

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

UNITED STATES OF AMERICA)	CRIM. NO. 03-50020-002
Plaintiff,)	
)	REPLY TO GOVERNMENT’S
vs.)	RESPONSE TO DEFENDANT
)	GRAHAM’S MEMORANDUM
FRITZ ARLO LOOKING CLOUD)	IN SUPPORT OF MOTION TO
and JOHN GRAHAM, a/k/a)	PRESERVE EVIDENCE AND
JOHN BOY PATTEN,)	PRODUCE EVIDENCE
Defendants.)	

In reply to paragraphs 2 and 4 of the government’s response to Mr. Graham’s motion to preserve and produce, Mr. Graham offers the following:

The government states that it is “unaware” of the location of the sanitary napkin observed during the first autopsy performed on Ms. Aquash’s body. At the completion of the autopsy, “artifacts” taken from the Ms. Aquash’s body were turned over to the FBI. The sanitary napkin was identified in the autopsy and was, presumably, one of the artifacts turned over to the government. The government should be ordered to review all available evidence and materials to determine the location of this item. Due to its absorbent nature, this item is likely to contain valuable samples for testing. It is not sufficient for the government to allege that it is unaware of the location of this item based simply on a review of “the information kept in the file.” A comprehensive search of all files, records, and evidence storage facilities should be mandated.

The government has asked this Court to limit the testing of Ms. Aquash's undergarments. Specifically, the government alleges that the only relevant information to be obtained from testing Ms. Aquash's undergarments is whether John Graham's DNA is present. Thus, the government is asking this Court to limit testing of these items in such a manner to only permit the production of potentially inculpatory evidence.

During its investigation of this matter, witnesses have told the government that third parties – not John Graham – raped and murdered Ms. Aquash. This is clearly exculpatory evidence, and DNA evidence supporting these claims would be similarly exculpatory.

The government can not reasonably contend that forensic evidence testing should be limited in such a way as to only produce potentially inculpatory evidence. If DNA is present in Ms. Aquash's clothing, Mr. Graham should have access to those samples to compare it against local and national DNA samples, databases and registries to determine whether it matches that of any other person who may have participated in the death of Ms. Aquash. To deny Mr. Graham this opportunity would be to deny Mr. Graham his Fifth and Sixth Amendment rights to due process, confrontation, and his fundamental right to a fair trial.

Dated February 20, 2008.

/s/ John R. Murphy
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated by electronic delivery:

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Dated February 20, 2008.

/s/ John R. Murphy
John R. Murphy