

2) Path 10 The Commonwealth of Massachusetts

3) Post.
4) Medical

Department of Correction
Bridgewater State Hospital
Bridgewater, MA 02324

Gerard F. Boyle
SUPERINTENDENT

(508) 697-6941

December 24, 1991

Francis X. Cunningham, Assistant Clerk
Boston Municipal Court
411 New Court House
55 Pemberton Square
Boston, MA 02108

BMC# 91CR01-10188
A - False Bomb Report
BMC# 247726
A - Common Night Walker

RE: THOMAS SHAY BSH #50-32402

Dear Sir:

The above named patient was admitted to Bridgewater State Hospital on November 21, 1991 under the provisions of Chapter 123, Section 15 (b), ordered here by the Boston Municipal Court where he is currently awaiting trial on charge of Falsely Reporting Location of Explosion (Bomb Scare) and he is also charged with Common Night Walker.

We have completed our observation and evaluation regarding competency to stand trial at the present time.

The reader is respectfully referred to the enclosed Competency To Stand Trial Evaluation of December 23, 1991 for our recommendations.

Sincerely,

Wesley E. Profit, Ph.D.
Director of Forensic Services

WEP/lis
Enc.

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Name SHAY, Thomas

No.

50-32402

December 23, 1991 COMPETENCY TO STAND TRIAL EVALUATION Paul G. Nestor, Ph.D.

IDENTIFYING DATA: This is the second Bridgewater State Hospital admission for this 20 year old, right-handed male. Mr. Thomas Shay was admitted on November 21, 1991 from the Boston Municipal Court where he is charged with Falsely Reporting Location of Explosion (Bomb Scare). The date of the alleged offense is November 13, 1990. He is also charged with Common Night Walker.

CRITERIA FOR DETERMINING COMPETENCY: In the Commonwealth courts, a defendant is found competent to stand trial if he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and if he has a rational as well as factual understanding of the proceedings against him.

STRUCTURE OF THE EVALUATION: Before beginning the evaluation, Mr. Shay was informed by the evaluator that this was a court-ordered evaluation for the purpose of gathering information that the court may use in determining whether he is competent to stand trial. Mr. Shay was also told that he had the right to refuse all or any part of the evaluation, that the interviews are not confidential, and that anything he may disclose during the evaluation may be reported to the Court. Mr. Shay responded to this so-called Lamb warning by stating that "there is nothing I could share with you that could incriminate myself." Mr. Shay thus appeared to understand the significance of the warning, and consented to the evaluation on that basis.

SOURCES OF INFORMATION: Sources of information for the present evaluation were:

- (1) Approximately five hours of interviews conducted by Paul Nestor, Ph.D.
- (2) Neuropsychological evaluation conducted by Paul Nestor.
- (3) Formal psychological testing by Frank DiCataldo, Ph.D.
- (4) Neurological evaluation conducted by M. Flint Beal, M.D, dated December 21, 1991.
- (5) Bridgewater State Hospital records including notes of treating clinicians.

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(6) 15a evaluation conducted by Dr. Luber.

REFERRAL NOTE: A 15a evaluation by Dr. Luber dated November 21, 1991 indicates that Mr. Shay show no signs or symptoms of a mental illness nor did he show any indications of impairment in his ability to form a factual and rational understanding of court proceedings or to assist his attorney. Dr. Luber found no basis for questioning the defendant's competency to stand trial and recommended against a 15b hospitalization.

COURSE OF HOSPITALIZATION: Upon admission, Mr. Shay was described as belligerent and threatening and required four-point restraints on the Intensive Treatment Unit. He soon, however, stabilized, and was transferred to minimum security unit, where he has had no significant difficulties. He has not been prescribed any psychopharmacological medication.

