

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

APPLICATION FOR LEAVE TO FILE A SECOND OR
SUCCESSIVE MOTION TO VACATE, SET ASIDE
OR CORRECT SENTENCE
28 U.S.C. § 2255
BY A PRISONER IN FEDERAL CUSTODY

Name

Alfred W. Trenkler

Place of Confinement

USP Tucson

Prisoner Number

19377-038

INSTRUCTIONS-READ CAREFULLY

- (1) This application must be legibly handwritten or typewritten and signed by the applicant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.
- (2) All questions must be answered concisely in the proper space on the form.
- (3) The Judicial Conference of the United States has adopted the 8 1/2 x 11 inch paper size for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings **must** be on 8 1/2 x 11 inch paper; otherwise we cannot accept them.
- (4) All applicants seeking leave to file a second or successive petition are required to use this form, except in capital (death penalty) cases. In capital cases only, the use of this form is optional.
- (5) Additional pages are not permitted except with respect to additional grounds for relief and facts which you rely upon to support those grounds. You submit separate petitions, motions, briefs, arguments, etc., that support your application.
- (6) In accordance with the "Antiterrorism and Effective Death Penalty Act of 1996," as codified at 28 U.S.C. § 2255(b), effective April 24, 1996, before leave to file a second or successive motion can be granted by the United

States Court of Appeals, it is the applicant's burden to make a prima facie showing that he satisfies either of the two conditions stated below.

A second or successive motion must be certified as provided in [28 U.S.C.] section 2255 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

- (7) When this application is fully completed, the original and four copies must be mailed to:

**Clerk of Court
United States Court of Appeals for the First Circuit
John Joseph Moakley Courthouse
1 Courthouse Way, Suite #2500
Boston, Massachusetts 02210**

(Rev. 11/02)

APPLICATION

1. (a) State and division of the United States District Court which entered the judgment of conviction under attack
District of Massachusetts, Boston
- (b) Case Number 92-10369-RWZ
2. Date of judgment of conviction November 29, 1993
3. Length of sentence life Sentencing Judge Rya Zobel
4. Nature of offense or offenses for which you were convicted: Ct. 1, Conspiracy, (18 U.S.C. § 371); Ct. 2, Receipt of explosive material, (18 U.S.C. § 844(d)); Ct. 3, Attempted Mal. Destruction of Property with explosives, (18 U.S.C. § 844(i)).
5. Related to this conviction and sentence, have you ever filed a motion to vacate in any federal court?
Yes (x) No () If "yes", how many times? Three (if more than one, complete 6 and 7 below as necessary)
 - (a) Name of court U.S. District Court, District of Massachusetts
 - (b) Case number 99-10074
 - (c) Nature of proceeding 28 U.S.C. § 2255
 - (d) Grounds raised (list all grounds; use extra pages if necessary) Petitioner's constitutional right to effective assistance of counsel was denied him by actions of his trial counsel.
 - (e) Did you receive an evidentiary hearing on your motion? Yes () No (x)
 - (f) Result Denied
 - (g) Date of result April 18, 2000
6. As to any second federal motion, give the same information:
 - (a) Name of court U.S. District Court, Mid. Dist. of PA.
 - (b) Case number 3:02-cv-1736
 - (c) Nature of proceeding 28 U.S.C. § 2241

(d) Grounds raised (list all grounds; use extra pages if necessary): Petitioner was convicted upon insufficient evidence of the interstate commerce elements of 18 U.S.C. §§ 844(d) and 844(i).

(e) Did you receive an evidentiary hearing on your motion? Yes () No (x)

(f) Result Dismissed

(g) Date of result March 7, 2003

7. As to any third federal motion, give the same information:

(a) Name of court District Court, District of Massachusetts

(b) Case number 1:07-cv-11823-RWZ

(c) Nature of proceeding 28 U.S.C. §2255

(d) Grounds raised (list all grounds; use extra pages if necessary) Def bomb expert observed fingerprint on bomb remains held by BATF; 2, Govt. possesses exculpatory actual innocence favorable to Trenkler; 3, Bomb switch contacts have been found to be a mis-match to Radio Shack switch; 4, Remote control receiver could not operate after being armed for period claimed by Govt.; 5, codefendant Shay states Trenkler is innocent and others resp. for bomb; 6, A witness in Trenkler trial stated to witnesses that significant portions of his...Continued on attached...

