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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Seventh Day of Trial

APPEARANCES:

For the Government:

Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,
Assistant United States Attorneys, Federal Courthouse,
Boston MA 02109.

For the Defendant:

Terry Philip Segal, Esq., Scott Lopez, Esq.,
and Brenda R. Sharton, Esq., SEGAL & FEINBERG,
210 Commercial Street, Boston, MA. 02109.

Courtroom 3
Federal Courthouse
Boston, Massachusetts

November 2, 1993

Computer-Aided Transcription

P R O C E E D I N G S

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[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning, please be seated.

Where is Mr. Shay?

MR. KELLY: Right outside the door.

THE COURT: Would you bring him in.

Thomas Leroy Shay, resumed

THE COURT: Mr. Shay, understand that you are still under oath even though we will not again go through the form also today.

THE WITNESS: Yes, your Honor.

THE COURT: Please be seated, and you may proceed, Mr. Segal.

Continued Cross-Examination by Mr. Segal

Q Good morning, Mr. Shay.

A Good morning, Mr. Segal.

Q Do you recall telling Officer Ahern on October 29, that you threw the device against the house?

A No, sir.

Q Do you recall stating that on Saturday night, you backed your car into his drive -- and the driveway and felt the car bottom out?

A No, sir.

Q You have no recollection of stating that to Officer Ahern the next day, October 29th?

1 A That's correct, sir.

2 Q Do you recall telling Detective McCarthy, you threw it
3 aside on the house?

4 A No, sir.

5 Q Do you remember meeting with Detective McCarthy and
6 O'Malley and Ross?

7 A I'm not too familiar with a couple of those names, sir.

8 Q Do you recall saying to them, that you were afraid of Mr.
9 Giamarco and Mr. Berry?

10 A No, sir.

11 Q Let me show you Defendant's Exhibit 81 for
12 identification, the McCarthy report of 10/29/91. I direct
13 your attention to page 7 of that report and I ask you if you
14 would read it to yourself.

15 The first full paragraph.

16 A To where?

17 Q Right down to there.

18 A Okay.

19 (Pause.)

20 A I don't remember these statements, sir.

21 Q My question is, you have now read to yourself that
22 paragraph on page 7 of Defendant's Exhibit 81?

23 A Yes, sir.

24 Q Does that refresh your recollection whether you told
25 Detective McCarthy that you were afraid of Giamarco and

1 Berry?

2 A No, sir.

3 Q All right.

4 I'd ask if you would just come down from the stand --

5 THE COURT: Wait a minute. For what?

6 MR. SEGAL: I would like to show him an exhibit if I
7 might.

8 Can you see this from where you are, sir?

9 A Yes.

10 Q All right. Would you look at what's been marked
11 Defendant's Exhibit 80 for identification, and forgetting the
12 color, look at the workmanship on this particular bookcase.
13 Can you identify this exhibit as a bookcase made by Arthur
14 Shay for you?

15 A No, sir.

16 Q Can you identify it as bookcase that was in the home of
17 you and Nancy Shay when you were married?

18 A No, sir.

19 Q Do you do any work with wood, sir?

20 A No, sir.

21 Q Do you have a saw in your garage?

22 A Yes, sir.

23 Q Is that a power saw or a hand saw?

24 A A hand saw, sir.

25 Q At the Rolling Wrench garage, did you do any work with

1 wood?

2 A No, sir.

3 Q Was there a saw at the garage when you were there in '91?

4 A I don't know, sir.

5 Q To your knowledge, does your brother Arthur Shay have any
6 capability in woodworking?

7 MR. KELLY: Your Honor, I have an objection to
8 relevance, his brother, I object.

9 THE COURT: Why is it not relevant?

10 MR. KELLY: Whether his brother can work with wood.

11 THE COURT: There are have been allegations about the
12 ability to work with wood.

13 A Would you repeat that question, please, sir.

14 Q To your knowledge, let me phrase it this way. Have you
15 ever seen any pieces of wood done by Arthur Shay, your
16 brother?

17 A Ever?

18 Q Ever.

19 A Not that I can recall, sir.

20 Q Have you ever seen Arthur Shay working with wood?

21 A Not that I can recall, sir.

22 Q Let me direct your attention, sir, to the lawsuit against
23 the Dedham Service Center. That's the outfit that you rented
24 space from in 1987, sir?

25 A Yes, sir.

1 Q All right. And that was run by Mr. Giamarco and
2 Mr. Berry?

3 A I believe so, sir.

4 Q They were the landlords?

5 A Yes, sir.

6 Q And you, there was an incident in October 1987 where a
7 quarter stick went off near you; is that correct?

8 A Yes, sir.

9 Q And that's while you were working at the automatic to
10 body shop, you were leasing there, am I right?

11 A Yes, sir.

12 Q All right. You then filed a lawsuit against the,
13 Mr. Giamarco and Mr. Berry two years later; isn't that
14 correct?

15 A Yes, sir.

16 Q All right.

17 Now, did you ever tell your son Tom that the suit has
18 nothing to do with money, this has to do with people being
19 responsible for their actions?

20 A Yes, sir.

21 Q So you really weren't trying to get money from the
22 lawsuit, you were just trying to get responsibility
23 established; is that right?