RELEVANT CLINICAL HISTORY: (The patient, as will be discussed below, is a poor historian and the reader is cautioned that the following is based on his own self-report.) Mr Shay reports that he was born in Brighton, Massachusetts, and is the youngest of fourteen children and the only son. His parents are divorced and live in the Boston area. There is no reported history of perinatal trauma, developmental milestone delays or significant childhood diseases. At the age five, however, the Department of Social Services, took custody of him apparently because of fire setting and run-away behavior. In DSS custody until the age of eighteen, Mr. Shay had several placements including the now closed Nazareth Home, Spaulding Youth Center, and the Baird Center. He has also had several psychiatric hospitalizations, beginning at the age of five at the Gaebler Institute of the Metropolitan State Hospital and including subsequent stays at Fuller Memorial Hospital, Bournemouth Hospital, and Medfield State Hospital. The nature of these hospitalizations is not particularly clear, although Mr. Shay states that they were, for the most part, related to DSS placement difficulties and his apparent conduct disorder problems. He denies any history of a major mental illness. History is also noteworthy for substance abuse beginning in his teens and continuing until the past year. His drug abuse has included primarily alcohol and marijuana. He reportedly has been abstinent for several months.

At the age of seventeen, Mr. Shay was admitted to Bridgewater

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TRIAL EVALUATION

State Hospital under Section 18a from the Dedham House of Correction where he was awaiting trial for Possession of a Stolen Motor Vehicle. The 18a evaluation conducted by Charles Forbes, M.D. indicated longstanding characterological and gender identity issues, which at times may manifest as episodes of depression. Dr. Forbes, however, found no evidence of a mental illness and following his evaluation recommended that Mr. Shay be returned to the Dedham House of Correction where he was apparently released on probation. Since his discharge, Mr. Shay has left DSS custody and reports that he has been living with his mother in Milton. He has yet to earn his high diploma. He has worked sporadically and his most recent employment was as a masseuse in Providence. He also reports that he has worked on a volunteer basis for an ambulance company. He describes his sexual orientation as "gay but not proud." He reports that he witnessed the death of his lover in what he describes as a gay bashing incident in 1989. He is a recent father of a baby girl. He denies any history of head injuries and/or seizures.

MENTAL STATUS: Tall, lanky, and thin, Mr. Shay comes unescorted to the several interviews. He presents as friendly and pleasant, but clearly annoyed by his evaluation, which he seems to view as a frivolous waste of his time. Indeed, he conveys a decidedly provocative and, at times, devaluing attitude about his evaluation, especially with regard to the question of his mental health. This is evident by his sarcastic and flip comments about how he does not see "pink elephants" and by his reported plan to publicize what he apparently believes is a waste of tax-payer's money for his hospitalization. Mr. Shay is often irritated by the formality of the evaluation, for example the evaluator's note-taking, as he seems to disparage anything that may underscore the seriousness of his circumstances. He often responds to specific questions about his past by referring to newspaper clipping about himself, which he brings to the evaluation. Not surprisingly given his derisive attitude, he does not provide a particularly clear history, for the most part intimating that it is too painful and chaotic to discuss in detail. Also evident is a tendency to try to control the evaluation, as he seems impatient when certain topics, other than those which he prefers to discuss, are under consideration.

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Notwithstanding his apparent disdain for much of the evaluation, Mr. Shay presents as a likeable young man, who clearly appears to enjoy and crave the attention inherent in the one-on-one clinical interviews. In fact, he seems to relish attention and publicity; for example, he often boasts about how news organizations have offered him financial inducements for his story and, on other occasions, he shows the evaluator professional cards of Boston news reporters, whom, he claims, were eager to talk to him. Beneath his apparent attention-craving and somewhat lighthearted veneer is a more serious and sad side, evident when he discusses his childhood and his family. He speaks with feeling about some of the losses and apparent rejections he has experienced in the past.

In terms of specific psychiatric symptoms, his mental status indicates no disturbance in thought and/or perception. Indeed, his thinking is clear and organized; reality testing is intact. His mood, however, is elevated and inappropriate, particularly in light of his claim that he is a suspect in the death of a Boston Police officer in a bomb explosion. Indeed, he seems childish, self-centered, and egocentric, almost as if he were basking in the limelight of a tragic event. This elevated and grossly inappropriate mood, though, is not a product of a mental illness, but rather is more indicative of a poorly-developed, immature, and longstanding personality and/or characterological structure that appears to be driven by an insatiable need for attention. He denies any suicidal and/or homicidal ideation.

