

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
APR 16 2010

CLERK

UNITED STATES OF AMERICA)	CR08-50079
)	
Plaintiff,)	
)	UNITED STATES' MOTION FOR
v.)	RECONSIDERATION OF ORDER
)	IN LIMINE
VINE RICHARD MARSHALL)	
a/k/a Richard Vine Marshall,)	
a/k/a Dick Marshall)	
)	
Defendant.)	
_____)	

COMES NOW the United States of America, by and through its attorneys, United States Attorney Brendan V. Johnson, Assistant United States Attorney Robert A. Mandel, and Special Assistant United States Attorney Rod Oswald, moves for reconsideration of the Court's order in limine as follows:

1. The Court granted the defendant's motion in limine prohibiting the United States from discussing the defendant's murder of Martin Montileaux in 1975, prior to the incident in this case, and his subsequent conviction of that crime in 1976.

2. Fritz Arlo Looking Cloud has testified on direct testimony and in part of his cross-examination testimony. He has been extensively cross-examined regarding the variation of his earlier stories in which he did not reveal that he had been to the Marshall home in Allen, South Dakota, as opposed to his 2008 admission that he had been to the Marshall home and that the gun that was used to kill Annie Mae Pictou Aquash was provided by the defendant. He has

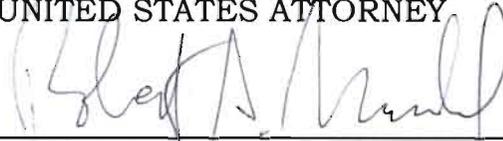
indicated that his reason for not earlier revealing that he had been to the Marshall home in Allen was because of his fear of Marshall. He has not, however, been allowed to reveal that that fear was based on the well known fact that at that time, the defendant had been charged with the murder of Martin Montileaux in Scenic, South Dakota. That fact is inextorably intertwined with his actions.

3. In addition, there is a reasonable inference that Ms. Pictou Aquash was brought to the Marshall home in order for Marshall to commit the murder. The note that was revealed indicating that the defendant was to “get rid of this baggage” or “get rid of this luggage” would make it reasonable to infer that an effort was made to seek Marshall as the executioner.

4. Precluding the United States from offering this evidence denies the jury the ability to weigh the facts in this case, including the significant reason for the inconsistency in Looking Cloud’s testimony. Given the extensive cross-examination to which he has already been exposed, it is the position of the United States that the Court should allow the evidence of the murder committed by the defendant, the knowledge that people had regarding that at the time of the execution of Ms. Pictou Aquash, and his subsequent conviction for that murder.

Respectfully submitted this 16th day of April, 2010.

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY

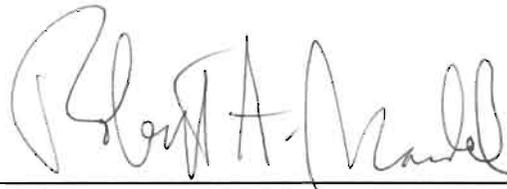


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CERTIFICATE OF SERVICE

The undersigned attorney for the United States, hereby certifies that on the 16th day of April, 2010, a copy of the foregoing was served via hand delivery on:

Dana L. Hanna
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Robert A. Mandel