24 A I was trying to get the point across to Tommy that the
25 responsibility of people's actions is important.

1 Q But the ultimate purpose in the lawsuit, wasn't it to
2 recover money against Mr. Giamarco and Mr. Berry?

3 A No, sir.

4 Q What was your purpose?

5 A The purpose was responsibility of people who are being
6 responsible for their actions.

7 Q Was the case settled with an apology from Mr. Giamarco
8 and Mr. Berry to you, sir?

9 A Apologies?

10 Q Yes.

11 A I don't think so, sir.

12 Q Was it settled for any money, sir?

13 A Yes, sir.

14 Q How much?

15 A That's not to be disclosed.

16 Q I'm not permitted to ask that sum of money, your Honor?

17 THE COURT: I didn't say you are not permitted to ask
18 it. You've asked it and he's given an answer.

19 MR. SEGAL: Well, I asked he be directed to answer
20 the exact sum of money that he received from that lawsuit.

21 THE COURT: You may tell us the exact amount of
22 money.

23 THE WITNESS: May I ask the Court a question,
24 please? I was directed not to disclose the amount of money.

25 THE COURT: By whom?

1 A By Judge Zobel in the Lowell state court.

2 THE COURT: I've just overruled him.

3 (Laughter.)

4 THE WITNESS: That's fine.

5 Q Having had a higher authority overrule the prior judge,
6 what is the amount of money you received in that lawsuit
7 against the Dedham Service Center?

8 A The settlement was for \$27,000.

9 Q And you received that money; isn't that correct?

10 A No, sir.

11 Q Thomas Shay, Jr., your son didn't receive it, am I right?

12 A That's correct.

13 Q He wasn't a plaintiff in the case?

14 A That's true.

15 Q Either you or your daughter received money; isn't that
16 correct from this suit?

17 A Which daughter are you referring to, sir.

18 Q Crysten?

19 A Yes, sir.

20 Q All right.

21 Are we clear that Crysten Flanagan who lives with you
22 on Eastbourne Avenue received the \$27,000 from the lawsuit?

23 A No, sir.

24 Q Who received the money?

25 A Yes, sir, it was a partial -- where I received, there was

1 a settlement of \$27,000, minus attorney fees and Crysten was
2 allowed 10 percent of that money because she was a minor child
3 of mine.

4 Q Her claim was sort of derivative. It was based on the
5 fact she lost certain services or consortium because of the
6 explosion that happened to you, am I right?

7 A Yes, sir.

8 Q All right. So she got 10 percent the recovery?

9 A Yes, sir.

10 Q Now, putting aside --- I take it, the attorneys got one
11 third of the suit; is that right?

12 A I believe so.

13 Q All right.

14 Putting aside that one third which is about \$9,000,
15 it is about 18,000 left to split, am I right?

16 A I believe so, sir.

17 Q Now, your daughter Crysten got 10 percent or 1800; am I
18 right?

19 A Yes, sir.

20 Q Who got the other approximately 16,000, sir?

21 A Yes, I did.

22 Q Now, in connection with that lawsuit, did you attempt to
23 get your son Tom Shay to appear for a deposition, sir?

24 A Yes, sir.

25 Q You were very interested in having him testify for you in

1 that case; isn't that correct?

2 A Only because he was a witness.

3 Q You understood he was present at the time of this
4 explosion, am I right, sir?

5 A Yes, sir.

6 Q You understood his testimony would help you, as opposed
7 to helping the defendant, right; he was an eye witness to what
8 happened?

9 A Well, I don't know that as just a fact that Tommy was
10 present.

11 Q But you understood he could basically corroborate your
12 story, as to what happened; isn't that fair to say?

13 A I would say so.

14 Q And in fact, you went up to Derry, New Hampshire, drove
15 up there, picked him up and brought him back the first time to
16 testify for a deposition, am I right, sir?

17 A Tommy called me and asked me if I would give him a ride,
18 and I said I would.

19 MR. SEGAL: I object to anything that Tom Shay said
20 to him. My question: Is you went up there.

21 Q You went up there, though?

22 A Yes, sir.

23 Q All right.

24 He didn't -- you picked him up, but he didn't appear
25 for the first deposition; isn't that right, sir?

1 A That's true.

2 Q You were upset about that? Is that fair to say? You
3 weren't happy that he didn't appear for that first deposition?

4 A Only because --

5 Q No, yes or no, is it fair to say you were not unhappy
6 that after having gone up to Derry, New Hampshire, picked up
7 your son Tom, he then didn't appear for the deposition the
8 next day?

9 MR. KELLY: Objection to the form.

10 MR. KELLY: I think he had a double negative there.
11 He said you were not unhappy and I think it is confusing.

12 MR. SEGAL: I apologize.

13 Q Mr. Shay, isn't it fair to say that you were not happy
14 about the fact Tom Shay, Jr. did not appear for that
15 deposition?

16 A That's true, sir.

17 Q All right. Didn't, at some point, you call your exwife
18 Nancy and take her out to dinner to ask her to get Tom to go
19 to a deposition?

20 A That's not absolutely correct, no.

21 Q Am I correct that prior to this deposition, you called --
22 you took your exwife out to dinner?

23 A We went out to lunch.

24 Q I'm sorry. All right.

25 And at that time you asked her to try to assist you

1 in getting Tom to go to a deposition, isn't that fair to say?

2 A That's not accurate.

3 Q Prior to taking her out to lunch, when was that lunch,
4 can we pin it down?

5 A I believe that was the day that Tom was supposed to do
6 his deposition, I went up the to the mother's house looking
7 for Tom and I had seen Nancy and my daughter Paula and we went
8 out to lunch together.

9 Q Who paid for the lunch?

10 A I did.

11 Q And was this the first deposition the one he didn't show
12 up at or was this the one he showed up?

13 A Yes, this is the one he did not show up at.

14 Q Did not?

15 A True.

16 Q Prior to that date, had you ever gone out to lunch with
17 your ex-wife and paid for that lunch?

18 A She's been to dinner at our house.

19 Q No, my question was lunch, sir, if you don't understand
20 my question, please tell me. My question was: Prior to this
21 date you just described, in connection with the deposition,
22 had you ever taken Nancy, your ex-wife, out to lunch and paid
23 for it, sir?

24 A Ever?

25 Q After being, after leaving the family house?

1 A In 1981?

2 Q Yes. After leaving the family house in '81.

3 A Not that I can recall.

4 Q Now, you understood that there was potentially \$400,000
5 available for recovery in this lawsuit you brought against the
6 Dedham Service Center; am I correct?

7 A Yes, sir.

8 Q All right.

9 And this suit was the deposition of Tom Shay, Jr. was
10 in the fall of 1991; isn't that correct?

11 A Could you repeat that, please?

12 Q Surely.

13 The deposition of your son, the one, let's take the
14 one where you went up to Derry, New Hampshire and picked him
15 up, that deposition was scheduled in September 1991; am I
16 correct?

17 A I don't know if that's true or not.

18 Q When do you think that deposition was scheduled?

19 A I don't know the exact date, sir.

20 Q Is it fair to say it was in 1991?

21 A Yes.

22 Q All right.

23 And in 1991, your income consisted of \$600 a month
24 from Social Security; am I correct?

25 A Yes.

1 Q Were you working part-time at all fixing cars in the
2 driveway?

3 A Yes, sir.

4 Q But that income was very nominal or small, is that fair
5 to say?

6 A I get paid average for a job that I would perform.

7 Q But your main income that you were relying on to live on
8 in 1991 was from the Social Security benefits, isn't that fair
9 to say?

10 A Yes, sir.

11 Q All right. And was that total disability that you were
12 receiving, sir?

13 A I believe so.

14 Q All right.

15 And that 600 a month total disability was as a result
16 of this explosion in 1987, am I right, sir?

17 A Yes, sir.

18 Q All right, sir. Do you recall filing a complaint with
19 the police in approximately October 1989 in relation to the
20 dumping of some autobody parts on your driveway?

21 A Yes, sir.

22 Q And I take it you came home and found a big mess of
23 autobody parts dumped on the driveway?

24 A Yes, sir.

25 Q And you could identify those parts as having been at your

1 garage over the Dedham Service Center?

2 A Yes, sir.

3 Q Didn't you learn that the people from the service center
4 had basically dumped those parts on your driveway?

5 A Yes, sir.

6 Q You went to the police and made a complaint?

7 A We called the police, yes.

8 Q Did you go down and then make a report?

9 A They came to the house, sir.

10 Q Didn't you tell them that you believed that Mr. Giamarco
11 and Mr. Berry were responsible for all that garbage that you
12 found on your driveway?

13 A Yes, sir.

14 Q Was it on the lawn or just the driveway?

15 A It was scattered in the driveway, partially on the
16 sidewalk, maybe.

17 Q After you found those parts, were you fearful of
18 Mr. Giamarco and Mr. Berry?

19 A Yes, sir.

20 Q And were you fearful that they were going to get you
21 because they dumped garbage on your lawn?

22 A Yes, sir.

23 Q Mr. Shay, I would like to show you some photographs that
24 have been admitted into evidence of your garage, and truck.

25 I think Mr. Kelly showed you this one. Can you

1 identify that particular piece of wood?

2 A Yes, sir.

3 Q All right.

4 Was that a piece of wood that was in your garage on
5 October 28th, 1991?

6 A I believe so.

7 Q All right.

8 And that's the same piece of wood with a couple of
9 pieces cut out that's reflected, the actual wood is in
10 Defendant's Exhibit 12, am I right?

11 A Yes, sir.

12 Q All right.

13 And at some point in December 1991, did somebody from
14 the ATF come to your garage and pick this up?

15 A No, sir.

16 Q Do you recall how, when it left your garage?

17 A I don't know the exact date, sir.

18 Q All right.

19 Is it -- do you have a memory that it was sometime
20 after the week of October 28th?

21 A Sometime after.

22 Q Somebody came from ATF and asked you for the piece of
23 wood, is that fair to say?

24 A No, sir.

25 Q They telephoned, they called you and you brought it in?

1 How did the wood get from the garage to the ATF, if you know?

2 A I have no idea.

3 Q All right.

4 But you have a clear memory that this wood that's
5 here was the same wood that was in your garage on October
6 28th, 1991?

7 A I believe so, sir.

8 Q And that's its accurately reflected in Defendant's
9 Exhibit 14 this picture of the garage wood, am I right?

10 A Yes, sir.

11 Q All right. Let me show you Defendant's Exhibit 15, a
12 photograph, sir, which also is a photograph of your garage
13 taken around October 28th, can you see that paint stirrer in
14 that photograph?