NEUROPSYCHOLOGICAL CONSULTATION: Mr. Shay was seen for a neuropsychological evaluation for the purpose of assessing current levels of intellectual and academic functioning. Results indicated that overall intellectual abilities fall in the low average range, as do both his verbal and performance skills. Tests of memory, visual perception, construction, and language are generally consistent with his overall intellectual abilities and do not reveal any significant impairment. He does, however, demonstrate some mild difficulties with attentional tasks due to occasional impulsivity and distractibility. The precise basis of these difficulties is unclear, although they may reflect residual signs of an attention deficit disorder. Also of note is that his academic skills of reading and arithmetic are not as well developed

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as his intellectual abilities, falling no higher than the end of the seventh grade level. These academic deficits, though, are not of the severity to support a formal diagnosis of learning disability and are best understood within the context of his past conduct disorder and learning problems.

DATA RELEVANT TO THE DETERMINATION OF COMPETENCY: Mr. Shay demonstrates a sound understanding of the court proceedings. He, for example, identifies his charge of Falsely Reporting Location of Explosion and the potential penalty if found guilty. He, however, reports that his charge of Common Night Walker has been already been processed. He understands the role of various court personnel, including those of the judge, district attorney, defense counsel, and jury. He demonstrates an appreciation of the adversarial nature of the court proceedings and understands the concept of plea bargaining. He reports no difficulty working with his attorney, as he claims that his attorney is a well-experienced and high-priced litigator, who apparently is taking his case pro bono. In short, Mr. Shay is, in my opinion, competent to stand trial.

DISCUSSION: The clinical profile is best characterized as a significant personality disorder, accompanied by prominent histrionic and borderline traits. The former is evident by his continual flaunting of the apparent notoriety he has recently received from the media. Indeed, he is so utterly taken by his perceived notoriety that he often had difficulty addressing the substantive questions of this evaluation. The borderline traits are evident by his apparent long history of interpersonal difficulties, emotional instability, and his reported identity problems. Also evident is a decidedly manipulative quality, as he states, for example, that he is not mentally ill now, but if sentenced he will be mentally ill because he cannot tolerate confinement in a cell. He then goes on to demonstrate how he would make believe that he is talking to imaginary people in an attempt to feign mental illness.

The critical point here is that his gross immaturity, his histrionics, and his emotional instability do not fulfill the criteria for a mental illness, as defined by Chapter 123. That is, these personality traits, though both maladaptive and inflexible, do not exceed the so-called threshold criteria for a substantial

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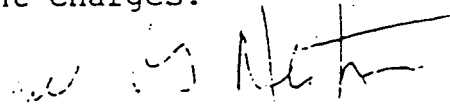
disorder in mood and/or thought that would grossly impair his ability to recognize reality and to meet the ordinary demands of everyday life. Nor does he report a history of mental illness, as defined by Chapter 123, although he clearly has had significant emotional difficulties in the past which have continued until the present. The presence of such a personality constellation, however, does not rule out the possibility of the emergence of a more substantial disorder in the future. Individuals with these personality problems are sometimes thought to be at risk of developing a more frank affective disorder in adulthood.

With respect to the question of his competency to stand trial, Mr. Shay clearly demonstrates a sound understanding of court proceedings. Moreover, he reports no significant problems working with his attorney and he would appear to be quite capable in assisting him. And finally, should Mr. Shay be released to the community, outpatient counseling or some type of mental health treatment is recommended.

RECOMMENDATIONS AND CONCLUSIONS:

(1) In my clinical opinion, Mr. Shay's current psychiatric problems of emotional immaturity, attention-seeking behavior, and manipulativenness do not fulfill the statutory criteria for a mental illness, as defined by Chapter 123.

(2) In my opinion, Mr. Shay is competent to stand trial on his current charges.



Paul G. Nestor, Ph.D.
Director of Neurocognitive Services
Designated Forensic Psychologist
Forensic Mental Health Supervisor