

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Case No. 3:06-CR-160 (JBA)
	:	
v.	:	
	:	
AZIBO AQUART	:	December 22, 2010
	:	<u>FILED UNDER SEAL</u>

12.2 ORDER

IT IS HEREBY ORDERED that Julie Mosley, United States Department of Justice Trial Attorney, is appointed to serve as the fire-wall government attorney in this case ("fire-wall attorney"). The fire-wall attorney shall be responsible for all issues relating to the Rule 12.2 mental health testing of defendant Azibo Aquart, including any legal or logistical issues that have to be resolved by the Court or brought to the Court's attention.

IT IS FURTHER ORDERED that the defendant shall disclose the mental conditions of defendant to which each defense expert will testify to the fire-wall attorney. All documents, records and information disclosed by the defendant to the fire-wall attorney and all documents, records and information obtained or developed by any expert working with her are subject to the following restrictions.

a) The documents, records and information shall be disclosed only to: (i) the firewall attorney; (ii) the individuals in the Department of Justice in Washington D.C. necessary to assist her in this case; and (iii) any expert(s) working with her. Each of the foregoing is an "Authorized Individual" for the purpose of this Order.

b) The foregoing documents, records and information shall not be disclosed,

directly or indirectly, to any member of the prosecuting team, or to any member of the U.S. Attorney's Office in the District of Connecticut, or to any other attorney, staff member, agent, expert or consultant working for or with the prosecuting team of the U.S. Attorney's Office.

c) The foregoing documents, records and information shall be used by each Authorized Individual solely for the purpose of this case. Each Authorized Individual shall not divulge the documents, records or information to anyone who is not an Authorized Individual. The fire-wall attorney shall maintain a record of any communications related to this case with a non-Authorized Individual, including any member of the prosecution team and any law enforcement agent working with the prosecution team.

d) Submissions to the Court referring to the foregoing documents, records or information shall be (i) filed under seal, and (ii) be served only on defense counsel and the fire-wall attorney.

e) Each Authorized Individual shall file, under seal, a statement under oath representing that he or she has read this Order and recognizes that a willful violation of it may be deemed a civil and /or criminal contempt.

f) If an Authorized Individual learns of a possible violation of this Order, he or she shall inform the Court promptly.

g) Reports and any other documents, records or information, obtained by experts retained by the fire-wall attorney, related to examinations of the defendant, may be read by the firewall attorney before filing them.

h) The fire-wall attorney shall provide defense counsel with at least five days

advance notice of the professions of the government expert(s) who will examine the defendant with respect to his mental condition and of the tests that the expert(s) expect to perform. If the defendant objects to the use of any expert, or to a particular test, defense counsel shall diligently attempt to resolve the objection with the fire-wall attorney. If resolution cannot be reached, the defendant shall file an objection with the Court no later than three business days after notice was provided, of the objectionable expert or test, and the Court shall set the matter for hearing.

i) The mental health examinations of the defendant conducted by the government's expert(s) shall be tape-recorded. This provision is subject to reconsideration if the fire-wall attorney moves to prohibit such tape-recording and establishes valid grounds as to why such tape-recording would interfere with the integrity of the tests or is otherwise unwarranted. If any such audio tapes are produced, the fire-wall attorney shall maintain copies of the audio-tapes until it is determined that any expert report(s) are to be disclosed to the prosecution team and to counsel for the defendant as set forth below and only then shall the audio tape be disclosed to the prosecution team and to counsel for the defendant. Further, any expert evaluating or testing the defendant shall be instructed to retain all notes made during their evaluation and testing.

j) Testing of the defendant shall be at his present place of confinement, unless the fire-wall attorney files a motion and establish valid grounds as to why a different place for testing is required. Failure of defendant to participate in a Court-ordered examination shall result in forfeiture of the right to present mental health testimony at the penalty phase of the trial. Fed.R.Crim.P. 12.2(d).

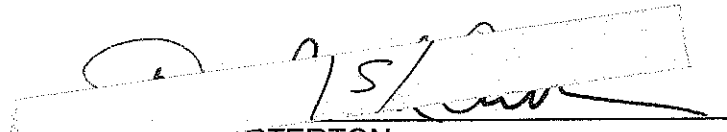
k) In the event that a guilty verdict is rendered by the jury, and if the defendant thereafter confirms his intent to offer during the sentencing proceedings expert evidence on mental condition, the results and reports of the defendant's experts and their examinations shall be filed under seal with the Court. Immediately thereafter, the results and reports of the government's experts and their examinations will be disclosed to the prosecution and the defendant.

l) Within two days thereafter, if the defendant reaffirms his intent to offer expert evidence on a mental condition, defense counsel shall notify the prosecution of the results and reports on mental condition conducted by defendant's expert about which the defendant intends to offer expert evidence, and those results and reports upon which the defendant intends to rely, as have been previously filed with the Court, will be unsealed and released to the prosecution. The limitations on the fire-wall attorney will remain in effect up to the point at which the defendant's experts' reports are unsealed and released to the prosecution. At that time, the fire-wall will cease to be in effect and the prosecution may communicate with the fire-wall attorney without restriction. However, prior to the release of the defendant's experts' reports to the prosecution, the defendant may move the Court for an Order continuing the fire-wall limitations; said motion shall include the specific reasons as to why the limitation of communication between the prosecuting attorneys and the fire-wall attorney should remain in effect.

m) In the event that the defendant elects not to make such disclosure, the defendant will be precluded from offering any such expert evidence, and all of the other restrictions on the fire-wall attorney and those Authorized Persons under this Order shall continue in effect.

SO ORDERED this 22nd day of December 2010, at 11 o'clock a.m./p.m. at

New Haven, Connecticut.


DANIEL P. ARTERTON
UNITED STATES DISTRICT JUDGE
DISTRICT OF CONNECTICUT