

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

4
5
6 UNITED STATES OF AMERICA

7 v.

8 THOMAS A. SHAY
9

10 Fifteenth Day of Trial
11

12 APPEARANCES:

13 For the Government:

14 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,
15 Assistant United States Attorneys.

16 For the Defendant:

17 Nancy Gertner, Esq., and Ann Baron-Evans, Esq.,
18 DWYER COLLORA & GERTNER, 400 Atlantic Avenue, Boston,
MA 02110, and
19 Jefferson W. Boone, Esq., BOONE & HENKOFF,
138 Brighton Avenue, Allston, MA 02134.
20

21
22 Courtroom 3
23 Federal Courthouse
Boston, Massachusetts

24 July 19, 1993

25 **Computer-Aided Transcription**

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Good morning, please be seated.

Counsel have a question?

MS. GERTNER: Yes, your Honor.

THE COURT: Can we deal with this in Mr. Shay's absence?

MS. GERTNER: Yes, your Honor, Mr. Kelly and I are trying to work out the stipulation concerning the parts of the Channel 56 tape that can come into evidence. And for example, we're excising any reference to topics that are irrelevant to this. There's a line in the Channel 56 tape that talks about an admission by Mr. Shay, refers to his identification, at the hands of Dwayne Armbrister, the Radio Shack clerk. He refers to that and he goes on and talks about it. The evidence will be that, in fact, he had been sent, Mr. Armbrister's grand jury testimony and he's responding to that.

The position we would like to take that should not come in, that part of the Channel 56 tape should not come in because he's responding to evidence that, in fact, has been ruled inadmissible. It would be same thing if there was an illegal search and on the tape --

THE COURT: I don't recall exactly what he says about that.

MS. GERTNER: He says that, "The guy in the store, you know, identified me that I was there, and I bought stuff

1 and I didn't know what it was for essentially."

2 THE COURT: Well, are you proposing to take out also
3 the reference to "I bought stuff"? Because he does -- as I
4 recall the tape, he also, in fact, admits to having been there
5 to buy stuff and buying stuff, but he denies having known what
6 it was for.

7 MS. GERTNER: Right.

8 THE COURT: It seems to me the Government is entitled
9 to have that admission.

10 MS. GERTNER: Except to the extent what he's doing --
11 the sentence -- I can pull it out for you, the predicate of
12 the sentence is that, The guy in the Radio Shack was quite
13 right in identifying me, and then he responds to that. It's
14 almost like --

15 THE COURT: I must confess I did not, you know, I
16 heard it a while ago, and observed it awhile ago, but my
17 recollection is that I heard it as an admission.

18 MR. KELLY: Your Honor, I have the transcript of the
19 exact statement. The statement says, starts by saying,

20 "There's only two things that I purchased that were inside
21 that explosive device that killed Officer Hurley."

22 "Question: What were those who things?

23 "Answer: The toggle switch and the AA battery
24 holder. The Radio Shack clerk on Mass. Ave. recognized me --
25 I don't know really why he recognized me, but Al had me go in

1 there and purchase these things. He said go across the
2 street. He gave me a list. I went in there and I got the
3 stuff."

4 THE COURT: It seems to me you can take out the
5 reference to being recognized and identified, but the rest of
6 it certainly sounds independent of that.

7 MS. GERTNER: Well if the Court, if the Court please,
8 should that come in then my preference with respect to this
9 witness Agent Leahy, there was a statement the month before
10 which directly contradicted this which says that the Radio
11 Shack clerk committed perjury, he recognized me from the
12 block. So then if the reference to buying something at the
13 Radio Shack is to come in, then we ask the statement of a
14 month before come in.

15 THE COURT: Okay.

16 MR. KELLY: I don't have a problem with that. We
17 clearly want to offer the statement for a number of reasons,
18 and I don't have a problem with Agent Leahy testifying about
19 Tommy's statement about perjury. I understand otherwise it
20 might be perjury. I certainly would be more than willing to
21 make the exception.

22 [Whereupon, the jury entered the courtroom.]
23
24
25

1 Dennis Leahy, resumed

2 Continued Cross-examination by Ms. Gertner

3 Q Agent Leahy, in addition to the searches of Al Trenkler's
4 parents' home, John Cates' home, and the business at AARCOM,
5 you also put a pen register on Al Trenkler?

