

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

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	DEFENDANT GRAHAM'S
vs.)	MOTION TO FILE MOTIONS
)	PAST FILING DEADLINE
JOHN GRAHAM, a/k/a)	
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL)	
Defendant.)	

Defendant John Graham moves this Court for its Order permitting him to continue filing discovery motions in this case, and to relieve him of any express or implied closure of the discovery process.

This motion is based on the need for Defendant Graham to address a discovery issue that arose on September 10, 2009. On that date, Defendant Graham was indicted in state court (Pennington County, South Dakota, Criminal File No. 09-3953) with three counts of murder (felony murder/kidnaping, felony murder/rape, and premeditated murder).

During a telephonic hearing on the same date, this Court advised counsel that discovery was closed. The official minutes of that hearing state, "Mr. Murphy requests clarification on closure of discovery. Court reiterates court's

discovery date has passed.” Doc. 454.

In order for Mr. Graham to receive a fair trial, he needs to have access to all discovery to which he is permitted under the Federal Rules of Criminal Procedure, United States Supreme Court and Eighth Circuit Court of Appeals precedent, and, the due process clause of the Fifth Amendment to the United States Constitution. Mr. Graham will be deprived those rights if the Court views discovery as being closed and prohibits him from addressing on-going discovery issues.

Additionally, Mr. Graham respectfully submits that the Court may be mistaken in believing that discovery has been closed and that a discovery deadline has passed. Counsel for Mr. Graham has reviewed the Court’s Order for Trial, Doc. 422, Order Granting Continuance, Doc. 348, Order for Trial, Doc. 187, and Order Fixing Dates, Doc. 44. He is unable to ascertain any date that closed the government’s obligation to provide discovery or set a discovery closure date.

It appears that the Court previously anticipated that discovery would not be closed and that counsel would have the opportunity to seek further relief from the Court. In its Order for Trial, Doc. 187, the Court stated that motions for leave to file additional motions would be considered upon a showing of good cause.

Good cause exists in this case. Mr. Graham seeks immediate disclosure of discoverable information that he has no other means of obtaining. Mr. Graham

has not yet been arraigned on the state court charges. It may be weeks or months before he is arraigned. Until such time as he is arraigned, he has no ability through the state court prosecution to obtain his grand jury transcripts.

Mr. Graham has been given limited access to his state court file. This access shows a deliberate attempt to prevent him from obtaining discovery. The version of the state court indictment that was made available to Mr. Graham has had the names of the witnesses who testified before the grand jury blocked out. South Dakota Codified Law 23A-8-2(2) states that a court must dismiss an indictment if it fails to set forth the name of the witnesses testifying at the grand jury at the foot of the indictment. However, until Mr. Graham is arraigned, he has no ability to address the redaction of names on his indictment. Federal court is the only avenue by which he may obtain discovery of state grand jury transcripts pertinent to the federal murder charges pending against him.

Mr. Graham's desire to obtain the state court grand jury transcripts is not a "fishing trip" that will lead to the disclosure of irrelevant or tangential materials. These transcripts were obtained during a joint state and federal investigation of Mr. Graham. They relate to conduct that the government alleges is relevant to the federal prosecution. The government has already asserted its intent to admit evidence of an alleged rape and kidnaping by John Graham in its federal

prosecution. Rape and kidnaping are the underlying offenses alleged in the state court felony murder counts. These grand jury transcripts will almost certainly contain information that is subject to disclosure. The transcripts are likely to contain alleged statements by Mr. Graham, statements by witnesses that are inconsistent with previous statements they have given, statements by alleged co-conspirators that the government intends to attribute to Mr. Graham, statements alleged by the government as being adoptive admissions by Mr. Graham, and statements by witnesses that contradict or are inconsistent with statements given by other government witnesses.

For these reasons, Mr. Graham seeks leave to file additional discovery motions and to be relieved of any express or implied closure of the discovery process by the Court.

Dated September 11, 2009.

/s/ John R. Murphy

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows:

ROBERT A. MANDEL
DANA HANNA

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

Dated September 11, 2009.

/s/ John R. Murphy
John R. Murphy