

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

5/11/93  
10:50 AM

UNITED STATES OF AMERICA )  
 )  
 )  
 v. )  
 )  
 THOMAS A. SHAY )

CRIMINAL NO. 92-10396-Z

*DOCKETED*

DEFENDANT'S MOTION FOR ORDER PRECLUDING ANY ACCESS TO OR USE OF STATEMENTS MADE DURING EXAMINATION PURSUANT TO 18 U.S.C. § 4242

Defendant Thomas A. Shay ("Shay Jr.") hereby requests that this Court issue an order precluding the prosecution's access to or use of statements he may make during a psychiatric or psychological examination ordered pursuant to 18 U.S.C. § 4242, except under limited circumstances enumerated herein. In support of his motion, Shay Jr. states as follows:

1. On April 22, 1993, the government moved this Court for an order submitting Shay Jr. to examination pursuant to 18 U.S.C. § 4242, following the filing on April 16, 1993, of Shay Jr.'s Motion for Leave to Late File Notice of Insanity Defense and Intention to Introduce Expert Testimony.

2. The Fifth Amendment to the Constitution of the United States provides: "No person . . . shall be compelled in any criminal case to be a witness against himself."

3. Statements made during a court-ordered psychiatric examination are both compelled and testimonial in nature. Estelle v. Smith, 451 U.S. 454, 461-65 (1981).

4. Rule 12(c) of the Federal Rules of Criminal Procedure precludes the admission of statements or their fruits in evidence

*Denied to the extent defendant seeks protections in excess of those provided by Rule 12(c)*  
*Rud W. Tolsted, Jr. 6/15/93*

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