

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

VINE RICHARD MARSHALL, a.k.a.
RICHARD VINE MARSHALL, a.k.a.
DICK MARSHALL,
Defendant.

Case No. CR 08-50079

AFFIRMATION IN SUPPORT OF MOTION
TO DISMISS FOR DESTRUCTION OF
EVIDENCE

NOW COMES the Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby affirms to the court that the attached exhibits, which are from the transcripts of deposition testimony given by former Denver Police Department Detective Abel Alonzo, are relevant to issues to be decided by the court pertaining to the defendant's motion to dismiss the indictment.

Dana L. Hanna, attorney for the Defendant, hereby affirms:

1. The Defendant has moved for dismissal of the indictment on the grounds that he has been denied due process of law by the destruction of evidence by the Denver Police Department (DPD) and by the government's failure to preserve and disclose such evidence.

2. One of the legal issues to be decided by the Court is whether the Denver Police Department, its officers and detectives, were acting as agents of the federal government when they gathered, kept, and destroyed physical evidence, including tape recorded interviews of witnesses, that was gathered and collected in the course of a federal investigation into the murder of Anna Mae Aquash.

3. The attached exhibits are pages from the transcripts of the deposition testimony given in two civil lawsuits by former DPD Detective Abel Alonzo, who, according to his testimony, was the lead investigator in Denver for the federal government investigation into the murder of Aquash.

4. In summary, in his deposition testimony, former Detective Alonzo testified that the investigation in which he was involved as the lead local investigator was a federal investigation, in which he was working at the behest and direction of the Bureau of Indian Affairs and the FBI; that

although he was assigned to the investigation under the auspices of the Denver Police Department Intelligence Bureau, it was never a DPD investigation; that it was solely a federal investigation; and that he working for 5 years and hundreds of hours from 1994 to 1999 as lead local investigator for the federal government's investigation into the Aquash murder.

5. Copies of the entire deposition are available for inspection by the government or the court if such inspection is requested.

Dated this 5th day of April, 2010.

RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
Attorney for Defendant Marshall
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Motion 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

Dated this 5th day of April, 2010.

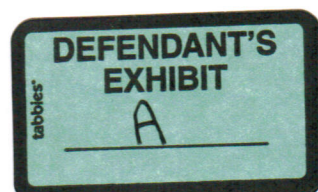
/s/ Dana L. Hanna
Dana L. Hanna

AMERICAN FRIENDS SERVICE COMMITTEE, et. al.

v.

CITY AND COUNTY OF DENVER

Deposition Testimony of Abel Alonzo
October 25, 2002
15:2-16:8



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Civil Action No. 02-N-0740 (CBS)
4 CONFIDENTIAL DEPOSITION OF
5 ABEL ALONZO
6 =====

7 AMERICAN FRIENDS SERVICE COMMITTEE, a Pennsylvania
8 not-for-profit corporation; ANTONIA ANTHONY; END THE
9 POLITICS OF CRUELTY, an unincorporated association;
10 CHIAPAS COALITION, an unincorporated association; STEPHEN
11 NASH; and VICKI NASH,
12 Plaintiffs,
13 v.
14 CITY AND COUNTY OF DENVER, Defendant.
15 =====

16
17
18 PURSUANT TO NOTICE AND THE FEDERAL RULES OF CIVIL
19 PROCEDURE, the deposition of ABEL ALONZO was taken by the
20 Plaintiffs at the offices of McKenna Long & Aldridge, LLP,
21 Attorneys at Law, 1875 Lawrence Street, Suite 200, Denver,
22 Colorado 80202, beginning at the hour of 9:00 a.m., on
23 Friday, October 25, 2002, before Rhonda N. Jordan,
24 Certified Shorthand Reporter and Notary Public, State of
25 Colorado.

26
27
28
29
30 * * * * *

1 varied.

2 Q. To ask the question somewhat differently, how
3 is the work of the Intelligence Bureau different from that
4 of other units within the Denver Police Department?

5 A. Well, for one, we would do dignitary
6 protections both on the international, national, state,
7 and local levels. We would monitor events, fund-raisers,
8 demonstrations alongside with the uniformed officers. We
9 would do background investigations for new officers coming
10 on the police department.

