such a note. Ms. Cleo Gates, ex-wife of the defendant, has never given testimony, in the grand jury or in Looking Cloud’s trial, about the contents of any alleged note. Nevertheless, the government has repeatedly made references in court and in court documents about the contents of an alleged note that no witness at trial has ever seen or testified about. It would be highly prejudicial to allow the government to make reference to the contents of an alleged note about which there will likely be no testimony, for the purpose of creating a false impression of inculpatory evidence that does not exist. To allow the government to make reference to such a

prejudicial piece of non-evidence in the opening statement would be highly prejudicial to the defendant's right to a fair trial.

WHEREFORE, the defendant moves in limine for the above-described orders.

Dated this 21st day of August, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Additional Motions in Limine was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
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Robert Mandel, Assistant United States Attorney
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John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 21st day of August, 2009.

/s/ Dana L. Hanna

Dana L. Hanna