6 A Well, we put a pen register on telephones that Al
7 Trenkler used. It is not something you put on person.

8 Q I'm sorry. Can you tell the jury what a pen register
9 is?

10 A Yes. It's, I guess you can call it an electromechanical
11 device that when a suspect has a phone at his business, home,
12 wherever we electrically hook it up to, when he picks the
13 phone up, it shows on an LCD screen that he's picked the phone
14 up the time and the date. It also records it internally or on
15 paper tape, depending which machine you have. And when he
16 dials the phone, pulses gives us a record of the phone number
17 that he's calling. And that enables us to see who the suspect
18 is speaking to.

19 Q You also did a mail cover on Al Trenkler?

20 THE COURT: Didn't we cover that on Friday?

21 MS. GERTNER: No, your Honor. I have the transcript
22 in front of me, no.

23 A Once again it is not on the person, it is where the
24 address, where the mail is delivered and we coordinate through
25 the post office through official channels, and the post office

1 records all the information on the outside of the envelope.

2 Q What is a clone pager, sir?

3 A When a suspect has a pager, once again, I'm not sure how
4 it is done, technically, but we have another pager that as he
5 is paged we get the same numbers on our pager that the suspect
6 gets on his pager.

7 Q Did you do the same three things, actually, four things,
8 search, pen register, mail cover, clone pager to Mr. Berry or
9 Mr. Giamarco?

10 A I believe it is to my recollection we pulled the tolls on
11 Mr. Berry and Mr. Giamarco which would give us the numbers
12 that they called in the past so that we could then look at
13 those numbers investigatively. We did not do one for the
14 future.

15 Q And you never searched Berry or Giamarco's home or work?

16 A Having a lot of agents and detectives on this
17 investigation, I personally never interviewed Mr. Berry or
18 Giamarco, went to their place of business. It was handled by
19 other investigators and, you know, I was at the investigative
20 meetings when their activities were discussed.

21 Q Was there ever a federal search warrant for either man?

22 A On their residence or vehicles?

23 Q Yes.

24 A No, there was not.

25 Q Did you ever formally have, you have to apply to the

1 Court for a pen register and a clone pager, do you not?

2 A Yes, ma'am.

3 Q Were any such applications made with respect to Berry or
4 Giamarco?

5 A No, ma'am, there were not.

6 Q What about what kind of investigation was done on
7 Mr. Pace, P A C E?

8 A He was interviewed by agents and a background check was
9 conducted on him.

10 Q And with respect to Mr. Shay, Sr., Tom Shay, Sr., I
11 believe you said that you did a pen register on him as well;
12 is that right?

13 A Well, once again, you don't do it on a person.

14 Q It is on his phone?

15 A Correct.

16 Q And was his lawyer aware of that, do you know?

17 A At the time we did it?

18 Q Yes.

19 A He shouldn't have been.

20 Q Had you been in regular contact with Mr. Pransky?

21 A No, I had not.

22 Q Likewise, you did some surveillance on Mr. Shay, Sr.; is
23 that right?

24 A Yes, mobile surveillance was conducted on Shay, Sr.

25 Q When was this?

- 1 A After October 28th, 1991.
- 2 Q Roughly when in terms of 1992, '91?
- 3 A Several months intermittently after October 28th.
- 4 Q And did anyone talk to his lawyer about that, or this was
5 also intended to be without his knowledge?
- 6 A Yes, it's done discretely. If the person knows you're
7 following him, it is usually not of much value.
- 8 Q Did you do a mail cover on Shay, Sr.'s mail?
- 9 A Yes, I believe we did.
- 10 Q And again, that was something that would have been
11 arranged without their knowing about it; is that right?
- 12 A It would have been done discretely, yes.
- 13 Q When you, at some point you got, received or looked
14 through Mr. Tommy Shay's address book?
- 15 A Yes, ma'am.
- 16 Q And you were looking through the address book, you were
17 basically going through the names of different people in the
18 address book; is that fair to say?
- 19 A Yes.
- 20 Q Was Mr. Carrion in the address book, if you recall?
- 21 A I don't recall.
- 22 Q And do you know --
- 23 A I don't believe he was, but I don't have a clear
24 recollection.
- 25 Q Or Russ Bonnano was he in the address book, if you know?