(e) Did you receive an evidentiary hearing on your motion? Yes () No (x)

(f) Result Denied

(g) Date of result March 16, 2009

8. Did you appeal the result of any action taken on your federal motion? (Use extra pages to reflect additional petitions if necessary)

(1) First motion No () Yes (x)

Appeal No. 00-1657

(2) Second motion No () Yes (x)

Appeal No. 03-1775

(3) Third motion No () Yes (x)

Appeal No. 09-1559

9. If you did not appeal from the adverse action on any motion, explain briefly why you did not:

10. State concisely every ground on which you now claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

(a) Ground one: Please see attached grounds one (1) through eight (8).

Supporting FACTS (tell your story briefly without citing cases or law):

Was this claim raised in a prior motion? Yes () No (x)

Does this claim rely on a "new rule of law?" Yes () No (x)
If "yes," state the new rule of law (give case name and citation):

Does this claim rely on "newly discovered evidence?" Yes (x) No ()
If "yes," briefly state the newly discovered evidence, and why it was not previously available to you _____

(b) Ground two: _____

Supporting FACTS (tell your story briefly without citing cases or law):

Was this claim raised in a prior motion? Yes () No ()

Does this claim rely on a "new rule of law?" Yes () No ()
If "yes," briefly state the new rule of law (give case name and citation):

Does this claim rely on "newly discovered evidence?" Yes () No ()
If "yes," briefly state the newly discovered evidence and why it was not previously available to you _____

[Additional grounds may be asserted on additional pages if necessary]

11. Do you have any motion or appeal now pending in any court as to the judgment now under attack? Yes (x) No ()
If yes, name of court 1st Cir. Ct. of App. Case Number 09-1559

Wherefore, applicant prays that the United States Court of Appeals for the First Circuit grant an Order Authorizing the District Court to Consider Applicant's Second or Successive Motion to Vacate under 28 U.S.C. § 2255.



Applicant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this Application are true and correct.

Executed on JUNE 10, 2010
[date]



Applicant's Signature

Proof of Service

Applicant must send a copy of this application and all attachments to the United States Attorney's office in the district in which you were convicted.

I certify that on JUNE 10, 2010, I mailed a copy of this Application and all
[date]

attachments to Assistant U.S. Attorney Randall E. Kromm

at the following address:

One Courthouse Way, Suite 9200, Boston, Massachusetts 02210



Applicant's Signature

Pursuant to Fed.R.App.P. 25(c), "If an inmate confined in an institution files a notice of appeal . . . , the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day of filing. Timely filing may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid."

Application, Number 7(d), continued...

...testimony are untrue.

ADDENDA BROUGHT TO THE ATTENTION OF THE DISTRICT COURT
SUBSEQUENT TO THE APPLICATION TO THE FIRST CIRCUIT COURT OF
APPEALS

- 1) The government discloses that it destroyed all the evidence in this case.
- 2) Non disclosed assistance of U.S. Attorney to State inmate for reduction of time for providing information to the government against Trenkler.
- 3) Juror number One writes the District Court convinced of Trenkler's innocence.
- 4) Juror number Two writes the District Court.
- 5) Evidence of large speed bumps never disclosed by the government.
- 6) Juror number Three writes the District Court
- 7) October 27, 2008 codefendant Shay Jr writes a letter proclaiming Trenkler's innocence.

ATTACHMENT...GROUNDS ONE (1) THROUGH EIGHT(8)

GROUND ONE:

The government failed in its constitutional duty by withholding a second fingerprint report and companion analysis with a negative match to Alfred W. Trenkler, "Trenkler".

SUPPORTING FACTS:

The government had in its possession two fingerprint reports of prints lifted from the "target" vehicle of the bombing, one, disclosed, with 17 prints and no analysis, the second, non disclosed, with the original 17 plus an additional 7 and a subsequent analysis of the 24 prints in toto, all with a negative match to Trenkler, or his codefendant. The government provided the first report but withheld the second with the accompanying exculpatory analysis.

