

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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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.

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CR 08-50079

UNITED STATES' RESPONSE TO  
DEFENDANT MARSHALL'S  
SUPPLEMENTAL MOTIONS IN LIMINE

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, and responds to defendant Marshall's supplemental motions in limine as follows:

1. Defendant seeks to preclude the United States from using any name other than Vine Richard Marshall when reading the indictment. It is the position of the United States that if the indictment is being read, it is appropriate to read it as defendant is charged in it. The United States does not believe that the mention of other names defendant is also known by is any way prejudicial.

2. Defendant seeks to preclude the United States from offering any testimony from Cleo Gates in which she makes reference to the contents of a writing that was presented to defendant when John Graham, Arlo Looking Cloud, and Theda Clarke

brought Annie Mae Aquash Pictou to the home of Marshall. It is the position of the United States that it is completely appropriate for the witness Cleo Gates to discuss anything she knows as to a note being presented and what that note said regardless of whether she personally read the note or not. Any knowledge she had of what was in the note came from defendant Marshall. Contrary to the suggestion of defendant, this does not constitute inadmissible hearsay.

3. The United States does not intend to offer any out-of-court statements made by Myrtle Poor Bear, deceased.

4. Defendant seeks to prohibit the United States from discussion of why various rifles located in his home were removed and taken to other locations. It was a condition of the bond on defendant's pending state murder charge at the time that he was required to have all weapons removed from his home. It is the position of the United States that the fact that he was subject to pending charges is directly related to what took place in this case and is part of the *res gestae* of this offense.

5. Defendant also seeks to have the United States precluded from offering any evidence regarding the state murder charge that was then pending against defendant and of which he was ultimately convicted. The United States feels that this evidence is highly relevant as to the actions that defendant took on the day that Annie Mae Aquash Pictou was at his home and go directly to his knowledge and intent. It is reasonable for the jury to infer that it was not just happenstance that caused the co-defendants to stop at defendant's house. By the same token, it is reasonable for the jury to infer from this evidence defendant's knowledge and state

of mind when he provided the gun that was used to murder the victim.

6. Defendant also seeks to preclude any testimony other than that of a pathologist as to the “ligature marks” found on the body of the victim when it was discovered on February 24, 1976. It is the position of the United States that the witnesses may testify as to their observations of the condition of the body when it was found, when it was first autopsied and when the subsequent autopsy took place. The opinion that there were “ligature marks” does not require an expert witness, but rather it is reasonable that a competent law enforcement officer could make such observations and give explanations for why such a belief was held.

7. Defendant also seeks to prohibit the government from offering any evidence regarding the fact that Ms. Aquash was raped while she was held captive. The United States disputes that such evidence would be speculative given both that this incident was overheard and that co-defendant Graham made admissions to another individual that he had in fact raped the victim. The fact that an individual was held captive and was raped during captivity prior to the time she was murdered seems to be quite probative of the treatment of the individual and the knowledge and intent of the parties involved.

Accordingly, with the exception of out-of-court declarations by Myrtle Poor Bear, the United States resists defendant’s supplemental motions in limine.

Respectfully submitted this 1st day of February, 2010.

/s/ Robert A. Mandel

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2010, I served by electronic transmission, a true and correct copy of the foregoing United States' Response to Defendant Marshall's Supplemental Motions in Limine on:

Dana Hanna  
Attorney at Law

John Murphy  
Attorney at law

/s/ Robert A. Mandel

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Robert A. Mandel