

**In the U.S. District Court
for the District of South Dakota**

JOHN GRAHAM,)	
)	
Petitioner)	
)	No. 13-cv-04100-RAL
v.)	The Honorable Lawrence L. Piersol
)	
DARIN YOUNG,)	
)	
Respondent.)	

Statement of Facts Genuinely in Dispute

1. Prosecution witness, BIA Agent Nathan Merrick testified that foul play was suspected by agents at the crime scene due to blood underneath the head of the body. (Trial 3 at 177/5-11, 184/24-185/1-8)
2. Prosecution witness, BIA Agent Nathan Merrick testified that a 'couple of FBI agents' were at the crime scene where Aquash's body was discovered before he arrived. [Trial 3 at 173]
3. Prosecution witness FBI Special Agent William A. Wood testified that foul play was not suspected when he came on the case in first couple days of March 1976. [Trial 3 at 125]
4. The prosecution presented the first autopsy report, performed February 25 1976, which was admitted into evidence, and stated that Anna Mae Aquash had been dead for about 7-10 days. (Trial 3 at 104/9-18, Exhibit 1 attached hereto)
5. Graham's appointed counsel, John Murphy, objected to the introduction of the first autopsy report into evidence in his criminal trial. [Trial 3 at 103]

6. BIA Agent Nathan Merrick testified that FBI agents attended the first autopsy of Aquash. [Trial 3 at 173]

7. The first autopsy determined that Aquash had died of exposure. (Trial 3 at 104/9-18, Exhibit 1)

8. The first autopsy determined that Aquash's body had suffered only moderate post mortem decomposition. (Exhibit 1)

9. The first autopsy determined that Aquash's body showed signs of suggillation. (Exhibit 1) Suggillation appears within one half to two hours after death, as a result of gravitational movement of blood within the vessels, and resolves after about two weeks. This also suggests that Aquash had not been dead for more than 2 months when her body was found.

10. In the first autopsy, the coroner opened Aquash's cranium and inspected her brain. It was said to weigh 1300 grams, meaning that it had been removed and weighed. No damage was noted, nor any bullet hole or gunshot residue on the scalp. (Exhibit 1).

11. During the first autopsy, Aquash's body was preserved using forensic chemicals. This was noted in the second autopsy. (Trial 3 at 127/20-22, Exhibit 2 attached hereto).

12. There was no reason to hastily bury the body as Jane Doe on March 2, 1976, before it had been identified, since it had been preserved with chemicals. (Trial 3 at 125/11-13, 184/4-11)

13. Aquash's hands were severed at the first autopsy in order to send them to FBI headquarters to identify the body. (Trial 3 at 126/22-24)

14. Agent Merrick received the hands from the coroner, Dr. Brown, and then handed them off 'to an FBI agent – or a couple FBI agents that were there present and they took possession of them." [Trial 3 at 173]

15. Prosecution witness FBI Special Agent William A. Wood testified that BIA Agent Nathan Merrick ordered the burial which occurred on March 2, 1976. (Trial 3 at 128/10-16)

16. BIA Agent Nathan Merrick denied that he ordered the burial. (Trial 3 at 183/20- 23)

17. The body was identified as Annie Mae Aquash on March 3, 1976. (Trial 3 at 57/7)

18. The exhumation of Aquash was requested on March 8, 1976 by her family. [Trial 3 at 141, 157]

19. Aquash's body was exhumed on March 11, 1976. (Trial 3 at 154/11-12)

20. Agent Wood claimed to also have requested the autopsy on March 8 or 9th, 1976 (Trial 3 at 124/16 -23)

21. Prosecution witness FBI Special Agent William A. Wood testified that foul play was suspected only after the second autopsy. (Trial 3 at 124/16 -23)

22. Agent Wood could not have requested the exhumation based on the first autopsy report, which is dated March 15th, 1976 [Trial 3 at 141, 157, Exhibit 2 attached hereto]