1 THE COURT: Is not the address book in evidence?

2 MS. GERTNER: Yes, but I have other questions, your
3 Honor.

4 A It's been almost two years, and I don't recall the names
5 in the address book verbatim.

6 Q But you were looking for people with a particular
7 background, that's what you were looking for this the address
8 book, right?

9 A Not initially, we were looking for people to interview
10 for investigative leads to see where it would go.

11 Q How many people in the address book did you, in fact,
12 interview?

13 A My best recollection is I think we tried to interview
14 everyone that we could contact.

15 Q On September 18th, 1992, you were with Tommy Shay when he
16 was being processed for fingerprints, photographs et cetera,
17 at the marshal's office?

18 A Yes, ma'am, I was.

19 Q And in the holding area I believe you testified that Shay
20 said, I'm not the guy who bolded, I'm not the guy who got the
21 dynamite. I'm not the guy who placed it. I'm not violent; is
22 that right?

23 A We missed spell check on that. It should be, I'm not the
24 guy who built it. In that last phrase --

25 Q It makes more sense?

1 A The last phrase should be I'm not the violent one.

2 Q In addition, he talked about the clerk at the Radio
3 Shack, do you recall?

4 A Yes, I do.

5 Q And he said, did he not that the clerk in the Radio Shack
6 knew him from the "block,"?

7 A That was part of the conversation about the clerk.

8 Q What is the block?

9 A It's a gay area in Boston, where it's basically a street
10 scene for gays.

11 Q And he also said that the guy, the clerk in the Radio
12 Shack perjured himself; is that right?

13 A Yes, he said that.

14 Q With respect to the your Radio Shack investigation had
15 you gone -- you had gone to a number of Radio Shacks in the
16 Boston area; is that right?

17 A That's correct.

18 Q And you also were in touch with manufacturers of toggle
19 switches.

20 A Actually, it was done by another agent, advised me of
21 what he found.

22 Q Did you investigate whether or not the manufacturer that
23 made the toggle switch, the Radio Shack marketed also marketed
24 that toggle switch to other brand names?

25 A We pursued that. And Radio Shack bought the toggle

1 switch from Taiwan. It was a company called Shin, Chin,
2 S H I N, C H I N. And it's our understanding they done have
3 anyone that speaks English at the company or they may have one
4 person that speaks some English.

5 Q And ATF doesn't have a Taiwanese agent?

6 A I really don't know.

7 Q So you couldn't really determine whether or not that --

8 A Well, speaking with Radio Shack we found out it is a very
9 small company. And it says custom made for Radio Shack on the
10 package. And in our conversations with the Radio Shack Tandy
11 people, it was the collective opinion it was highly unlikely
12 that it was manufactured for any one else.

13 Q But you couldn't, you couldn't determine, you couldn't
14 confirm whether or not this particular company distributed to
15 anyone else?

16 A As I mentioned, it was another agent that was doing it,
17 and he may have further results that I'm unaware of.

18 Q And when you went to the Radio Shack, how many times did
19 you visit the Radio Shack opposite the Christian Science
20 monitor?

21 A Probably five or six.

22 Q When you went there, did you speak to Mr. Nightingale?

23 A Yes. I believe on two occasions, I spoke to him.

24 Q And did Mr. Nightingale indicate to you that he was the
25 roommate of Mr. Carrion?

1 A Yes, he did.

2 Q And did you interview people with respect to the extent
3 to that particular -- or strike that.

4 Were you a participant in the search of Nancy Shay,
5 Shay's home, Thomas Shay's mother?

6 A No, I was not.

7 Q Do you know whether or not the search of any of Shay,
8 Tommy Shay's homes produced receipts of any sort?

9 A Which Tommy Shay's?

10 Q Tommy Shay, Sr.

11 A No, they did not.

12 Q My question, I misspoke myself, did you ever determine
13 whether or not, did you ever search anyplace that Tom Shay,
14 Jr. lived at to determine if there were any receipts of any
15 sort?

16 A Yes. When I was in San Francisco, we searched his duffle
17 bag, and found no Radio Shack receipt.

18 Q What about the home of Mr. Shay's mother, the home he had
19 been living in on occasion, did you ever search that home?