11 You know, they said you kind of worked for
12 the chief of police, and if he had an investigation he
13 wanted you to do, then you would do it. But that -- I
14 can't ever remember anything being -- well, actually there
15 was one that I was asked to do, and that was from Chief
16 Michaud.

17 Q. What investigation was that?

18 A. That was a homicide investigation.

19 Q. Was it typical for the Intelligence Bureau to
20 work on homicide investigations?

21 A. Not -- not really. This was kind of unique.
22 It was -- well, now it's about a 28-year-old case.
23 Initially I was asked by Chief Michaud to assist a U.S.
24 Marshall from South Dakota that was in charge of the
25 homicide investigation here in the Denver area. And from

1 there, I kind of spun over to where at one point I was
2 kind of the lead investigator.

3 Q. Did this homicide involve members of the AIM?

4 A. Well, I can't disclose that now because we're
5 getting ready to go into federal grand jury, and we're
6 waiting for a decision from the U.S. Attorney in South
7 Dakota to make a decision on that. But we've had past
8 federal grand juries involved in this case.

9 Q. You testified that the Intelligence Unit
10 monitored events. What types of events would the
11 Intelligence Unit monitor?

12 A. Well, I guess, for example, a presidential
13 visit, if there were a demonstration then we would monitor
14 that along with the uniformed officers.

15 Q. Who would decide which events the
16 Intelligence Unit would monitor?

17 A. Our commander.

18 Q. Did you, as an officer, ever decide to
19 monitor an event that the commander had not specifically
20 asked you to monitor?

21 A. No, all events were through the -- through
22 the permission of the commander. He was always made --
23 they were always made aware of anything that was handled
24 by the Intelligence Bureau.

25 Q. Did you ever request permission from the

Civil Action No. 03-N-0154
United States District Court

ERNESTO B. VIGIL

v.

CITY AND COUNTY OF DENVER

Deposition Testimony of Abel Alonzo
Volume I
August 11, 2004
82:15-84:12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-0154 (CBS)

ERNESTO B. VIGIL,

Plaintiff,

vs.

CITY AND COUNTY OF DENVER,

Defendant.

COPY

DEPOSITION OF ABEL ALONZO
VOLUME I
AUGUST 11, 2004

APPEARANCES:

APPEARING PRO SE FOR THE PLAINTIFF:

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(303) 355-2794

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APPEARING ON BEHALF OF THE DEPONENT:

DAVID BRUNO, ESQ.
Bruno, Bruno & Colin, PC
1560 Broadway, Suite 1099
Denver, Colorado 80202-6000
(303) 831-1099

ALSO PRESENT:

Douglas Vaughan, Jr., Investigator
Darrin Wood, Assistant Investigator
Allen Marples, Videographer

1 A I guess you need to be more specific. I don't
2 know anything that's been going on since I've been gone,
3 since '99.

4 Q During the time that you attended MAGIC
5 meetings, were you aware of the participants at the
6 meeting who were employed by the Federal government?

7 A Yes.

8 Q Can you tell me what entities they worked for?

9 A FBI, Customs, the FPS -- Federal Police
10 Service, I think they're called. That's all I remember.

11 Q Did the University of Colorado campus police
12 and Auraria Public Safety Office belong to MAGIC at the
13 time that you attended these meetings?

14 A I don't recall.

15 Q Were you removed from the Anna Mae Aquash
16 investigation in October of 1999?

17 A Yes.

18 Q What does it mean to be removed from that
19 investigation?

20 A I don't understand your question.

21 Q You've stated, if I understood you correctly,
22 that you had worked on this investigation until October
23 1999; is that correct?

24 A Yes.

25 Q And in October you were removed from the

1 investigation; is that correct?

2 A Yes.

3 Q How did that affect your work with the
4 Intelligence Bureau?

5 A How did that affect my work?

6 Q Yes.

7 A It didn't.

8 Q Was not the investigation part of your work
9 with the Intelligence Bureau?

10 A Yes.

11 Q Would it be fair to say that you no longer
12 worked on the matter once you were removed from it?

13 A That's correct.

14 Q Were you removed from it in October of 1999?

15 A Right.

16 Q And you performed no other functions regarding
17 that investigation as an Intelligence Bureau detective?

18 A Yes.

19 Q You did perform --

20 A Oh, no. I don't understand your questioning.
21 I mean --

22 Q Let me rephrase it. In October 1999, you were
23 removed from the investigation and you were conducting an
24 investigation under the auspices of the Intelligence
25 Bureau until you were removed. Is that a fair statement?

