

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 FOR A BIFURCATED TRIAL

Defendant moves this Court to hold a bifurcated trial, separating the guilt phase of the trial from the insanity phase, and either impaneling separate juries or permitting renewed voir dire of the same jury on the insanity issues following the first trial.

Defendant cites as his reasons therefor the following:

1. The defendant is charged with conspiracy, receipt of explosives in interstate commerce resulting in death and injury to public safety officers, attempted malicious destruction of property used in and affecting interstate commerce by means of fire and explosives, resulting in death and injury to public safety officers, and aiding and abetting such offenses. The indictments stem from an explosion which occurred on October 28, 1991, and which resulted in the death of one police officer and the injuring of another.

2. The government's case against Mr. Shay is entirely circumstantial. There are no witnesses claiming to have seen him participate in the bombing. No meaningful physical evidence can be tied to him or to the places in which he lived at the time. Indeed, in its investigation of the case, the government has

investigated a number of different suspects, each with a motive to commit the offense. The government's investigation took over one and one half years and yielded virtually the same limited evidence at the end that it had at the beginning. In short, there are substantial defenses on the merits to the charges against Mr. Shay.

3. On April 16, 1993, the court was advised that in addition to raising the substantial factual defenses, Mr. Shay will raise an insanity defense.

4. It is difficult if not impossible to simultaneously defend the charges against Mr. Shay on the merits and to raise the insanity defense.

A. Evidence with respect to the latter necessarily opens the door to psychiatric and psychological history and statements which are highly prejudicial to Mr. Shay's other defenses.

B. The insanity defense, by focusing on the claim that the crime charged was the product of mental illness, necessarily makes the jury believe that the defendant was likely to have committed the act in question.

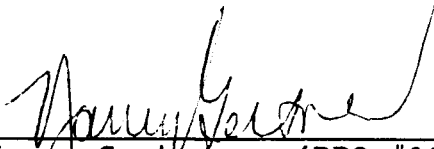
C. Evidence that the defendant has a mental illness, which would not otherwise be admissible in the case in chief, invites the jury to resolve doubts concerning the commission of the act by finding the defendant not guilty by reason of insanity, rather than acquitting him.

5. Bifurcation facilitates an orderly presentation of the issues in the trial, both in terms of explaining the burdens of proof and conducting voir dire. The burden of proof with respect to guilt or innocence is beyond a reasonable doubt, while the burden of proof with respect to the insanity defense is by a preponderance of the evidence.

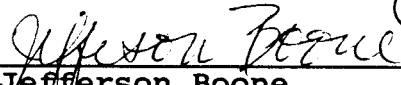
For all of the above reasons, the defendant moves for a bifurcated trial.

Respectfully submitted,

THOMAS A. SHAY
By his attorneys



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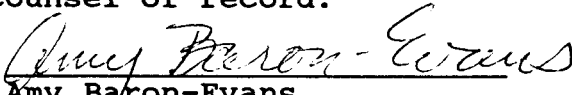


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Dated: June 24, 1993

CERTIFICATE OF SERVICE

I, Amy Baron-Evans, hereby certify that on this 24th day of June, 1993, a copy of the foregoing document was mailed, first class, postage prepaid to the all counsel of record:



Amy Baron-Evans

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