20 A I personally did not.

21 Q Do you know whether or not a federal search warrant was
22 ever executed at that home?

23 A To my knowledge, there was no federal search warrant
24 served on that house.

25 Q Now, when you went to the Radio Shack, prior to, you went

1 to a number of Radio Shacks and you were looking for what kind
2 of receipts, when you went looking for Radio Shack receipts?

3 A Receipts that would be investigatively interesting. I
4 had the model, stock number of the toggle switch. I was look
5 fog suspects' names; I was looking for items purchased, other
6 than the toggle switch that could be in the device.

7 Q The toggle switch that Cynthia Wallace reconstructed that
8 was likely to be a Radio Shack toggle switch; is that right?

9 A That's the information from the forensic chemist, yes.

10 Q You were getting your information from her, you had no
11 independent verification at all, right? She said this is what
12 she thought it was, and you were going to follow along looking
13 for what she thought it was?

14 A Actually, she compared it to her exemplars at the lab and
15 determined it was that switch, and then we requested a
16 computerized printout on that switch and, that's an
17 investigative lead, and then I followed that course.

18 Q Had you personally participated in the gathering of the
19 little pieces of the toggle switch?

20 A I personally did not find little pieces the toggle
21 switch, no.

22 Q Now, with respect to the search of Alfred Trenkler's
23 house in February '92, or in January of '92, you indicated,
24 that you were -- not his house but the house at 7 White Lawn
25 Avenue, you were a participate in that?

1 A I was the search team leader.

2 Q And your primary goal was to chronicle the search; is
3 that right? Your primary goal was to organize the search and
4 keep track of the information that had been obtained from the
5 search?

6 A Well, as a search team leader we have a search warrant
7 checklist, I assemble the people at a given time, make sure
8 there was tags and bags for evidence, we had a forensic
9 chemist, and I believe there was ETV person there, provided
10 transportation, overall direction, I guess is the best way to
11 phrase it.

12 Q And your goal on that occasion was not to interview
13 Alfred Trenkler; is that right?

14 A That's correct.

15 Q Your testimony was that Mr. Trenkler had a conversation
16 with you?

17 A Yes, ma'am; that's correct.

18 Q And after you had that conversation with Mr. Trenkler,
19 you went to another location, right?

20 A No, I actual I stayed at that location, I believe he left
21 and I discussed it with Detective Fogerty, we finished doing
22 an inventory, and then I went to another location.

23 Q With respect to -- you had the conversation with Al
24 Trenkler, you weren't taking any notes at that time?

25 A That's correct.

1 Q And you went from that location at 7 White Lawn to
2 another location?

3 A Yes.

4 Q Where was the second location you went?

5 A 133 Atlantic Ave.

6 Q Was your role at 133 Atlantic Ave. the same as your role
7 at 7 White Lawn to be the team leader?

8 A No, it wasn't.

9 Q What was your role there?

10 A My best recollection is we had Dr. Hobbs from MIT that
11 had an experimental explosives sniffer and I was chauffering
12 or arranging him to be brought to the three locations so that
13 he could take hair samples, so I was basic an a chauffeur?

14 A Yes.

15 Q At the second location did you take any notes?

16 A No, I did not.

17 Q Where did you go next?

18 A Went to AARCOM which is in Weymouth, it is Trenkler's
19 partner's company.

20 Q And at AARCOM, what was your role, were you a chauffeur
21 or team leader, quite a gap there?

22 A Yes, I was the gopher again.

23 Q You were the gopher.

24 At that third location did you take any notes?

25 A No, ma'am.

1 Q And what time did you conclude your day on the day that
2 you searched Mr. Trenkler's homes and offices?

3 A I think we finished up mid-afternoon, and went back to
4 Boston Police homicide for a quick meeting, and I'd say very
5 early evening probably.

6 Q And you don't put down your notes, you don't type up your
7 memory of a previous day until the next morning; is that
8 right?

9 A Generally that's correct, yes.

10 Q Now, after Mr. Trenkler said something about blasting
11 caps and a shunt and electrical wires as antenna, you asked
12 him how come he knew about such things, right?

13 A Yes. He, we had a fairly lengthy conversation about
14 explosives, and I was surprised he knew what a shunt was. I
15 was surprised he knew about leg wires and blasting caps. I
16 was surprise that had he knew the dynamite or a high explosive
17 placed under dynamite would sympathetically detonate.

