

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DEC 14 2005
C. [initials]

UNITED STATES OF AMERICA)
)
 v.)
)
 ZACARIAS MOUSSAOUI,)
 a/k/a "Shaqil,")
 a/k/a "Abu Khalid al Sahrawi,")
)
 Defendant)

~~UNDER SEAL~~

unsealed per 4/20/06
ruling in open
court
Criminal No. 01-455-A
Hon. Leonie M. Brinkema

ORDER

The defendant has filed notice pursuant to Fed. R. Crim. P. 12.2(b) that the defense intends to offer expert evidence to support a mental health diagnosis of the defendant that he suffers from a major thought disorder. The Government has responded by identifying its mental health experts as Drs. Paul Montalbano and Raymond Patterson, and asked, pursuant to Fed. R. Crim. P. 12.2(c)(2), to have Drs. Montalbano and Patterson examine the defendant. The Court hereby GRANTS the Government's request to conduct a mental health examination of the defendant and ORDERS that Drs. Montalbano and Patterson shall examine the defendant at the Alexandria County Jail not later than January 6, 2006. Upon completion of their examination, Drs. Montalbano and Patterson shall inform members of the Government's trial team whether the defendant cooperated with the examination sufficiently to allow the doctors to diagnose the defendant. Drs. Montalbano and Patterson shall not disclose the substance of their interaction, nor shall they disclose their diagnosis to the prosecutors. Within two business days of learning from Drs. Montalbano and Patterson whether the defendant cooperated with the examination sufficiently to allow the doctors to diagnose the defendant, the Government shall inform the Court and the defense of the outcome of the doctors' examination of the defendant and, if the

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defendant is uncooperative, whether the Government seeks sanctions pursuant to Fed. R. Crim. P. 12.2(d).

The Court further ORDERS that, if the defendant cooperates with the examination sufficiently to allow the doctors to diagnose him, Drs. Montalbano and Patterson shall write a report of their diagnosis, which shall be filed under seal with the Court and not disclosed to counsel for either party. If the jury finds the existence of the threshold factor at the conclusion of the first part of the penalty phase, the reports of Drs. Montalbano and Patterson shall be unsealed to all counsel of record for use during the second part of the penalty phase. At the same time, the defense shall provide the Government with all reports and underlying raw data upon which the reports are based of any expert that it intends to call as a witness during the second part of the penalty phase.

The Clerk is directed to seal the contents of this Order from the public; however, the Clerk is further directed to provide a copy of this Order to counsel of record. Counsel of record shall provide a copy of this Order to their respective experts with an instruction that they may not publicly disclose the contents of this Order.

Entered this 14th day of December, 2005.

/S/
LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia