

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY

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CRIMINAL NO. 92-10369-Z

**GOVERNMENT'S RENEWED MOTION FOR ORDER
DIRECTING WLVI-TV (CHANNEL 56) TO PRODUCE
VIDEOTAPED INTERVIEW WITH DEFENDANT THOMAS A. SHAY**

The government hereby respectfully renews its motion, filed January 28, 1993, for an order directing WLVI-TV (Channel 56) to produce a videotape containing an interview conducted by Channel 56 with Defendant Thomas A. Shay ("Shay Jr."), in October, 1992, at the Plymouth County House of Correction. In support whereof, the government states as follows:

1. On April 2, 1993, and after briefing and argument by counsel on the matter, the Court issued a Memorandum of Decision denying the government's above Motion for Order, without prejudice. In its Memorandum, the Court ruled that in camera review of the videotaped interview would, at that juncture, be "premature." More particularly, the Court stated that the issue as to compelled disclosure of the videotape under Rule 17(c) was not then ripe for adjudication due to "the possibility that there may be no trial at all." As the Court went on to note:

Shay may plead guilty or be declared incompetent to stand trial. The occurrence of either event would obviate the government's need for the tape.

(Memorandum of Decision, p. 3).

2. After reserving the First Amendment issue bound up in the government's motion for later consideration, the Court made it clear that the government had leave to renew its motion "if it becomes apparent that Shay will stand trial." (Memorandum of Decision, p. 3).

3. On April 16, 1993, Defendant Shay Jr. filed his Motion for Leave to Late File Notice of Insanity Defense and Intention to Introduce Expert Testimony. That motion makes it plain that Shay Jr. intends to place his sanity at issue at trial and reflects his intention to "introduce expert testimony relating to a mental disease or defect or mental condition bearing upon the issue of guilt." (Motion for Leave to Late File, p. 1). Significantly, while Shay Jr.'s above motion advises the Court that Shay Jr. has in fact been evaluated by an unnamed mental health expert who, in turn, has informed Shay Jr.'s counsel that there exists "a basis for raising the defense of insanity at trial" (Defendant Shay Jr.'s Motion for Leave to Late File, ¶ 6), Attorney Gertner has advised the government's attorneys that her client does not intend to raise any issue of competency to stand trial. See 18 U.S.C. § 4241.

4. On April 22, 1993, the government responded to Shay Jr.'s above notice of insanity defense by moving for an order submitting Shay Jr. to mental health examination by the government.

5. In view of the foregoing, it is now clear that this matter will proceed to trial. The attorneys for the government have not been approached by counsel regarding the prospects for a

plea and, indeed, have been advised by counsel that none should be expected. By virtue of the above Notice of Insanity Defense, counsel for Shay Jr. has made it all the more plain that her client intends to proceed to trial, all the while reserving, under Rule 12.2(c), the opportunity to place at issue the matter of Shay Jr.'s sanity at the time of the offense. In view of these circumstances, in camera review of the videotape is no longer premature, but, rather, timely and entirely warranted under Rule 17(c) and governing case law. United States v. Nixon, 418 U.S. 683 (1974); United States v. LaRouche Campaign, 841 U.S. 1176 (1st Cir. 1988).

6. Other factors militate in favor of the Court's renewed consideration, and early resolution, of the government's Motion for Order with respect to Channel 56's disclosure of the videotape. Trial of this matter is scheduled to begin Monday, June 28, 1993. The government long ago notified its victims and many witnesses -- law enforcement and civilian -- of that trial date and has been preparing accordingly. Further in this respect, the government has before the Court its Motion for Order Submitting Defendant Shay Jr. to Mental Health Examination. The (approximately one-hour) videotaped interview sought from Channel 56 clearly falls within that category of materials directly bearing on the question, now placed at issue by Defendant, as to Shay Jr.'s alleged mental disease or condition at the time of the offense. Timely resolution of the government's Motion for Order regarding the videotape will maximize the time within which all parties and their mental health experts may review and evaluate

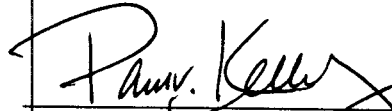
the videotape in preparation for trial.

WHEREFORE, the matter now being ripe for resolution, the government respectfully renews its Motion for Order Directing WLVI-TV to Produce Videotaped Interview with Defendant Thomas A. Shay, Jr. A copy of the (proposed) Order initially submitted by the government in this regard is attached hereto for the Court's convenience.

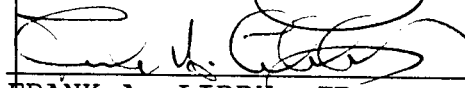
Respectfully submitted,

A. JOHN PAPPALARDO
United States Attorney

By:



PAUL V. KELLY
Assistant U.S. Attorney



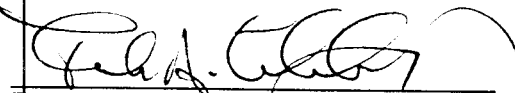
FRANK A. LIBBY, JR.
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
April 30, 1993

I, FRANK A. LIBBY, JR., Assistant U.S. Attorney, do hereby certify that I have this day served, by first-class mail, postage prepaid, to counsel of record, a copy of the foregoing Government's Renewed Motion for Order Directing WLVI-TV (Channel 56) to Produce Videotaped Interview with Defendant Thomas A. Shay Jr.



FRANK A. LIBBY, JR.,
Assistant U.S. Attorney