18 Q My question was, did you ask him how come he knew?

19 A Yes, he did.

20 Q And he said from TV; is that right?

21 A Yes, he did.

22 Q Now, with respect to wires coming out of the blasting
23 caps acting as antennas, the man was an expert in microwave
24 technology, was he not -- radio technology?

25 A That was the business where he was employed.

1 Q And one of the things that happens -- strike that.

2 And the comment that dynamite, through heat, can
3 cause to explode dynamite that is located next to it is not
4 exactly true; is that right?

5 A Well, there are again, it depends on the proximity that
6 the dynamite is placed to the other dynamite.

7 Q If dynamite is stored in a hot place, it won't explode?

8 A Not generally, no. It shouldn't.

9 Q And the comment that two electrical wires can act as
10 antenna is really nothing more than the same thing as the
11 signs when you pass a blasting area, don't turn on your radio;
12 is that right?

13 A I don't think so.

14 Q There are such signs when you past a blasting area, it
15 says don't turn on your radio, you know that?

16 A Yes.

17 Q And that's because essentially when you turn on the radio
18 or start, any kind of transmission it could have an impact on
19 the blasting area?

20 A Yes, that why I was surprised he knew about a shunt.

21 Q The man was an expert in radiowaves, microwaves, and
22 things like that, right, so far as you knew?

23 A I know he was employed pretty unsuccessfully in doing
24 that, so I'm want sure if he is an expert.

25 Q That's what his employment focused on, radio waves and

1 transmitters, and issues like that?

2 A Microwave technology, correct.

3 Q When you say you talked extensively about this, other
4 than the comments you just described, you can't remember
5 anything else he said?

6 A Oh, sure.

7 Q With respect to explosives, blasting caps, electrical
8 wires, dynamite exploding through heat, that's all he said
9 about explosives?

10 A No, I recall other conversations with him.

11 Q On the subject of explosives?

12 A Yes.

13 Q Is that -- this all you wrote down in your report?

14 A Yes, I was being conservative, I didn't want to get into
15 a lengthy...

16 Q You were being conservative concerning an interview that
17 you had with a primary suspect in a murder investigation?

18 A Yes.

19 Q You knew that one day you would be on the stand, and
20 these reports would be means by which you would refresh your
21 recollection, right?

22 A That's correct.

23 Q And you knew that these reports would be the means by
24 which some lawyer would cross-examine you, right?

25 A Could, yes.

1 Q And in fact your goal this these reports is to write down
2 as much as you can possibly remember that's of significance so
3 that you can refresh your memory, right?

4 A That's correct. I felt that I had captured the essence
5 of the conversation and why be repetitive with more
6 conversations on explosives.

7 Q The only details you put in your report are the details
8 you described?

9 A What's in my report is in my report, yes. That's
10 correct.

11 Q Do you have any other notes independent of your report?

12 A I have a folder that is 12 inches thick.

13 Q No. What notes with respect the conversation with Al
14 Trenkler?

15 A No, I don't.

16 Q And it's your testimony that Al Trenkler just sort of on
17 his own and not in response to any questions, not being led by
18 you made these comments?

19 A Yes. Yes, he showed up, he had been advised that we were
20 at that location.

21 Q My question just called for yes or no response.

22 A Yes.

23 Q Was he laughing?

24 A He was in a good mood.

25 Q And he was essentially having an informal conversation

1 with you; is that right?

2 A He was very chatty, very cooperative, allowed a consent
3 to sniff his trunk. He came over and talked to us, I asked
4 him to stay, you know, a good distance away so he wouldn't
5 interfere with the search, and he kept coming back over to
6 talk to us.

7 Q He behaved like someone who had nothing to hide, is that
8 fair to say?

9 A No, I wouldn't say that.

10 Q He didn't call his lawyer, right? You told him he could
11 call his lawyer?

12 A Yes, I did, and Detective Fogerty did.

13 Q And he chose not to call his lawyer?

14 A He mentioned his attorney when I brought up a particular
15 subject.

16 Q But when you asked him, you told him that you didn't
17 think that he should be talking to you without his lawyer
18 present or words to that effect?

19 A Yes, Detective Fogerty was very concerned about that, and
20 briefed him extensively not to.

21 Q But he didn't have any problem talking to you?

22 A No, he didn't. He was very chatty.

23 MS. GERTNER: No further questions.

24 THE COURT: Anything else Mr. Kelly?

25

1 what was his demeanor?