1 A Yes.

2 Q So after you were removed, you had no other
3 involvement as an Intelligence Bureau detective with that
4 investigation after October?

5 A That's correct. Yes.

6 Q Have you ever worked in collaboration with the
7 U.S. Marshall's Office?

8 A Yes.

9 Q When did you work with the U.S. Marshall's
10 Office as an Intelligence Bureau detective?

11 A When I was first introduced to the case in
12 '94.

13 Q Do you know an FBI agent named Mark Holtslaw,
14 H-o-l-t-s-l-a-w?

15 A Yes.

16 Q How do you know Mr. Holtslaw?

17 A I met him several years ago.

18 Q In your official capacity as an Intelligence
19 Bureau detective?

20 A Yes.

21 Q Was there a particular investigation you
22 worked on with him?

23 A No. Not that I recall.

24 Q Have you ever warned members of Colorado AIM
25 that rival AIM members might seek to injure or kill them?

Civil Action No. 03-N-0154
United States District Court

ERNESTO B. VIGIL

v.

CITY AND COUNTY OF DENVER

Deposition Testimony of Abel Alonzo
Volume II
August 12, 2004
132:5-133:24
144:2-147:5
202:13-23

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 03-N-0154(CBS)

ERNESTO B. VIGIL,

Plaintiff,

vs.

CITY AND COUNTY OF DENVER,

Defendant.

COPY

DEPOSITION OF ABEL ALONZO
VOLUME II
AUGUST 12, 2004

APPEARANCES:

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ALSO PRESENT:

Douglas Vaughan, Jr., Investigator
Darrin Wood, Assistant Investigator

1 A A person of interest, I would assume. But you
2 asked me if I was -- if you were a subject of an
3 investigation, I said yes, but not an Intelligence
4 related matter.

5 Q So you were working on a non-Intelligence
6 related matter investigating me from inside the
7 Intelligence Bureau?

8 A The homicide case.

9 Q Pardon me?

10 A The homicide case.

11 Q What does it mean when somebody is a subject?

12 A Could be a witness, could be a suspect, could
13 be a victim.

14 Q Could it be another investigative officer
15 being the subject of the file?

16 A Sure. Absolutely.

17 Q Now, do I understand that this investigation
18 you were conducting you were doing under the orders of
19 the Police Chief Tom Sanchez?

20 A What investigation?

21 Q The one in which I was the subject.

22 A And your question with Tom Sanchez, what was
23 that?

24 Q This was an investigation that you were
25 conducting under the orders of Tom Sanchez; is that

1 correct?

2 A I was never conducting an investigation under
3 the orders of anyone. As I assisted at the beginning
4 with this investigation, I became more involved, but I
5 was never ordered to work the case.

6 Q But you were ordered off the case; is that
7 correct --

8 A Yes.

9 Q -- in October 1999?

10 A Yes.

11 Q Who ordered you off the case?

12 A Captain Saltzman.

13 Q Do you know why he ordered you off the case?

14 A The only reason I got from him is that we
15 don't do homicides in Intelligence.

16 Q And how long had you been working on this
17 case?

18 A Five years.

19 Q And how long was Mr. Saltzman there as your
20 supervisor?

21 A A few weeks.

22 Q So every previous supervisor knew that you
23 worked this investigation?

24 A Yes.

25 Q Even though it was a homicide investigation?

1 (Deposition Exhibit AA13 was marked.)

2 Q (BY MR. VIGIL) Now, in the article's first
3 page in the middle column there's a quote by a Mr.
4 Ecoffey, and Mr. Ecoffey is quoted as saying, "We had
5 suspects in the case, and I think we were getting very
6 close to getting people charged, Ecoffey said. He
7 (Alonzo) put in hundreds of hours on the investigation
8 and was on the verge of doing something with it...(so)
9 There's no rational that anybody could give me for the
10 shift in gears."

11 Did you ever read this article?

12 A No. This is the first time I've seen it.

13 Q Have you spoken with Mr. Ecoffey since
14 November 8th, 1999?

15 A Oh, yes.

16 Q Did he ever call to your attention his
17 comments about your being removed from the case wherein
18 he states you put in hundreds of hours?

