

UNITED STATES DISTRICT  
COURT DISTRICT OF SOUTH  
DAKOTA WESTERN DIVISION

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UNITED STATES OF AMERICA,	*	CR. 08-50079-01
	*	
Plaintiff,	*	
	*	DEFENDANT’S MOTION FOR
v.	*	PRELIMINARY INSTRUCTION ON
	*	READ BACK OF TESTIMONY
	*	
RICHARD MARSHALL,	*	
	*	
Defendant,	*	
	*	

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NOW COMES the Defendant Richard Marshall, by and through his attorney of record, Dana L. Hanna, and hereby moves the Court to give the jury a preliminary instruction that the court will allow read back of testimony to the jury during deliberation.

As grounds for the motion, attorney Dana L. Hanna hereby affirms:

1. Generally, whether to allow the court reporter to read back testimony to the jury, if the jury so requests, during deliberations, is a matter within the discretion of the trial court. United States v. Bear Ribs, 722 F.2d 420, 422 (8<sup>th</sup> Circ. 1983); Stone v. United States, 506 F.2d 561 (8<sup>th</sup> Cir. 1975).

2. This is a murder trial in which the sentence, if there were to be a conviction, would be a mandatory sentence of life in prison.

3. All parties are likely to call several witnesses. The trial is likely to last 2 or 3 weeks.

4. Given the length of the trial and the number of witnesses, it will be difficult for even the

most conscientious jurors to accurately recall specifics details of witness testimony that they may have heard 2 weeks prior to deliberations.

4. There is no good reason to deny the jury the right to hear the verbatim testimony of any witness it wants to hear in order that they find the facts in this case. If a jury requests a read back, it indicates that there is likely to be a difference of opinion, based on the imperfections of memory, as to what the testimony was. Allowing jurors to request the read back of testimony would serve the interests of justice and enhance the integrity of the fact finding process.

WHEREFORE, the defendant Marshall moves the Court to give the jury a preliminary instruction that they will be allowed to hear testimony read back to them during deliberations, if they so request.

Dated this 11<sup>th</sup> day of January, 2010

RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna

DanaL.Hanna

P.O. Box 3080

Rapid City, SD 57709

(605) 791-1832

[dhanna@midconetwork.com](mailto:dhanna@midconetwork.com)

Attorney for Defendant Richard Marshall

**CERTIFICATE OF SERVICE**

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

Robert Mandel, Assistant United States  
Attorney [Robert.Mandel@usdoj.gov](mailto:Robert.Mandel@usdoj.gov)

John Murphy, Attorney for Defendant  
Graham [jmurphysd@hotmail.com](mailto:jmurphysd@hotmail.com)

Dated this 11<sup>th</sup> day of January, 2010.

/s/ Dana L. Hanna  
Dana L. Hanna