2 A He was calm like we are, and I took it to be a
3 self-serving comment.

4 MS. GERTNER: Objection, your Honor.

5 THE COURT: What he took it to be, the jury will
6 disregard, but the rest stands.

7 Q There was a difference in the demeanor at the time he was
8 making the two sets statements?

9 A Yes, sir.

10 Q Now, the Radio Shack receipt which was offered in
11 evidence and which you were asked some questions about, what
12 if any investigation was conducted with respect to the name
13 that appeared on that receipt, S A H Y, what if any
14 investigation --

15 MS. GERTNER: Objection, your Honor.

16 THE COURT: Beyond the scope?

17 MR. KELLY: I don't think it is beyond the scope.

18 MS. GERTNER: I didn't get into it at all.

19 THE COURT: I don't recall on Friday whether
20 Ms. Gertner got into the Radio Shack --

21 MR. KELLY: It is my understanding, correct me if I'm
22 wrong, she asked you questions about when you were looking
23 through these receipts, you know, and what were you looking
24 for, having to do with suspect names --

25 THE COURT: That's true, you did do that.

1 MS. GERTNER: I withdraw the objection, your Honor.
2 I did do that.

3 THE COURT: You may proceed.

4 Q My question, following up on this, when you found this
5 particular receipt, which has been offered in evidence, what
6 if any further investigation did you do with respect to that
7 name, S A H Y, if any?

8 A We looked in the Boston phone book, and there was one.
9 And we called the phone company.

10 Q There was one what, sir?

11 A S A H Y.

12 Q What appeared to be a person having that name, is that
13 what you are referring to?

14 A Yes, sir.

15 Q Tell us what happened then.

16 A We contacted the phone company, and ascertained it was a
17 misprint. It should have been Fahey, F A H Y. And then
18 later, investigators canvassed Massachusetts and could find no
19 one with that name.

20 Q To the best of your knowledge, sir, based on this
21 investigation, was there anybody in the State of Massachusetts
22 having the last name, S A H Y?

23 A Not that I'm aware of, no.

24 Q You were asked a number of questions about investigative
25 techniques employed on various people. My first question,

1 sir, is at any time -- strike that.

2 How many times did you personally have occasion to go
3 back to 39 Eastbourne Street to have some contact with that
4 address or with Mr. Shay, Sr., after the date of the
5 explosion?

6 A Numerous times.

7 Q On any of those occasions, Mr. Leahy, did you encounter
8 any resistance or lack of cooperation from Thomas Shay, Sr.?

9 A None whatsoever.

10 Q At any time did he deny you access to his property?

11 A No, he was always very cooperative was.

12 Q What if any occasion did you ever have subsequent to
13 October 28th to take possession of his car, for example, the
14 1986 Buick?

15 A Yes, we took his car, or we asked if we could take it,
16 and he allowed us to do the mock run around time with the
17 device on it. We asked him, again, to look at the
18 undercarriage. Probably we had his car more than he had it
19 for months at a time, and he never minded.

20 Q Is it fair to state when you asked for that car, you'd
21 take it for a period of days or hours or whatever, he simply
22 turned over the keys?

23 A Yes, that's correct.

24 Q You were asked some questions by Ms. Gertner late Friday
25 about whether or not a federal search warrant was ever

1 conducted at that property.

2 Would you tell us the reason why a federal search
3 warrant was never obtained for that property?

4 A Mr. Shay was always very cooperative, allowed us access
5 all the time. And we had photographs from before, so I could
6 look at the photographs and, you know, go back on occasions if
7 we had to.

8 Q Was there a difference in the way you approached a search
9 of a piece of property if you have a search warrant, compared
10 when the owner of a property grants you consent to search a
11 property? How do those two situations differ in terms of the
12 way you approach a search, at all?

13 A Well, when you have a search warrant, it is generally
14 more organized, you have more people, you are under stricter
15 guidelines than when you have consent. You are basically free
16 to walk around, you know, take a look, take your time.
17 There's, there's a difference.

18 Q Now, you were asked specifically a question about the
19 paint stirrer that was at some subsequent point over to ATF
20 months after the bombing.

21 Do you recall that question or questions by
22 Ms. Gertner?

23 A Yes, I do.

24 Q When that particular paint stirrer was passed on months
25 after the explosion, was that the first time that

1 investigators had seen that paint stirrer?