15 A Yes, sir.

16 Q All right.

17 Was that stirrer in your garage on October 28th,
18 1991?

19 A I don't recognize it to be, sir.

20 Q All right.

21 Do you recognize -- let me show you another
22 photograph, Defendant's Exhibit 16 of your garage. Can you
23 identify this photograph as your garage on October 28th, sir?

24 A Yes, sir.

25 Q I'm sorry?

1 A Yes, sir.

2 Q All right.

3 How can you identify that particular photograph, and
4 maybe you can hold it up so we can all see it, or I'll hold
5 it.

6 Mr. Shay, how do you identify this particular
7 photograph, which is Defendant's Exhibit 16, as your garage on
8 this date?

9 A May I? It looks like a couple of fishing boxes that are
10 mine. There appears to be a buffer. I recognize a hedge
11 cutter, and I recognize the table, and there's a cable there I
12 use for the electric lawn mower.

13 Q You recognize a number of items. There's also a paint
14 stirrer in Defendant's Exhibit 16 on the table next to those
15 other items, do you recognize that paint stirrer now as being
16 in your garage on October 28, 1991?

17 A There's two, there, sir. Which one are you talking
18 about?

19 Q Well either one. Which one do you recognize if any?

20 A I see them there. And, you know, it appears they are in
21 my garage.

22 Q All right.

23 And did you use those paint stirrers in connection
24 with painting you did at the residence there, sir?

25 A Possible.

1 Q And wasn't some of that painting done in connection with
2 fixing automobiles?

3 A That's a possibility.

4 Q You were working out of the house, sort of, on a
5 part-time basis in connection with auto body repair business
6 in October 1991; am I correct?

7 A I wasn't actually working there right out of the doing
8 business, you know, work in the house or at the house.

9 Q But I meant you had some tools there and occasionally you
10 would use those tools to assist you in your business; is that
11 fair to say?

12 A Yes, sir.

13 Q All right.

14 Do you recall in April, somebody from the April '93,
15 a man from the ATF coming to your house and picking up a used
16 wood paint stirrer?

17 A What?

18 Q April of '93?

19 A Yes, sir.

20 Q Do you have a recollection now of Mr. Palaza from ATF
21 coming over and picking up a paint stirrer?

22 A Yes, sir.

23 Q All right. And is that one of the stirrers reflected in
24 photographs that we see next to you in the garage?

25 A I really don't know, sir.

1 Q Would you look at these two photographs which are
2 Defendant's Exhibit 16 and Defendant's Exhibit 15 taken of the
3 garage in October 1991 and tell us, if you can, whether one of
4 those paint stirrers was the paint stirrer that Mr. Palaza
5 picked up from you in April 1993?

6 A I don't know, sir.

7 Q All right. But there's no doubt he did pick up a used
8 paint stirrer from you on this date?

9 A I believe so.

10 Q Is this Exhibit 24 in evidence, another picture of your
11 garage that was taken around October 28, 1991?

12 A Yes, sir.

13 Q All right.

14 And can you tell us some of the items that are
15 reflected in that picture that you can identify?

16 A Yes, sir.

17 There's a chair; there's a bicycle; there's a two
18 wheeler, there's a trash barrel. There's the cable for lawn
19 mower. There's some odds and ends, some cabinets.

20 Q Did you make any of those --

21 A There's a table.

22 Q That --

23 A There's a box.

24 Q That table that's reflected in the exhibit, did you make
25 that table, Mr. Shay?

1 A No, sir.

2 Q What did you use it for?

3 A Just to pile things on.

4 Q Are there any items reflected in that picture that you
5 personally made, sir?

6 A (Pause.) Nothing I recognize.

7 MR. SEGAL: May I publish these photos amongst the
8 jury, please?

9 THE COURT: Yes.

10 (Pause.)

11 Q Mr. Shay, wasn't there a truck of yours in the driveway
12 on October 28th, 1991?

13 A Yes, sir.

14 Q And didn't that -- what did you use that truck for at
15 that time, sir?

16 A At that present time the truck was not registered, it was
17 just parked there.

18 Q Did you use it to store some of your supplies?

19 A I would put things in there as far as like storing
20 things, no.

21 Q Let me show you two photographs in evidence, Defendant's
22 Exhibit 22, 23, photographs taken of your truck on October
23 28th, 1991. Can you identify that particular piece of wood
24 that's in the truck, sir?

25 A At this present time, yes.

1 Q All right.

2 What is it, what do you recall it, sir?

3 A That looks like a piece of paneling.

4 Q And what did you use that piece of paneling for, sir?

5 A I can't recall using it for anything.

6 Q All right.

7 Now, I'm showing you another photograph of your truck
8 taken at the same date, and do you see the same piece of wood
9 in it. This is Defendant's Exhibit 23, do you see -- can you
10 hold it up, do you see the same piece of wood?

11 A I believe so.

12 Q All right.

13 Now, next to it there appears to be a can of black
14 spray paint; do you see that, sir?

15 A Yes, sir.

16 Q All right.

17 And you had that in the truck on October 28th, 1991,
18 sir?

19 A I believe so.

20 Q And you were using that in connection with the part-time
21 work you were doing at the house?

22 A Could repeat that question, please?

23 Q Were you using that black spray paint for any work you
24 were doing in your autobody business at the house?

25 A I don't think so.

1 Q Do you use black spray paint in connection with your
2 autobody business?

3 A Periodically.

4 Q Your job as an autobody specialist is to sort of match up
5 the fender with the, with the part of the car that is already
6 on it, I'm talking about the new fender; isn't that right?