NEWLY DISCOVERED EVIDENCE:

In July of 2009 Trenkler discovered a never before disclosed May 25, 1992 fingerprint analysis of 24 fingerprints, 17 prints lifted on November 2, 1991 and 7 prints lifted on November 14, 1991 with a negative match to Trenkler or his codefendant, Thomas A. Shay, "Shay Jr". Five of these fingerprints were lifted from the undercarriage of the Thomas L Shay, "Shay Sr", "target" vehicle where the bomb is alleged to have been placed.

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Pretrial, Trenkler had filed a specific request for "The results of any BPD or ATF tests which did not connect

defendant to the 1991 explosion. For example, the results of the fingerprints tests done on the auto and house of Thomas Shay Sr."

The government responded it "will provide" them, however, no results were provided. At no time did the government mention, discuss, disclose or produce a second print report or any analysis.

Trenkler's counsel made the reasonable assumption that no analysis existed, and, unless the government informed Trenkler, counsel had no way to know the second report with the additional 7 prints and analysis existed. Defense expert Denny Kline, "Kline" noted in his 1993 forensic report that "A total of seventeen (17) lifts were taken" from the Shay Sr black Buick, i.e, no second report.

Post trial, Trenkler inquired with the Boston Police (who stated that "the feds took everything when they took over the case"), the ATF, FBI, U.S. Attorney, district and appellate court judges and clerks, Trenkler's and codefendant's counsel, experts and investigators and the Waltham archives in the search for exculpatory evidence with no discovery of this second report and analysis.

Trenkler had diligently pursued every logical lead and source to locate exculpatory evidence.

There is no doubt that the government was aware of the second report and analysis, amongst the newly discovered evidence was found a January, 1992 request by the government to "Have Boston P.D. fingerprint expert check lifts taken from

[the] Shay (Sr.) vehicle with prints of key suspects".

Ironically, it was the government that had unwittingly set the wheels in motion for this and other discovered evidence when it stated in its December 2007 Opposition to Trenkler's 2007 § 2255 (07-11823-RWZ) that it had destroyed all the evidence in this case.

Boston Police Captain Frank Armstrong was shocked and amazed learning the government destroyed all the evidence in its possession and had alerted Trenkler et al in March of 2008 that the Boston Police maintained an archive of the evidence that the government did not take when it took over this case. Again, this was contrary to what Trenkler had been told previously by the Boston Police, that "the feds took everything". Armstrong had unique knowledge of the archive evidence, he was the officer assigned to organize and catalog the evidence prior to the government takeover of this case.

In April, 2008, Trenkler filed a FOIA request, at first being told by Boston Police Media Relations that "This is a federal case [and] we have no information on this[,] you would have to contact them or the AG's office. Thanks for the request and best of luck."

With Armstrong's assistance, the evidence was located, a viewing was scheduled in June of 2009, files were ordered, edited and copied and received by Trenkler in July of 2009.

But for Frank Armstrong, Trenkler would not have found this government withheld evidence.

GROUND TWO:

The government failed in its constitutional duty to provide an exculpatory second reenactment report proving the bomb did not dislodge from Shay Sr's car.

SUPPORTING FACTS:

Prior to trial the government had provided Trenkler with a November 8, 1991 Boston Police report of a reenactment test of bomb dislodgement from Shay Sr's car with no results of the test mentioned. This was the only report on this subject provided to Trenkler. Trenkler had no reason to believe there was any other report or any subsequent reenactment.

NEWLY DISCOVERED EVIDENCE:

In July of 2009, Trenkler discovered the existence of a November 17, 1991 second report with a replica of the bomb attached to the undercarriage of Shay Sr's car and a reenactment of the entire Shay Sr trip in his car prior to the alleged dislodgement in his driveway. The Shay Sr car had been backed into his driveway a number of times where it was noted that "The device adhered to the vehicle during this exercise", certainly exculpatory evidence since this case relied heavily upon the bomb being on the Shay Sr car.