2 A No, sir, it wasn't.

3 Q When was the first time the investigators had seen it?

4 A I saw it the 29th, you know, and at one of the many
5 investigative discussions it was mentioned that the paint
6 wasn't the same as the paint on the device.

7 Q When you and other investigators saw this particular item
8 on October 29th, 1991, what if anything did you do with it?

9 A I believe we photographed it and just examined it to try
10 and determine if the paint was the same as on the device.

11 Q And when you went back to Mr. Shay, Sr.'s home, how if at
12 all did the photograph of the paint stirrer affect what you
13 asked him for? Did you show him the photograph and say did
14 you say: Do you still have it?

15 A I'm not positive if we did or not, or just went to the
16 garage, and he said you can go get it.

17 Q At some subsequent point did you take the paint stirrer,
18 check it against photograph and see that it was the same one?

19 A Yes.

20 Q And was it the same one?

21 A Yes.

22 Q You were asked a number of questions about whether you
23 employed various investigative techniques with Mr. Berry,
24 Mr. Giamarco, Mr. Pace, and others, correct?

25 A Yes, sir.

1 Q Were you involved in the process, Agent Leahy, of not
2 only interviewing various people but securing the presence of
3 people to come in and give sworn testimony before the Federal
4 grand jury?

5 A Yes, I was.

6 Q And you're familiar, are you not, sir, with the
7 identities of the various people who were called upon to
8 testify before the grand jury in connection with this
9 investigation?

10 A Yes, I am.

11 Q And was Jeffrey Berry called before the grand jury?

12 A That's my recollection, yes.

13 Q Tony Giamarco?

14 A I believe he was.

15 Q Ralph Pace?

16 A I believe he was, also.

17 Q Tom Shay, Sr.

18 A Yes, he was definitely.

19 Q His fiancée, Mary Flanagan?

20 A Yes.

21 Q His brother, Arthur Shay?

22 A Yes.

23 Q The mechanic at the Rolling Wrench Garage, Mr. John
24 Doering?

25 A I recall that name, also.

1 Q Mr. Shay's attorney Mr. Pransky?

2 A Yes.

3 Q Various other neighbors, such as the McKernans and
4 others?

5 A That's correct.

6 Q Finally, sir, you were asked on Friday afternoon about
7 the question of primary suspects and secondary suspects, et
8 cetera, and you stated, in response to one of Ms. Gertner's
9 question, "About seven days, maybe six days after October
10 28th, he, Tom Shay, Jr., ceased to be a primary suspect"; do
11 you remember that testimony?

12 A Yes, I do.

13 Q Without getting into the details, sir, was the reason
14 that that switched at that time six or seven days later, was
15 there some specific event which changed the course of the
16 investigation?

17 A Yes, there was. That's correct.

18 Q It wasn't that after six or seven days, the investigators
19 simply felt that they had done all work they needed to do and
20 they were satisfied, was it, sir?

21 A Not at all.

22 MR. KELLY: Nothing further.

23

24

25

Cross-examination by Ms. Gertner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q You testified you didn't know a great deal about microwaves, right?

A Yes, that's correct.

Q But you do know that there's microwaves are dangerous around blasting areas?

A Yes, I do.

Q And blasting areas are typically on construction sites?

A That is one place, quarries. With us, mainly we destroy explosives, so we're at explosives ranges.

Q But explosives are used in construction sites?

A Yes.

Q And people who put up microwave antennas are also sometimes at construction sites, right?

A That's correct.

Q So that anyone with any expertise in microwaves, would be someone who may well want to know about the relationship between what he does and explosives in the construction area? In other words, he would want to know about the extent to what he's doing might, could trigger explosions somewhere else?

A Well, actually, the explosives are used to remove Stones and so forth, and then they would put the tower in, and then the microwave portion would go in last. So the blasting should have been completed by the time the microwave equipment is installed.

1 Q But the information for someone who installs microwaves
2 is likely to have has to do with the relationship between what
3 he does and its impact on other people in the area, right,
4 essentially?

5 A I would assume that there's safety limits that microwaves
6 are dangerous to people and you would have to be cognizant of
7 the distances and the height and so forth.

8 Q Its impact on other -- impact on people, its impact on
9 businesses, its impact on radio communication, and it's impact
10 on blasting in the area?