7 A Yes, sir.

8 Q So you want to get the fender to be just about the same
9 texture and color as the old one, right?

10 A As close as possible, sir.

11 Q And how do you do that?

12 A As far as refinishing goes?

13 Q Yes. Tell us what you do to refinish fenders?

14 A It would depend on the color.

15 Q All right.

16 Let's take black. How would you do it?

17 A Black is a basic color. You would order paint through a
18 dealer, automotive paint distributor, and use thinner and some
19 other additives, and you would use a spray gun to spray the
20 fender.

21 Q Would you have to sort of mix and match colors to make
22 sure that the fender matched the fender on the car?

23 A Not black.

24 Q What other colors would you have to mix and match to get
25 there to be a fairly good fit?

1 A Usually, I wouldn't.

2 Q Did you have somebody do that?

3 A At the automotive dealership where they would sell
4 supplies, yes.

5 Q What sort of supplies did you buy in connection with your
6 business, what sort of automotive -- just what sort of
7 supplies did you buy, sir?

8 A Well, you would buy all different grades of sand papers,
9 plastics for body filler, primer, compounds for cleaning cars,
10 buffing pads, thinners, different additives that would go into
11 different things, different paint. It's numerous amount of
12 things.

13 Q You say you would buy, that's the type of thing you
14 bought in connection with your business; do you agree with me?

15 A Yes.

16 MR. SEGAL: May I publish those other two
17 photographs?

18 THE COURT: Yes.

19 Q Mr. Shay, let me show you another picture taken of your
20 garage on October 28th, 1991. Can you identify this catalog
21 that's reflected in this picture, sir?

22 MR. KELLY: Can we have the exhibit number?

23 MR. SEGAL: 21.

24 A Could you rephrase that whole question.

25 Q Sure.

1 A Please.

2 Q Sure.

3 Mr. Shay, can you identify the catalog that's
4 reflected in the picture of your garage which is Defendant's
5 Exhibit 21?

6 A No, sir.

7 Q Do you recall having that particular Grainger catalog in
8 your garage on October 28th, 1991?

9 A No, sir.

10 Q Do you know what a Grainger catalog is?

11 A Yes, sir.

12 Q What is it?

13 A I believe it is a book that you can buy numerous things
14 from. It is a catalog.

15 Q All right.

16 Would you agree with me that the photograph of your
17 garage appears to have a picture of a Grainger catalog in it?
18 Does that appear to be a Grainger catalog from what you can
19 see, sir?

20 A That's a Grainger catalog.

21 Q But it is your testimony you didn't have such a catalog
22 in your garage on October 28th, 1991?

23 A That's true, sir.

24 Q All right.

25 Did you ever buy anything from Grainger using this

1 type of catalog which is Defendant's Exhibit 18 for
2 identification?

3 A Ever?

4 Q Yes.

5 A No, sir.

6 Q All right.

7 Would you look at this, have you seen this type of
8 catalog before?

9 A I really don't know, sir.

10 Q All right. But it is your testimony that, you cannot
11 recall that catalog being in your garage on October 28th,
12 1991?

13 A That's true, sir.

14 Q And that you never purchased any items from a Grainger
15 catalog similar to the one next to you?

16 A Not that I can recall, sir.

17 Q At the Rolling Wrench garage, you worked there in October
18 '91; is that right, sir?

19 A I worked out of there.

20 Q All right.

21 A Yes.

22 Q When you say out of there, you did work on automobiles at
23 the Rolling Wrench garage in South Boston; am I correct?

24 A Yes, sir.

25 Q All right.

1 Did you have paint there?

2 Was there paint?

3 A Yes, there was.

4 Q Was there a saw?

5 A Not that I can recall.

6 Q Was there wood?

7 A There might have been.

8 Q Was your brother Arthur Shay also working out of that
9 garage in October 1991, sir?

10 A Yes, sir.

11 Q To your knowledge, had he been in the United States
12 military?

13 A Yes, sir.

14 Q You had been in the military, the National Guard for
15 about six years; am I correct?

16 A Yes, sir.

17 Q And he served in Viet Nam?

18 A Yes, sir.

19 Q Let me direct your attention to the coming back from the
20 police station, now, on October 28th?

21 THE COURT: Before we get into at that, let's
22 stretch.

23 [Pause.]

24 THE COURT: All right, you may proceed.

25 Q Mr. Shay, you went to the police station on October 28th,

1 1991, am I right, area E-5?

2 A Yes, sir.

3 Q Just to back up, you went to the Rolling Wrench garage
4 and somebody said this could be a bomb, and you went over to
5 the police station, am I right?

6 A No, sir.

7 Q You went to the Chapman lock place first?

8 A Nobody ever said, It could be a bomb.

9 Q Why did you go to the police station, sir?

10 A The reason being because I thought it could be a
11 dangerous item, and my brother and John said to me that it
12 doesn't sound right, you know, be careful.