23. The coroner who performed the second autopsy, Dr. Peterson, testified, but was not asked about the first autopsy, and in particular, the finding that Aquash had only been dead for about a week. (Trial 4 at 56-67)

24. In support of its argument that the body was preserved for a period of two months between Aquash's alleged date of death, and when the body was discovered, the prosecution presented temperature charts for February of 1976, but not for December 1975 or January 1976. (Trial 4 at 56-67)

25. The first autopsy report stated that Aquash's fingers and toes showed the appearance of frostbite. (Trial 4 at 3/3-4, Exhibit 11, Exhibit 1 attached hereto, hereinafter "Exhibit 1")

26. The second autopsy report did not find evidence of frostbite on either the fingers or toes. (Trial 4 at 3/3-4, Exhibit 10, Exhibit 2 attached hereto, hereinafter "Exhibit 2")

27. The first autopsy found that the scalp and skull appeared normal. (Exhibit 1)

28. The first autopsy found that the soft tissue of the neck appeared normal. (Exhibit 1)

29. The second autopsy report found a 4 mm. perforation of the skin of the posterior neck, with with a 2mm. rim of abrasion surrounded by a 1.5x2.2 cm. area of blackish discoloration. It also found that surrounding this area was a reddish discoloration measuring 5x5 cm. The second autopsy report concluded that the area was grossly compatible with a gunshot entrance wound. (Exhibit 2)

30. The second autopsy report found a discoloration of the skin measuring approx.. 5x5 cm in the left temple/eye area, and that a firm mass was palpable beneath the skin. (Exhibit 2) This was not noticed in the first autopsy. (Exhibit 1)

31. The first autopsy reported missing teeth numbers # 1, 8, 9, 10, 15, 16, 17, 19, 31 and 32. (Exhibit 1)

32. The first coroner's numbering is opposite to the Universal Numbering system which was used in the second autopsy.

33. The second autopsy reported that the teeth "appear to be in relatively good repair" but did note the partial plate which replaced 3 teeth. (Exhibit 2)

34. The first autopsy reported that the right kidney weighed 130 grams, and had a thin capsule that was stripped with ease. The cut surface showed the usual structural details and appeared normal except for post mortem changes. Left kidney was said to grossly resemble the right, and no weight was given. (Exhibit 1)

35. The second autopsy found that both kidneys were undissected and are in their respective retroperitoneal locations. (Exhibit 2) They could not have been previously removed and weighed. The right kidney weighed 160 grams and the left kidney weighed 180 grams. (Exhibit 2)

36. The first autopsy found that the adrenal glands weighed 20 grams. (Exhibit 1) The second autopsy found the adrenal glands to be present in their respective normal anatomic position and undissected. (Exhibit 2) They could not have been removed and weighed in the first autopsy.

37. The liver weighed 1200 grams in the first autopsy and 950 grams in the second. The spleen weighed 75 grams in the first autopsy and 110 grams in the second. The brain weighed 1300 grams in the first autopsy and 1000 grams in the second. The heart weighed 250 grams in the first autopsy and 200 in the second. (Exhibits 1 and 2) These discrepancies cannot be explained by decomposition of the body during the days between the autopsies, since some organs increase in weight and others decrease.

38. Arlo Looking Cloud was instructed by paid informant Kamook Ecoffey to only implicate Graham in the murder of Aquash. (Trial 6 at 261/14 - 262/15)

39. Anna Mae Aquash was never interested in becoming an informant even though offered a misdemeanor plea bargain. (Trial 4 at 225/19- 226/1-13)

40. The accusation of Aquash being an informant came from jealous women, including informant Kamook Ecoffey. (Trial 4 at 259/18- 261/1-14) Kamook Ecoffey had previously been the common law wife of Dennis Banks, with whom Aquash was also having a sexual relationship.