11 A I'm not sure that that's -- I'm not sure that that's
12 correct. It's possible. But I'm not sure if -- I dealt with
13 explosives for 20 years, and I know nothing about microwaves,
14 and it could be vice versa.

15 Q With respect to the Radio Shack receipt, sir, you did an
16 investigation looking at the name, first, looking for the name
17 Shay, right?

18 A Well, actually, I first looked, I got the computerized
19 printout by stock number for the toggle switch and then I
20 looked for names.

21 Q Now, you testified that you could find no one with the
22 name, S A H Y, in the Boston area when you found this Radio
23 Shack receipt?

24 A I believe there was one in the phone book.

25 Q That's right. There was one individual, an Indian

1 individual in Brighton; isn't that right?

2 A No. Originally, the investigators thought that S A H Y
3 might be an Indian national because of the name and the
4 address in Boston. However, when we looked into it, it was a
5 Fahey; it was a misprint in the phone book.

6 Q So you never called anyone by the name of S A H Y in
7 Brighton, an Indian gentleman?

8 A No, I did not.

9 Q And then, with respect to the telephone number on the
10 Radio Shack receipt, did you determine that the telephone
11 number on the Radio Shack receipt was the telephone number of
12 Tom Shay, Sr., with the digits transposed?

13 A Yes, Radio Shack has an I.D. number, and two digits
14 juxtaposed would give Tom Shay, Sr.'s phone number.

15 Q And that was the receipt that you had gotten in February
16 of '92; is that right?

17 A Yes, ma'am.

18 Q Now, you said that Shay, Sr. was very cooperative and
19 took his -- when you took his car a number of times. He
20 cooperated with search of his property; isn't that right?

21 A Yes, that's correct.

22 Q Now, you did so -- at some point, the newspapers, did
23 they not -- strike that.

24 In any of your communications with Shay, Sr. or his
25 attorney, did you make it clear to him that he had gone from

1 being a primary suspect to being a secondary suspect?

2 A Usually we don't even tell people, like, you're a suspect
3 and say, like, your a primary or secondary suspect. It
4 wouldn't make sense.

5 Q But it's fair to say that at some point newspapers were
6 reporting other suspects other than Shay, Sr.?

7 A I don't recall, there could have been.

8 Q And when you looked at his car and when you looked at
9 this paint stirrer, that was a number months after the actual
10 event, after the actual bombing?

11 A No, we looked at his car the day of the bombing, the next
12 day, the week after. We have looked it over a period of time.

13 Q But with respect to -- when you search searched Al
14 Trenkler's house, you looked for dynamite, blasting caps,
15 magnets, batteries, radio controls devices, washers, black
16 electrical tape, silver duct tape, wood or wood paneling,
17 one-inch finishing nails, black spray paint, glues or
18 adhesives, insulated copper wire, magazines, or torn pages
19 from magazines; am I reading correctly?

20 A Yes, ma'am.

21 Q Did you do -- and when you searched Al Trenkler's house,
22 you did so without notice. You simply arrived and combed the
23 place for items of that nature, right?

24 A Well, actually, we had been to the location twice. The
25 second time was with the federal search warrant.

1 Q Right. But the thing about the federal search warrant,
2 you did not give Mr. Trenkler notice that you were going to be
3 there to comb the place for these items, right?

4 A Absolutely not.

5 Q Right. You just arrived and searched, right?

6 A That's correct.

7 Q But with respect to Shay, Sr., who had gotten pretty cozy
8 with the investigators by this point, you gave --

9 MR. KELLY: I object to that.

10 THE COURT: The objection is sustained, and the jury
11 will disregard it.

12 Q With respect to your encounters with Mr. Shay, Sr., he
13 consented to these searches in advance?

14 A No, that's not correct. The first day he consented, the
15 second day, state search warrants were served.

16 Q Right. And the state search warrants were served by
17 State Police -- by the Boston Police; isn't that right?

18 A That's not correct. There were agents there with them.

19 Q And did the agents gather up the information that I've
20 just -- materials that I just described?

21 A No, they did not.

22 MS. GERTNER: Thank you, no further questions.

23 THE COURT: Thank you, Mr. Leahy, you are excused.

24 Members of the jury, we get to stretch, and Mr. Kelly
25 or Mr. Libby will call their next witness.