

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

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.

Case No. CR 08-50079

DEFENDANT
MARSHALL'S RENEWED
MOTION FOR SEVERANCE
AND REQUEST FOR
SPEEDY TRIAL

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, and pursuant to his constitutional rights to a speedy trial and to Rule 8(b) of the Federal Rules of Criminal Procedure, hereby renews his motion to sever his trial from that of Co-Defendant John Graham and further moves this court to schedule a trial date. Defendant Marshall makes this motion on the grounds previously set forth in his original motion for severance and upon the further grounds that failure to order a severance would deny Richard Marshall his constitutional and statutory rights to a speedy trial.

In support of this motion, Dana L. Hanna, attorney for the Defendant, hereby affirms:

1. The Defendant Richard Marshall requests a speedy trial. He has been detained and held in custody without bond since August 2008. He has previously moved for a severance of his trial from that of the Co-Defendant John Graham. His motion for severance was denied. All evidence and factual affirmations previously set forth in support of his original motion for severance are

incorporated herein by reference.

2. After this Court dismissed one count of the indictment that charged Co-Defendant Graham with murder and indicated its intention to dismiss the remaining murder counts against Graham in a trial, the government filed an interlocutory appeal with the United States Court of Appeals for the Eighth Circuit. The government then requested a continuance of the trial for 60 days. In order to conduct further investigation and trial preparation, defendant Marshall joined in the government's request for a continuance for 60 days. This Court granted the motion in part and denied it in part. The Court ordered a continuance of the trial without setting a trial date, advising the parties that a trial date would be set after the Court of Appeals rules on the government's appeal.

3. Thereafter, Richard Marshall moved for release from custody pending trial. The government opposed Richard Marshall's motion for release from detention and the U.S. Magistrate judge denied the motion for release from detention. Since that time, the government's interlocutory appeal of the ruling on the Co-Defendant's case constitutes a fundamental change of circumstances that entitles the defendant Marshall to a severance. Failure to grant a severance is likely to deny Marshall his right to a speedy trial.

4. More than 60 days have passed since May 5, 2009, when this court entered its order for an indefinite continuance of the trial, and the 8th Circuit Court of Appeals has not ruled on the government's appeal. Richard Marshall is detained without bond and without a trial date. As a matter of law the trial of the Co-Defendant Graham cannot proceed while the appeal is pending, but there is no legal barrier to a trial for Richard Marshall.

5. In the professional judgment of counsel for Mr. Marshall, the legal issue raised by the

government in its interlocutory appeal does not present a close question; there is no legal authority for the government's argument; and this Court's ruling on the jurisdictional issues raised in the government's appeal will be affirmed. At that point, the government will have to try a case they know is going to be dismissed or dismiss the case against Graham. There being no way to predict whether the appellate court will decide the government's appeal within a month or four months or a year, it is fundamentally unfair to allow the government to delay the trial of Richard Marshall.

6. Richard Marshall is ready for trial and requests the Court to order a severance of his trial from that of John Graham. Richard Marshall asks this court to schedule a speedy and separate trial.

WHEREFORE, Defendant Marshall moves the Court to re-consider the Defendant Marshall's motion for severance; enter an order severing the trials of the two defendants; and to schedule a trial date for Richard Marshall.

Dated this 20th day of July, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
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CERTIFICATE OF SERVICE

I hereby certify that I a true and correct copy of the foregoing Defendant Marshall's Motion for Severance and Request for a Speedy Trial was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
kim.nelson@usdoj.gov

Robert Mandel, Assistant United States Attorney
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 20th day of July, 2009.

/s/ Dana L. Hanna _____

Dana L. Hanna