41. Prosecution witness Angie Janis described Graham as a quiet young 20 year old man interested in making chokers to sell and attend pow wows and sun dances. (Trial 4 at 99/10-22)

42. Janis testified that the alleged meeting in Troy Lynn Yellow Wood's house happened in November, not December of 1975. (Trial 4 at 100/3-14)

43. The events in question happened around Thanksgiving, not after Thanksgiving. (Trial 4 at 100/18-25 - 101/1-2, 261/22-25)

44. No witness testified to any purpose for the meeting at Troy Lynn Yellow Wood's house. (Trial 4 at 111-14)

45. Yellow Wood's house was a place for AIM members to hang out. (Trial 4 at 98/7-21)

46. Prosecution witness Troy Lynn Yellow Wood testified that Aquash's hair was very short when she was at her house. (Trial 4 at 136/19- 137/1-5, Trial 9 at 65/18-21)

47. The second autopsy report shows that Aquash's hair was shoulder length.
(Exhibit 2)

48. Prosecution witness Angie Janis testified that Aquash was in Denver at Troy Lynn Yellow Wood's house on her way to another house and that she was not in hiding. (Trial 4 at 87/5-11)

49. Aquash was not detained at this house to discuss her fate as the Respondent states. (Trial 4 at 258/14-20, 259/8-14, 260/18-22 ; at 88/8-11; and at 89/12-18)

50. Angie Janis did not recall telling Graham her about her phone call from Thelma Rios. (Trial 4 at 94/12-25)

51. Angie Janis mentioned Thelma Rios for the first time at Graham's trial even though she was interviewed by BIA Investigator Robert Ecoffey twice before. (Trial 4 at 83/22-25)

52. Prosecution witness George Palfy testified that Ernesto Vigil's alleged gesture slitting his own throat and saying that this was what a Chicano group did to informants was made as a joke. (Trial 4 at 256/11-24)

53. Palfy further testified that 'Indian people don't do that', referring to the same gesture. (Trial 4 at 257/8)

54. Prosecution witness Arlo Looking Cloud testified that Graham was helping to protect Aquash and described Aquash and Graham as friends. (Trial 7 at 21/21-22/1-6 and Trial 4 at 258/14-20) The Respondent's claim that Aquash was in peril at that time is incorrect.

55. Arlo Looking Cloud had also described Graham and Aquash as being friends and mentioned no sexual assault in his first 1994 interviews with Robert Ecoffey. (Trial 6 at 241/20-24)

56. In Arlo Looking Cloud's original interviews with BIA Agent Ecoffey, Looking Cloud stated that Aquash was not tied up. (Trial 6 at 240/13-17)

57. No murder weapon was ever found. Arlo Looking Cloud claimed for the first time at Graham's trial that Richard Marshall gave him a gun, after testifying various other times and never mentioning this. (Trial 6 at 134/5-7, Trial 7 at 7/15-19)

58. Arlo Looking Cloud claimed for the first time at Graham's trial that he had stopped at a bridge to bury the gun, and went back later to find that the gun was no longer there. (Trial 6 at 194/10-20)

59. Angie Janis testified that Aquash walked out of Troy Lynn Yellow Wood's house on her own power. (Trial 4 at 95/2-17)

60. Angie Janis also testified that she did not see anyone force Aquash out of Troy Lynn Yellow Wood's house. (Trial 4 at 95/21-24)

61. Prosecution witness, Angie Begay Janis denied that Troy Lynn Yellow Wood tried to call the police and that she pushed the phone down. (Trial 4 at 85/18-86/1-6 and at 93/6-9)

62. Prosecution witness Angie Janis also provided inconsistent testimony regarding whether or not Aquash's hands were tied, sometimes in front or back or tied to a board. (Trial 4 at 103/19- 104/1-4)

63. Prosecution witness George Palfy testified that Arlo Looking Cloud was not present that evening and not in the car as he saw it loaded and driven off by Theda Clarke. (Trial 4 at 253/2-14, 252/3-25)

64. Prosecution witness Candy Hamilton testified that she saw Anna Mae Aquash at the office of the Wounded Knee Legal Defense/Offence Committee, days after the prosecution's alleged date of her murder. (Trial 5 at 48/3-8, 63/13-15)