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Trenkler had no reason to believe the government would withhold a second report that had proved the bomb was not

attached to Shay Sr's car since it could not dislodge to end up in Shay Sr's driveway. The government represented that it was fully complying with applicable discovery rules. Unless the government told Trenkler this second report existed, Trenkler had no reason to believe it existed.

There is no doubt the government was aware of this report, ATF agents Victor Palaza and Edward Crowley were part of the reenactment team listed in this report.

Credit must be given to Boston Police Captain Frank Armstrong who had alerted Trenkler that the the Boston Police had archive evidence that the government had not removed after it took over the case, again, Trenkler had been previously told by the Boston Police that they had no evidence since the "feds" took it all.

But for Captain Frank Armstrong, Trenkler would not have found this evidence.

GROUND THREE:

The government failed in its constitutional duty to provide exculpatory evidence of a second videotape of a reenactment of the alleged dislodgment of the bomb from the undercarriage of the target vehicle.

SUPPORTING FACTS:

The government had provided a November 8, 1991 videotape of a replica bomb being crushed while attached to the

undercarriage of the Shay Sr car being backed into his driveway. The government gave no indication that there was a second videotape reenactment with no dislodgment of the replica bomb on Shay Sr's driveway.

NEWLY DISCOVERED EVIDENCE:

In July of 2009, Trenkler discovered a never before disclosed November 17, 1991 second reenactment report and a second videotape that memorialized a reenactment of the entire Shay Sr round trip from his Eastbourne Street driveway to Medford and back with a replica of the bomb attached to the undercarriage of the Shay Sr car, without dislodging, and, despite Shay Sr's car being backed into his driveway multiple times, the ATF and Boston Police "Team 5" could not make the bomb dislodge from Shay Sr's car.

Certainly dramatic visual exculpatory evidence proving that the bomb was not attached to the Shay car since it could not have dislodged to be "found" and, obviously, had to have ended up in the Shay driveway by some other means. There would be no attempt to damage or destroy the Shay Sr car if the bomb was not attached to it, further, no attempt to injure or kill Shay Sr in his car.

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Like the second reenactment report, Trenkler had no reason to believe there was a second videotape that documented the non dislodgement of the bomb, the government represented that

it was fully complying with discovery rules. Trenkler had diligently pursued all logical sources, to no avail.

Once again, the credit goes to Boston Police Captain Frank Armstrong without whom Trenkler would not have discovered this withheld evidence.

GROUND FOUR:

The government failed in its constitutional duty to provide Trenkler with Shay Sr impeachment evidence.

SUPPORTING FACTS:

On February 15, 1993, Magistrate Judge Marianne Bowler had ordered the government to produce exculpatory evidence and "information [that] concerns prospective trial witnesses", which would include criminal records under Brady. Since the government never submitted any criminal record, Trenkler made the reasonable assumption that Shay Sr had none. Of course, in the First Circuit, the government has a duty to search for and produce impeachment evidence of its witnesses.

NEWLY DISCOVERED EVIDENCE:

In July of 2009, Trenkler received evidence that Shay Sr had a sealed criminal record, in fact, it had been obtained by subpoena by AUSA Frank A. Libby, (FAL), in 1992, but never disclosed to Trenkler. Trenkler also discovered that the government obtained evidence that Shay Sr had a firearms permit, certainly evidence of a violent nature, there was no

evidence that Shay Sr was a game hunter. The government possessed, but never disclosed, another lawsuit Shay Sr had for \$850,000 dollars, dismissed just prior to the 1987 explosion, the genesis of the \$400,000 dollar lawsuit that was the center of this case, certainly evidence that Shay Sr went after big game (gain) lawsuits.

The government had provided Shay Sr's other lawsuits up to \$100,000, why would it fail to mention the \$850K lawsuit?

Also discovered in 2009, evidently, since government agents had proven that the bomb could not scrape off Shay Sr's car, officials suspected Shay Sr put his car up on a lift to put scratch marks on the undercarriage of his car to make it appear as if the bomb had scraped off, this discovered in a Boston Police journal and never previously disclosed to Trenkler.