19 A No.

20 Q In fact, you did put in hundreds of hours?

21 A Probably.

22 Q Now, in the next to the bottom paragraph in
23 the middle column, the newspaper quotes you and says: "I
24 can't comment on anything, I apologize -- it's just one
25 of those things. I've been put on restriction."

1 Do you recall making that comment?

2 A Not really.

3 Q Is it a fact that you were put on restriction?

4 A That's probably a poor choice of words. I was
5 just taken off the case.

6 Q Now, in the right-hand column, the article
7 states: "Thursday, Lombard downplayed the matter, saying
8 Alonzo's removal was simply an administrative decision."

9 "Lombard called back approximately 30 minutes
10 later with a somewhat different explanation. I got to
11 thinking after we hung up on the phone that probably one
12 of the most important things for the press to know about
13 this case is the fact that it's not our case, Lombard
14 said during the second interview. We don't have the case
15 file -- the FBI does."

16 "According to Lombard, Alonzo was never
17 officially authorized by the Denver Police Department or
18 U.S. Marshall Service or the FBI to investigate
19 Pictou-Aquash's death."

20 "This was basically a case of a detective that
21 just kind of picked up on it, and I don't know how he did
22 it, and he just kind of was playing with the case and
23 working with it and developing some information. So, we
24 don't have a case on this, Lombard said."

25 Do you have any disagreement with the

1 narrative there as to whether it is incorrect?

2 A No. It's pretty accurate. I mean, it was
3 nothing -- our cases are assigned a case number, so
4 technically, you know, there was not a case number
5 assigned to this. A lot of it was preliminary. Yeah, I
6 don't have a problem with it.

7 Q Now, in my reading of this, it indicates that
8 the case you worked on was essentially an FBI case --
9 that it was an FBI case; is that true?

10 A At the time that I was working it on, it was
11 with the Bureau of Indian Affairs.

12 Q And that would be from 1994 to 1999?

13 A Yes.

14 Q So would Mr. Lombard be incorrect when he says
15 that this is the FBI's case?

16 A Well, it's a Federal case. What I guess I
17 should say is I worked with BIA, not directly with the
18 FBI. It's a Federal case. All Federal cases are handled
19 by the FBI.

20 Q Now, when you were working on the case, did
21 you work with the FBI?

22 A Yes.

23 Q For all five years of your involvement?

24 A Yes.

25 Q Was that with the FBI agents out of the Denver

1 field office?

2 A South Dakota.

3 Q Did you visit with them in their offices in
4 South Dakota?

5 A Yes.

6 Q Did they point to me as a suspect or witness
7 in this matter?

8 A Excuse me?

9 Q Did the FBI point to me as a suspect or a
10 witness in this matter?

11 A No.

12 MR. VIGIL: Would you mark this, please?

13 MR. SHAROFF: Is this a good place to take a
14 quick break?

15 MR. VIGIL: Let me go another 15 minutes.

16 (Deposition Exhibit AA14 was marked.)

17 MR. VIGIL: Let's go ahead and take a break.

18 (Recess taken from 10:12 a.m. to 10:22 a.m.)

19 Q (BY MR. VIGIL) On the copies that I have
20 passed you designated as AA14, on the first page there's
21 identification information as to what this is. It is a
22 December 15th, 1996, Sunday article, page 1 of Section A,
23 the article is by Patrick O'Driscoll, a Denver Post staff
24 writer.

25 Did you ever speak to Patrick O'Driscoll as he

1 article?

2 A I don't recall reading it.

3 Q Can you read the highlighted section on the
4 second page?

5 A "Amnesty International calls for the release
6 of Peltier."

7 Q The highlighted portion.

8 A No, I can't read that. I can make out the
9 FBI, but that's about it.

10 Q If you will pass it back to me, I'll try to
11 read it and then I'll return it to you.

12 A (Deponent complied.)

13 Q The highlighted area reads: "The FBI recently
14 agreed to turn over the investigation into her unsolved
15 murder to the Denver Metro Police Department." The
16 article is apparently written by a journalist association
17 called Unity, I believe.

18 Do you recall if the FBI turned over the case
19 to the Denver Police Department?

20 A No, I don't.

21 Q And to your knowledge, it always has been an
22 FBI case?

23 A Yes.

24 Q Would you let your relationship with Mr.
25 Ecoffey interfere with your professional duties?