

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY

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CRIMINAL NO. 92-10396-Z

MOTION TO SUPPRESS STATEMENTS

The defendant Thomas A. Shay hereby moves to suppress all statements he has made or is alleged to have made to or in the presence of Boston Police, agents of the United States Bureau of Alcohol, Tobacco and Firearms, and personnel of Bridgewater State Hospital and the Suffolk County Jail, including but not limited to the following:

- 10/29/91 to Boston Police Officer William E. Bridgeforth while Bridgeforth was transporting Mr. Shay from Area E-5 to the Homicide Unit at 1:55 A.M.
- 10/29/91 to Boston Police officers and detectives at the Homicide Unit office at and after 2:30 A.M.
- 10/31/91 to Boston Police officers and detectives and ATF agents at Homicide Unit office following press conference
- 10/31/91 to Boston Police detectives and officers and ATF agents following arrest on default warrant
- 11/21/91 to Dr. Luber during competency evaluation at the Boston Municipal Court prior to admission to Bridgewater
- 12/20/91 to Dr. DiCataldo during psychological assessment at Bridgewater

- 12/21/91 to Dr. M. Flint Beal during neurological consult at Bridgewater
- 12/23/91 to Dr. Nestor during criminal responsibility and competency evaluation at Bridgewater
- 12/31/91 to Nurse Coffey at Suffolk County Jail
- undated letter to Joyce and Dian Shay
- 3/24/92 to federal agents, California police officers or Boston Police officers upon arrest in San Francisco
- 4/1/92 to Boston Police officers while transporting Mr. Shay from San Francisco to Boston
- 5/1/92 Suffolk County Jail Incident Report

In support of his motion to suppress statements, Mr. Shay states the following:

1. The Fifth Amendment to the United States Constitution commands that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." If a defendant gives a statement involuntarily, that statement may not be used against him.

2. Whether a statement was given voluntarily depends upon "both the characteristics of the accused and the details of the interrogation." Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Circumstances which may render a statement involuntary, whether it was given in custody or not, are, among others, mental illness or instability, psychological pressure, official manipulation or deceit, and absence of Miranda warnings. Davis v. North Carolina, 384 U.S. 737 (1966); Colorado v. Connelly, 479 U.S. 157 (1986); U.S. v. Barone, 968 F.2d 1378, 1382-84 (1st Cir. 1992); Bryant v. Vose, 785 F.2d 364, 368 (1st Cir. 1986); U.S. v. Pelton, 835 F.2d 1067, 1072 (4th Cir. 1987). The "suspect's

state of mind is central to the voluntariness finding." Barone, 968 F.2d at 1384.

3. Statements made in custody are presumed involuntary unless preceded by proper warnings regarding the Fifth Amendment right to remain silent and the Sixth Amendment right to counsel. Miranda v. Arizona, 384 U.S. 436, 444 (1966); Barone, 968 F.2d at 1383.

4. Statements made to medical and psychiatric personnel conducting court-ordered competency evaluations may not be used against a defendant unless preceded by Miranda warnings. Estelle v. Smith, 451 U.S. 454 (1981).

5. While a person may waive his rights, any waiver must have been made "voluntarily, knowingly and intelligently." Miranda, 384 U.S. at 444. Such waivers must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception," and must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine, 475 U.S. 412, 421 (1986).

6. Statements made in the absence of an attorney are inadmissible if they are obtained by the government in derogation of an accused's Sixth Amendment right to counsel. United States v. Melanson, 691 F.2d 579, 585 (1st Cir. 1981).

7. A statement which is the fruit of an unlawful arrest or interrogation is inadmissible. Wong Sun v. United States, 371 U.S. 471 (1963).

8. Mr. Shay's statements, as enumerated above, were made involuntarily.

9. On several occasions, Mr. Shay was not advised of his rights.

10. All statements were elicited and given without the assistance of counsel, indeed, some of at a time when the interrogating officers knew Mr. Shay had counsel.

11. On those occasions when he was advised of his rights, the record reflects, he did not knowingly, intelligently and voluntarily waive them. The government bears the burden of proving that Mr. Shay's alleged statements and waivers were not involuntary. Connelly, 479 U.S. at 168-69; United States v. Melanson, 691 F.2d 579, 589 (1st Cir. 1981).

REQUEST FOR EVIDENTIARY HEARING

The defendant respectfully requests an evidentiary hearing pursuant to 18 U.S.C. § 3501 and Jackson v. Denno, 378 U.S. 368 (1964).