Trenkler discovered Federal government reports that Shay Sr "may have tried to influence his lawsuit"; had a "great deal of interest in [the] outcome of [the] lawsuit (and recovery of \$400,000)"; "inconsistent story re: discovery of device"; Uncooperative/evasive during questioning"; "Inconsistent, largely unbelievable story"; Shay Sr denied speaking to a neighbor while standing next to the bomb in his driveway; Shay Sr denied being seen by another neighbor carrying around a black box similar to the bomb.

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Without question, all this evidence was in the possession

of the government. Unless the government gave it to Trenkler or notified Trenkler as to its existence, Trenkler had no way to discover it with the display of due diligence.

Once again, credit for this discovery goes to Boston Police Captain Frank Armstrong, without whom Trenkler would not have discovered it.

GROUND FIVE:

The government failed in its constitutional duty to provide detailed evidence of another suspect in his case.

SUPPORTING FACTS:

In July of 1992 there had been extensive coverage of a Dennis Owen of Hyde Park, a chemical engineer employed at a Cambridge construction company, that claimed to have built the Roslindale bomb and was in the middle of building another bomb to kill a police officer that had just arrested Owen's son. AUSA Paul V. Kelly actually participated in the search of Owen's apartment where actual bomb components had been found. With little explanation and within days, Owen went from being "the" Roslindale bomber to having nothing to do with the '91 bombing.

NEWLY DISCOVERED EVIDENCE:

In July of 2009 Trenkler received reports in the government's possession including an interview by Boston Police Sergeant Timothy Calahan and ATF agent Jeff Kerr with Owen's roommate Derrick Massey. Massey stated that Owen had

built the Roslindale bomb out of a "black container" with "special Magnets" that had to be purchased at a "special place" and that the bomb had been set off by "remote control". Massey described Owen showing him a supply of "blasting caps" that looked like fireworks with "wires attached". Massey went on that Owen was making another bomb with "round magnets" and some kind of "plastic box" with "electronics" and "wires" and watched Owen "soldering wires" within the bomb. All of these items were specific attributes of the Roslindale bomb, and, other than "blasting caps", none of these items were public knowledge as of July, 1992.

Massey stated that he had been threatened by Owen and his next door neighbor with death if Massey said anything about the Roslindale bombing to anyone, in fact, the reason for this interview was that Massey had been burnt with some kind of acid by Owen and beaten up to keep Massey in line and Massey had gone to the police for help.

Owen himself had been interviewed and confirmed that he was a chemical engineer and had extensive knowledge of and access to "explosives" and "blasting caps".

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Unless the government came forward with this evidence, Trenkler had no way to know it existed. The government constantly maintained that it was abiding with the discovery rules, Trenkler had no reason to mistrust that the government would do its duty to provide exculpatory evidence or suspect

that the government would withhold evidence such as this.

Once again, after trial, Trenkler had been told by the Boston Police that the "feds" took all the evidence when it took the lead in this case.

It was Boston Police Captain Frank Armstrong that had alerted Trenkler to the fact that, contrary to what others at the Boston Police had told Trenkler, what the government did not take was stored in archives.

As mentioned throughout, Trenkler had inquired with all logical sources in the search for exculpatory evidence and cannot be faulted for the repeated withholding of this evidence known to and in possession of the government.

GROUND SIX:

The government violated Trenkler's constitutional right to a fair trial by presenting expert testimony that it was aware was controverted by withheld government evidence

SUPPORTING FACTS:

At Trenkler's trial, the government presented the testimony of its automotive expert, using tests on his own personal car, a land survey, viewing Shay Sr's car, statements of Shay Sr, and General Motors specs to "calculate by simulation" by means of "equations in the computer" that the bomb dislodged from the Shay Sr car in the manner Shay Sr intimated and the government theorized in order to gain federal jurisdiction.

However, 7 months previous, the government had evidence developed by its own agents that the bomb physically, actually, could not dislodge from the Shay Sr car as stated, that Shay Sr's "discovery" story was not believed, and that Shay Sr was suspected of scratching the bottom of his car to make his story believable.

NEWLY DISCOVERED EVIDENCE:

In 2009, Trenkler discovered the government allowed Shay Sr to obtain his car, the "target vehicle", on December 5, 1991, allowing him ample time to "doctor" his vehicle prior to Shapley's May 1992 inspection.