13 Q Okay. And you spoke to a Detective Maloney there, sir?

14 A I believe so.

15 Q Did you tell him the item you had observed in your
16 driveway was a metal box?

17 A I don't remember describing it. I might have said, made
18 a description. I said it looked like it was a little metal
19 box on top of it. I don't remember what I said to him.

20 Q Did you tell him you saw wires sticking out of the
21 device?

22 A If I described it, I might have said that.

23 Q Okay. Let me just show you his report, Defendant's
24 Exhibit 78 for identification, and read to yourself the first
25 paragraph to see if you said it was a metal box with wires

1 sticking out?

2 A Right here?

3 Q Yes.

4 (Pause.)

5 A I don't really recall if that's exactly whether that is
6 actually accurate.

7 Q Do you have a recollection now, saying it was a metal box
8 with wires sticking out of it, having read that, sir?

9 A I might have. I might have described it with a little
10 metal box on top.

11 Q Let me ask you, is it your testimony now that -- well,
12 strike it. I'll move on.

13 After you went to the police station, sir, you went
14 back to your house; isn't that correct?

15 A Yes.

16 Q And were you, when you went to the Rolling Wrench garage,
17 you were driving a neighbor's Mazda; am I correct?

18 A Yes, sir.

19 Q You were going to do some work on the Mazda that morning?

20 A Yes, sir.

21 Q And did you put your tools in the little box to take with
22 you to the garage to work on the Mazda?

23 A In a cardboard box, I believe so.

24 Q Do you have a clear recollection of doing that, sir?

25 A No, I don't, sir.

1 Q It is possible you did not put your tools in the
2 cardboard box that morning when you took the Mazda to the
3 Rolling Wrench?

4 A The box already contains some tools.

5 Q All right. You have a clear recollection of taking what
6 you described as a cardboard box?

7 A Yes, sir.

8 Q What was the color?

9 A I believe it is white and blue.

10 Q All right.

11 How big was that box?

12 A Approximately maybe two by two by two maybe.

13 Q You took it, you took it out of your house and placed in
14 the Mazda or was it already in the Mazda when you started out
15 that morning?

16 A I really can't recall, sir. I know it probably wasn't
17 already in that car, whether it was in the Buick or in the
18 house at that time, it was either one or those two places.

19 Q But there's no doubt you took that white and blue box
20 with the tools, with you to the Rolling Wrench garage that
21 morning; am I correct?

22 A Yes, sir.

23 Q All right.

24 And you then took it with you home, am I right?

25 A Yes, sir.

1 Q When you came home, did you take that white and blue box
2 out of your -- out of the automobile and walk into the house
3 carrying a box?

4 A I believe so, sir.

5 Q And that had your tools in it; is that right?

6 A Yes, sir.

7 Q All right. Is it your testimony that when you walked out
8 of the Mazda and went into your house, you were carrying
9 something beside that white and blue tool box?

10 A Yes, sir.

11 Q And what were you carrying, please?

12 A I have a black bag which I carry some personal items in.

13 Q Now, how did the black bag get into the car that morning?

14 A Because I carry the black bag with me at my house, and I
15 carry my license in that bag along with a wallet and spare set
16 of keys and a hair brush, and I would have always taken the
17 bag with me because that's where my license would be.

18 Q So you have a clear recollection of taking that black
19 bag, putting it in the Mazda, and going to the Rolling Wrench;
20 is that right?

21 A I dropped Crysten at school first, sir.

22 Q I'm sorry, dropping your daughter to the school?

23 A Yes, sir.

24 Q And then going with those two items, the tool box and the
25 black bag to the Rolling Wrench?

1 A Yes, sir.

2 Q And I'm sorry, what did you say was in that black bag
3 again, sir?

4 A Personal items.

5 Q Can you be a little more specific?

6 A A wallet, which carries my license and credit cards, a
7 hair brush. There was a little tube of ointment in there, a
8 spare set of keys, maybe some spare change, maybe a couple of
9 Roll Aids.

10 Q Not maybe just give me your best recollection as to what
11 you can recall was in there that morning, sir?

12 A That's what I recall, sir.

13 Q How long did you stay at the Rolling Wrench that morning?

14 A I left there around 10:30 in the morning.

15 Q And what time did you arrive?

16 A I probably got there quarter of 9, 9 o'clock, maybe a
17 little later.

18 Q Did you use the hair brush at all while you were at the
19 Rolling Wrench garage?

20 A I can't remember that, sir. Okay.

21 Q Okay.

22 Prior to testifying today, when was the first time
23 you told the investigators about the black bag?

24 A I believe that was at my son's trial.

25 Q Do you recall calling -- do you recall testifying one day

1 at the grand jury and the next day calling Agent D'Ambrosio to
2 clarify some testimony about the tool boxes?

3 A I don't recall that, sir.

4 Q All right.

5 Do you recall testifying at the grand jury in March,
6 1992, is that fair to say?

7 A Yes, sir. All right.

8 And do you recall the next day, calling either
9 Mr. Kelly or Special Agent D'Ambrosio in this case?

10 A I don't recall that, sir.

11 Q You know who Special Agent D'Ambrosio is? You know he's
12 with the ATF?

13 A I believe so, sir.

14 Q In fact, can you identify him as seated in the front row
15 on the left?

16 A Yes, sir.

17 Q And he's -- you've met him in connection with this case?

18 A Yes, sir.

19 Q Do you recall calling him and saying you want to clarify
20 testimony about tool boxes, and saying you often carried a
21 cardboard tool box that is approximately two by two feet which
22 contains small hands tools and is white in color. And saying
23 you also had two other tool boxes which are gray in color.