65. Candy Hamilton also testified that she saw Aquash during the Wilson Trial, which was days after the alleged murder date. (Trial 5 at 63/13-15)

66. Having known Aquash since July 1975, Candy Hamilton knew Aquash better than most people and argued to defend her friend from being called an informant. (Trial 5 at 30/10, 29/4-9, 31/9-21)

67. In the several interviews Arlo Looking Cloud made between from 1994 to 2000, he never mentioned Richard Marshall or going to a house on Rosebud. (Trial 6 at 242/11-20; Trial 6 at 255/22- 256/1-8)

68. Arlo Looking Cloud implicated Richard Marshall for the first time in 2008. (Trial 7 at 7/15- 8/1-9)

69. Prosecution witness Cleo Gates testified that Aquash was not tied up and not guarded and could leave at any time, and made no mention of keeping her in the basement. (Trial 5 at 83/15-21, 84/1-10, 87/6-24, 88/3-6)

70. The Respondent's statement regarding the visit to Richard Marshall's house is questionable. Marshall was acquitted of his alleged involvement, and Arlo Looking Cloud's original interviews never mention this visit. (Trial 6 at 242/11-20; Trial 6 at 255/22- 256/1-8)

71. Before testifying against Graham, Arlo Looking Cloud had been convicted **12 other times** for providing false testimony. (Trial 6 at 237/12-18)

72. In Looking Cloud's original interviews, he never mentioned going to Marshalls house. (Trial 6 at 242/11-20; Trial 6 at 255/22- 256/1-8)

73. Cleo Gates testified they did not keep any guns or shells in their house. (Trial 5 at 85/7-15)

74. Looking Cloud acknowledged adding details at Graham's trial, which he had never mentioned before, in order to account for six hours he could not explain at the Marshall trial. (Trial 6 at 233/9- 234/1-17)

75. Informant Kamook Ecoffey did not personally know John Graham, but knew Theda Clarke (Trial 5 at 95/24 -96/1-11), Arlo Looking Cloud (Trial 6 at 253/12-20) (Trial 6 at 74/1-25), and Troy Lynn Yellow Wood (Trial 6 at 254/2-4), (trial 6 at 75-76/2).

76. Kamook Ecoffey only knew of Graham indirectly through his association with Aquash (Trial 6 at 23/16-18) and Angie Begay Janis (Trial 4 at 79/4-9) (Trial 4 at 77/24 - 78/1-12).

77. Kamook Ecoffey knew Aquash was having an affair with her common-law husband Dennis Banks and had reason to dislike her. (Trial 6 at 21/1-25) Kamook Ecoffey is also married to Robert Ecoffey, the lead investigator in this case.

78. Rumours that Aquash was suspected of being an informant began at the Farmington convention in June of 1975 (Trial 6 at 31/11-16), where Kamook Ecoffey learned about Aquash's affair with her common-law husband Dennis Banks. (Trial 6 at 19/18 --20/10)

79. Aquash only joined the motor home trip a few days before Columbus Day, Oct. 12, 1975. (Trial 6 at 21/12-13). (Trial 6 at 7/13-15)

80. The motor home was pulled over by law enforcement from tips received from informants A & B. (Trial 6 at 69/9-15, 70/8-24) Graham does not know the identities of these informants.

81. Dennis Banks and Leonard Peltier escaped from the motor home shoot out. The rest were jailed, including Aquash, Kamook Ecoffey, Ecoffey's sister Bernadine Nichols, Kenny Loud Hawk, and David Hill. (Trial 6 at 48/9-11)

82. Cross-examination of Kamook Ecoffey suggests that the two informants A & B, by elimination, could only be Kamook Ecoffey and her sister Bernie. (Trial 6 at 70/8-24)

83. Cross Examination shows that only Kamook Ecoffey believed the theory that Aquash was an informant who couldn't be trusted (Trial 6 at 56-58/1-13)

84. Graham was acquitted of the premeditated murder of Aquash. (Trial 10 at 12/2)

Respectfully submitted,

/s/ Paul Wolf

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