Trenkler also discovered the government possessed the November 17th, 1991 reenactment report and videotape of Shay Sr's car with a replica of the bomb on the undercarriage being backed into Shay Sr's driveway a number of times with no dislodgement proving that Shay Sr's story was "inconsistent" and "largely unbelievable", i.e., that the bomb was never "on" Shay Sr's car.

Fully aware of the above, the government stood by as its automotive expert, Christopher Shapely, "Shapley", testified he was hired in May of 1992 to verify the government's theory and Shay Sr's "incredible" and "largely unbelievable story", that the bomb was attached to Shay Sr's car for Shay Sr to "find" in his driveway after it allegedly dislodged while backing into his driveway, that he had access to and inspected Shay Sr's Buick Century, stating that scratches on the

undercarriage of Shay Sr's car were consistent with the bomb scraping off the car.

Inexplicably, Shapley never conducted an actual physical reenactment of the dislodgement claim with the Shay Sr car with the replica device, as Trenkler recently discovered the ATF and the Boston Police had previously done, instead, Shapley simply calculated the holding strength of the magnets from the '91 bomb, using, illogically, the undercarriage of Shapley's Pontiac 6000, not the Shay Sr Buick Century, the dimensions supplied by General Motors, not the actual 6 year old Shay Sr car, a survey of the cross section of Shay Sr's driveway, the dimensions of the replica bomb, the same replica the government knew the ATF failed to dislodge, and determined, by computer calculated simulation, that the bomb dislodged as Shay Sr intimated and the government needed in order to obtain the interstate element of the Shay car.

If Shapley had access to the Shay Sr vehicle, why didn't he test the magnet's holding strength, or take measurements of or actually place the replica device on Shay Sr's car to reenact the claimed dislodgement?

How could Shapley possibly know the condition of the Shay '86 vehicle, tires, shocks, springs or it's history, accidents, handling by various drivers, or the amount of upkeep, to compare to Shapley's car or GM specs?

Why wasn't Shapley shown the reenactment video or report where the bomb didn't dislodge or shown the route Shay Sr drove just before the alleged dislodgment?

The government knew Shapley's "simulation" testimony was in direct contention with the facts known and withheld by the government, that early on the government didn't believe Shay Sr's version of events since the bomb did not dislodge during the reenactment.

The case against Trenkler depended, in large part, on the Jury finding Trenkler attached the bomb to Shay Sr's car to damage or destroy the car or to intimidate, injure or kill Shay Sr, then, "unexpectedly" dislodged in Shay Sr's driveway for him to find. The car was found to effect interstate commerce since Shay Sr used it in the course of his part time business.

The fact the bomb was in Shay Sr's driveway and the fact that the bomb could not dislodge if attached to the undercarriage of Shay Sr's car obviates that the bomb ended up in Shay Sr's driveway by some other means. Trenkler would not be guilty of targeting the Shay Sr vehicle thus not violating 18 U.S.C. § 844(i).

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Again, prior to July of 2009, Trenkler had no idea the government withheld a report that Shay Sr obtained his car on the 5th of December, that the government had a second reenactment report where the bomb failed to dislodge, a second videotape memorializing the non dislodgement, reports that Shay Sr's version of events were not believed by the Boston Police nor the government.

GROUND SEVEN:

The government mis represented there were no fingerprints on tape used to wrap dynamite sealed within the Roslindale bomb after being notified of the presence of fingerprint.

SUPPORTING FACTS:

At trial, government expert chemist testified there was no evidence of fingerprints between layers of electrical tape that had wrapped the dynamite sealed within the Roslindale bomb. Prior to trial, and, unbeknownst to Trenkler or trial counsel, Trenkler's bomb expert displayed the print he discovered to BATF agents and the AUSA and stated the print needed to be resubmitted to the ATF lab to be identified since it would solve the case.

NEWLY DISCOVERED EVIDENCE:

Trenkler's expert, Denny Kline, "Kline", submitted an affidavit in August of 2009 regarding the discovery and subsequent notification to ATF agents Jeff Kerr and Tom D'Ambrosio and AUSA Frank A. Libby of an observed fingerprint between layers of tape recovered from the bomb scene that had wrapped the dynamite sealed within the Roslindale bomb and that they should resubmit it to the ATF lab to be identified since they would positively prove the identity of the bomb builder so hotly contested.