24 Do you recall saying that to Agent D'Ambrosio?

25 A No, sir.

1 Q All right.

2 Would you look at what's been marked Defendant's
3 Exhibit 79 for identification, D'Ambrosio's report of
4 February -- March 25th, 1992. And would read the entire first
5 page to yourself.

6 THE COURT: Oh, come on, Mr. Segal, this will take
7 forever.

8 MR. SEGAL: I'm almost through, your Honor. It is
9 two paragraphs.

10 THE WITNESS: Do you want me to read the whole
11 thing?

12 Q Just read to yourself what I've got in green.

13 A Right here, sir?

14 Q Yes.

15 A Okay. What's your question, sir?

16 Q Having read that, do you now have a memory of calling
17 Agent D'Ambrosio and talking to him about the tool box?

18 A No, sir.

19 Q After you were learned this device could be dangerous,
20 you went to the police station, am I right?

21 A At what point, sir?

22 Q That morning, October 28th?

23 A Yes, sir.

24 Q You never called Mary Flanagan and said, that device that
25 we have sitting around the house, could be dangerous; is that

1 right?

2 A That's true, sir.

3 Q The next day, October 29th, did you go with a member of a
4 Boston Police force and retrace the route you drove on Sunday,
5 October 27th?

6 A Would you repeat that, please?

7 Q Sure.

8 Now, let me try to put it in focus. The bomb
9 explodes on October 28th, am I right, sir?

10 A Yes, sir.

11 Q Do you recall after that day, driving with a member of
12 the Boston Police force, perhaps, Officer Fogerty, the route
13 that you drove on Sunday, October 27? In other words, did you
14 redrive that route you told us about at any point?

15 A Yes, sir.

16 Q All right. And who was that with?

17 A In the police car? Officer Fogerty. There was another
18 person there, and Alan Pransky, an attorney.

19 Q And when do you recall doing this drive?

20 A I don't recall the exact date, sir.

21 Q Without going to all the details, this is, you went over
22 to McDonald's and the Burger King, and you went down to Story
23 Drive and you went down out to Malden, is that about right,
24 Castle Island?

25 A Yes, sir.

1 Q Now, how long after the 28th -- sorry, you don't recall
2 it was after October 28th, you did this drive?

3 A No, sir.

4 Q All right.

5 Now, Mr. Pransky had been representing you in the
6 suit against the Rolling Wrench garage; isn't that correct?

7 A No, sir.

8 Q He initially was representing you; is that right? And
9 then?

10 THE COURT: You got the defendant.

11 MR. SEGAL: I apologize.

12 Q Mr. Pransky initially was representing you in the suit
13 against the Dedham Service Center, am I correct?

14 A Yes, sir.

15 Q At some point he became a witness and had to withdraw, am
16 I right?

17 A I believe so, yes.

18 Q Wasn't that before this bomb went off on October 28th?

19 A Yes, sir.

20 Q Now, so he was out of that case, am I right, by October
21 28th?

22 A I believe so, sir.

23 Q When the bomb went off that day, you immediately called
24 Mr. Pransky, isn't that fair to say?

25 A No, sir.

1 Q Didn't Mr. Pransky come over to your house that
2 afternoon, October 28th, 1991?

3 A I don't know what time when he came over.

4 Q Did he come over that day?

5 A Sometime during the day or evening, yes.

6 Q Was, to your knowledge, was that at your request that
7 Mr. Pransky arrived there at your house that day?

8 Did you ask him to come over?

9 A Well, the way it went, that I don't know if I had called
10 Mr. Pransky to come over or if the police had. I don't know
11 who called him to come over. All right.

12 Q When he came over, did he bring the file, the whole file
13 relating to the suit against the Dedham Service Center?

14 A I don't recall that, sir.

15 Q He was, he stayed with you that night, October 28, I did
16 not mean overnight, he was there trying to assist you and the
17 police?

18 A I don't know if you would call it assisting. He was
19 there.

20 Q Well, from what you could see, what was Mr. Pransky doing
21 there that day?

22 A He had information pertaining to the names to the lawsuit
23 against the Dedham Service Center.

24 Q And he was giving the police the information about the
25 lawsuit against the Dedham Service Center, am I correct?

1 A I don't recall that, sir.

2 Q What do you recall him doing there?

3 A Pretty much sitting and listening.

4 Q Did he come over the next day?

5 A He might have, sir.

6 Q Did he come over the day after?

7 A I'm not too clear whether he did or not.

8 Q But at some point you and Mr. Pransky and some members
9 the Boston Police redrove your route on, the route that you
10 took on Sunday, isn't that fair to say?

11 A Yes, sir.

12 Q At any time in those three or four days after this bomb
13 explosion, did you learn that you were a suspect in this case,
14 sir?

15 A No, sir.

16 MR. SEGAL: I have no further questions.

17 THE COURT: Any redirect?

18 MR. KELLY: Briefly, your Honor.

19 Redirect Examination by Mr. Kelly

20 Q Mr. Shay, Mr. Segal, asked you some questions, sir, about
21 gambling. Would you describe for us on those occasions when
22 you do gamble, what types of activities would you engage in?

