

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
SEP 17 2009
[Signature]
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRAHAM, a/k/a/ John Boy Patton,
VINE RICHARD MARSHALL, a/k/a
Richard Vine Marshall, a/k/a
Dick Marshall,

Defendant.

CR 08-50079

ORDER

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Pending before the Court is Defendant Graham's Motion to File Motions Past Filing Deadline. (Doc. 455.)

The Court has indicated that it will consider a motion filed by a party after the motion deadline if the party can show good cause as to why the motion was late filed. Defendant John Graham ("Graham") asserts that he has good cause to file a discovery motion at this time because he was indicted in state court with three counts of murder on September 10, 2009. He wants access to the grand jury transcripts from the state court proceedings but cannot obtain them in state court because he has not been arraigned. Graham cites SDCL 23A-8-2(2) which 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. According to Graham, the names of the witnesses who testified before the grand jury are "blocked out" on the version of the state court indictment that was made available to him. Until Graham is arraigned in state court, he cannot address the redaction of the names on his indictment. Graham believes federal court is the only avenue by which he may obtain discovery of state grand jury transcripts which he believes are pertinent to the federal murder charges pending again him.

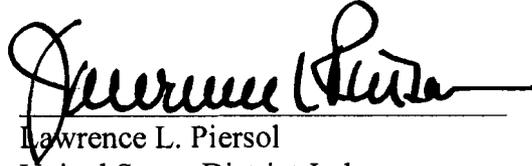
The Court will direct the federal government to respond to Graham's pending motion, and will invite the State to respond. The parties should address whether Graham is entitled to discovery of the grand jury transcripts in the state proceedings, as well as the unredacted version of the indictment. Accordingly,

IT IS ORDERED:

1. That the United States shall submit a response to Graham's motion, doc. 455, and the State of South Dakota may submit a response to the motion. The responses must be served and filed on or before Monday, September 28, 2009. Graham may submit a reply on or before Wednesday, September 30, 2009.

Dated this 17th day of September, 2009.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
DEPUTY