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

Trenkler's advocate for freedom, Morrison Bonpasse, had

contacted Kline in July of 2007 when Trenkler first learned of this observation, however, Kline had relocated and could not be reached until August of 2009 to write his affidavit. In Kline's absence, Bonpasse wrote an affidavit reflecting his recollection of the Kline conversation, mistakenly stating that Trenkler's counsel had been present during Kline's observation, where Kline had stated instead that only he and Trenkler's private investigator from Trenkler's defense team were examining evidence along with the ATF and the AUSA.

Trenkler's family had contacted both Kline and defense Counsel numerous times and neither one had ever mentioned the print observation. There were no documents reflecting Kline seeing a fingerprint on the bomb tape, in fact, in Kline's forensic analysis he stated, "It is noted that the six layers of black plastic tape recovered from the IED have not been separated, and there is no visible indication on the remains of the detonators, paper, tape or other remaining components that they were processed for fingerprints", no mention that he saw a fingerprint. Trenkler had contacted trial counsel after learning of the Kline observation, counsel responded that it never was aware of any print observation.

No degree of diligence could have resulted in the discovery of this evidence at an earlier date, it had only become available when Kline himself accurately revealed this observation in August of 2009, clarifying that Trenkler's counsel was not present at the time of Kline's discovery of the fingerprint.

GROUND EIGHT:

The government denied Trenkler's constitutional right to a fair trial by presenting statements of codefendant Shay Jr it knew to be false.

SUPPORTING FACTS:

Prior to trial, the government had held several proffer sessions, a hypnosis session, and accepted phone calls from codefendant Shay Jr, resulting with several memos written by AUSA Paul V. Kelly to Shay Jr's counsel stating that "nothing Shay Jr said could be corroborated".

These same statements of non-testifying codefendant Shay Jr had been presented at Trenkler's severed trial through the testimony of police, inmates that had been housed with Shay Jr and a videotaped interview with Shay Jr by a local television station, simply turning the same previously non corroborated statements into "facts" for the jury to consider, again, knowing these statements to be false.

Shay Jr has, "over the years, written letters to the Boston U.S. Attorney's office, the Boston Police and to U.S. District Court Judges Nancy Gertner, Edward F. Harrington, Mark Wolf and Rya Zobel, and others to explain the truth of [his] non-involvement in the Roslindale bomb".

Shay Jr had never given any sworn statements or testimony.

NEWLY DISCOVERED EVIDENCE:

On May 6, 2010, Shay Jr wrote an affidavit explaining that his prior statements were based upon information provided to Shay Jr by the AUSA and ATF agents and police, that he was coached by AUSA Paul V. Kelly and ATF agents to "get creative" to help "get" Trenkler, that the government had misrepresented to him and his counsel that Trenkler's counsel was arranging a deal with the government, pointing the finger at Shay Jr, and that Shay Jr had to come up with something to beat Trenkler to the "door", though Trenkler steadfastly maintained his innocence.

Shay Jr had been offered from 20 years down to 3 years and had been offered the \$65,000 reward money for "information" and to "get creative" to help prosecute Trenkler, but, again, Shay Jr came up with nothing that could be corroborated.

The government repeatedly told Shay Jr that unless he helped get Trenkler, Shay Jr would end up paying for the bombing on his own and Trenkler would get away with nailing Shay Jr.

Shay Jr states that the AUSA Paul Kelly, who had set up Shay Jr's jailhouse television interview, and ATF agent Jeff Kerr, held a meeting with Shay Jr in Kelly's office prior to the interview reviewing the government's evidence and reminding Shay Jr that he needed to come up with "something substantial" if he was to get his three year deal offer.

"Since I [Shay Jr] was led to believe that Alfred Trenkler was actually trying to put this all on me, I was not going to

sit back and let Alfred Trenkler put me in jail for life for a crime I did not commit, and get away with three years in prison. I had assumed that AUSA Kelly had made Trenkler the same offer as he had to me [...] I was going to do everything I could to convince the government, through this interview with Channel 56, that Alfred Trenkler was guilty, even though I knew he had nothing to do with this crime".