23 A Sometimes horse racing, dog racing, periodically maybe a
24 card game, different types of card games and football cards,
25 periodically.

1 Q Are you one of these people that goes to the dog track or
2 horse track on a daily basis?

3 A No, sir.

4 Q How frequently would you say you go to the track? On an
5 annual basis, how many times a year would you go, sir?

6 MR. SEGAL: Can we pick out the year?

7 MR. KELLY: As of 1991, for example.

8 Q Do you recall how many you may have gone to either horse
9 track or the dog track in 1991?

10 A In the year of 1991?

11 Q Approximately, sir.

12 A Three.

13 Q And as of October of 1991, Mr. Shay, were you in debt to
14 anyone as a result of any gambling activities?

15 A No, sir.

16 Q As of October 1991, had anyone ever threatened you or
17 pressured you as a result of gambling activities or gambling
18 debts?

19 A No, sir.

20 Q Have you ever had anybody threaten you as a result of
21 gambling activities or gambling debts?

22 A No, sir.

23 Q Mr. Segal asked you some questions about some items in
24 the photographs that were shown.

25 In the line of work that you're in, autobody work,

1 you from time to time get involved with work with paint; is
2 that correct?

3 A Yes, sir.

4 Q Do you know the difference between glossy paint and flat
5 paint?

6 A Yes, sir.

7 Q Looking at Defendant's Exhibit 23 which Mr. Segal showed
8 you, that can of spray paint which is depicted in the
9 photograph of the cab of that panel truck, what kind of paint
10 is that, Mr. Shay? What kind of spray paint?

11 A It appears it is glossy paint, sir.

12 Q Do you presently have any recollection as to what you may
13 have used that for? That you may have used it for?

14 A I remember doing some work on Mr. Louis Rotman's car. On
15 his car he has some type of a molding on the left rear. I'm
16 not too sure it is side molding or could be part of the bumper
17 which is kind of glossy, and I could have used this spray
18 paint to, to spray that molding on his car.

19 Q The -- just one last area, Mr. Shay.

20 This board you have been asked a number of questions
21 about, do you remember what they call the color, do you see
22 this darker color that's on here do you know what color it
23 was. Do you have a recollection of the label, the description
24 of that color?

25 A It looks like what they call a dark blue metallic.

1 Q Dark blue metallic?

2 A Yes, it is.

3 Q And this picture that we've seen, Defendant's Exhibit 14,
4 your memory is that this is a photograph of the same board
5 before it was cut in this manner?

6 A Yes, sir.

7 Q And you said that it was used for some kind of a bumper
8 end; is that what you said?

9 A Yes, sir.

10 Q And so, someone looking at that, are you looking at the
11 kind of the profile, the side-view of the bumper, is that
12 what's depicted here by the shape, Mr. Shay?

13 A No, it would be laying flat.

14 Q What is a bumper end for those that that aren't in this
15 business?

16 A Well, under certain cars, there's a plastic or a rubber
17 piece on the end of the bumper. It is like, almost like
18 molding in a way.

19 Q It is the thing that goes around corner?

20 A On some cars.

21 Q Would it have been the corner piece on this car, do you
22 have a memory?

23 A Yes, sir.

24 Q And finally, sir, there appears to be a second kind of
25 paint on this board, Defendant's Exhibit 12, kind of a lighter

1 color?

2 A Yes, sir.

3 Q Do you remember what if anything you used that for?

4 A For prior to doing any refinishing work we would probably
5 have to do some priming. That looks like a light gray
6 prime. They're probably sprayed on that part first.

7 MR. KELLY: I have nothing further, your Honor.

8 THE COURT: Any recross?

9 MR. SEGAL: Briefly.

10 Recross-examination by Mr. Segal

11 Q Mr. Shay, in addition to going to the race track, I think
12 you said you went to the dog track; is that right, sir?

13 A Yes, sir.

14 Q Was that Seabrook?

15 A Yes, sir.

16 Q What other dog tracks?

17 A Wonderland, Raynham.

18 Q Wonderland is right over here in Revere?

19 A Yes, sir.

20 Q And what, what horse tracks?

21 A Usually Suffolk Downs.

22 Q In 1991 and before did you bet on horses or dogs by
23 telephone?

24 A No, sir.

25 Q Did you ever receive bets on football games by telephone,

1 sir?

2 A No, sir.

3 Q Isn't it true, Mr. Rotman's car was white, sir?

4 A Yes, sir.

5 MR. SEGAL: I have no further questions.

6 THE COURT: Thank you Mr. Shay, you are excused.

7 Who is next?

8 Q The United States calls Christopher Shapley.

9 (Pause.)

10 Christopher Shapley, sworn

11 Direct Examination by Mr. Kelly

12 THE CLERK: Please be seated and state your name for
13 the record.

14 THE WITNESS: Christopher Guy Shapley,
15 S H A P L E Y.

16 THE COURT: This witness is called as an expert?

17 MR. KELLY: Yes, your Honor.

18 THE COURT: In what field?

19 MR. KELLY: IN the field of automotive engineering,
20 with a specialty in the field of vehicular movement.

21 THE COURT: Any objection to qualifications?

22 MR. LOPEZ: No, your Honor, I have just a couple of
23 questions.

24 THE COURT: Do we have a C.V.?

25 MR. KELLY: We do, your Honor.