

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

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

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 (8th Circ. 1983); Stone v. United States, 506 F.2d 561 (8th 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 8th day of January, 2010

RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
P.O. Box 3080
Rapid City, SD 57709
(605) 791-1832
dhanna@midconetwork.com
Attorney for Defendant Richard Marshall

CERTIFICATE OF SERVICE

I hereby certify that I 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

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

Dated this 8th day of January, 2010.

/s/ Dana L. Hanna _____
Dana L. Hanna