Shay Jr admitted he told lies at the government's request and admitted he plead guilty to avoid a life sentence or possible death penalty.

Beyond the information leaked to Shay Jr and his attorney by the government and whatever he picked up from the media, Shay Jr's stories became more polished at every subsequent telling as he "knew what the [government] didn't believe", however, nothing he stated was independent of what the government had told or theorized to Shay Jr, the government simply used Shay Jr knowing whatever it told Shay Jr would be repeated and expanded in Shay Jr's own way for anyone who would listen in order to legitimize its theories and accusations.

Shay Jr denies at any time that he or Trenkler "conspire[d] to purchase, build or place, activate or cause to detonate [] the Roslindale bomb" or have any "intent to kill, injure, or intimidate [Shay Sr], or attempt to damage or destroy his car [] or otherwise have anything to do with the explosion at 39 Eastbourne Street, Roslindale on October 28, 1991".

Not only does Shay Jr refute every inculpatory statement he made involving Trenkler, he refutes the underlying government theory of an alleged physical attraction or long term relationship between Shay Jr and Trenkler as a possible intent or motive for the bombing, stating, "I was not nor have ever been Alfred Trenkler's lover or sex partner, he never approached me in that way, and I was barely even his friend and we did not even socialize", and that he was only in Trenkler's presence "for all of 8 hours for a period of less than 90 days, mid June to August of 1991. I used him as a source of transportation whenever I crossed his path on Boylston Street in Boston [...] It was always me approaching [Trenkler] for rides, as I knew he worked in the area".

Shay Jr admits pulling a ruse the last time he saw Trenkler in August of 1991 to get Trenkler's phone number by making up a story about a work contact at a local radio station, Shay Jr simply wanted a way to call Trenkler for rides.

Shay Jr states that "Prior to June of 1991, I never saw, met, knew of, talked to, sought rides from or was otherwise ever aware of Alfred Trenkler's existence", and that Shay Jr was living in New York City prior to June of 1991 and that the only reason he was in Boston in June of 1991 was at his father's, Shay Sr's, request to be deposed as a witness to a 1987 explosion, in relation to Shay Sr's \$400,000 lawsuit, the center of this case against Trenkler.

Shay Jr denies making the October 18, 1991 six item

purchase at Radio Shack®, that he was with a friend of his at the time buying kittens for his mother's birthday.

Shay Jr states, "At this time I would take the stand under oath to explain what I did and why I did these foolish things at the urging of AUSA Paul Kelly and the ATF", and that "I want to take a polygraph test to prove what I say is true".

WHY WAS THIS EVIDENCE NOT PREVIOUSLY AVAILABLE:

The government tried to compel Shay Jr to testify at Trenkler's trial, however, Shay Jr exercised his Fifth Amendment rights and "refused to testify at Trenkler's trial because I [Shay Jr] told so many lies I could not keep track of them and I was afraid I would face perjury charges every time I said something AUSA Paul Kelly did not like to hear".

In fact, Shay Jr's counsel argued that the government was simply "walking [Shay Jr] into a perjury charge" as well as "contempt charges", as a "ceremony to increase [Shay Jr's] punishment".

At Trenkler's trial, when asked to testify by the court, Shay Jr stated, "Your honor, I have to refuse [to testify] on advice of counsel".

There was no way for Trenkler to compel Shay Jr to risk perjury charges risking an increase in his sentence or to jeopardize a new trial should he win his then upcoming direct appeal.

Trenkler, without the ability to cross examine Shay Jr's statements, motioned to put AUSA Paul V. Kelly on the stand to

examine the Shay Jr statements. Denied by the district court, Trenkler had no way to cross examine, impeach or refute the Shay Jr statements at Trenkler's trial.

According to Shay Jr's affidavit, he felt threatened to come forward with this affidavit at an earlier time for fear of retribution while incarcerated by the federal government.

The testimony set out in this affidavit was unavailable to Trenkler at his trial, and Trenkler exercised diligence as he did not have the power to compel Shay Jr to testify with the inherent risks known to Shay Jr and his counsel.