

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)
UNITED STATES OF AMERICA)
 V.)
THOMAS SHAY)
_____)

DEFENDANT SHAY'S MOTION FOR EXCULPATORY EVIDENCE

Pursuant to the Fifth Amendment to the United States Constitution, Thomas Shay moves this Court for an order directing the government to provide to defense counsel all exculpatory evidence that may be in its knowledge or possession or that might, with due diligence, come into its knowledge or possession.

A. General Definition

For purposes of this motion, the term, "exculpatory evidence" is defined by the defendant as including, but not limited to, all information, in whatever form, of whatever nature, and from whatever source, which tends or may tend to exculpate, or to mitigate the degree of culpability of, or degree of punishment to be imposed upon the defendant, whether or not such evidence is currently in a form admissible in court, including:

a) information tending to impeach or to lead to the impeachment of the testimony of any witness whom the government intends to produce at trial or who has given the government information which has led to the indictment in this case but whom the government does not intend to produce at trial; and

b) information indicating the defendant is innocent or information which may be or become of benefit to the defendant in preparing for or presenting the merits of his defenses, including a defense of innocence, at trial;

c) information which may mitigate the degree of punishment to be imposed upon the defendant within the meaning of the Federal Sentencing Guidelines.

(d) information which may corroborate statements made by the defendant.

B. Specific Requests

(1) Information concerning James Harding, Robert Evans, Larry Plant, and Daniel Goldrick:¹

a) A full and complete statement of all details, terms and provisions of any and all plea bargains, agreements or arrangements, whether oral or written, formal or informal, express or implied, entered into between the government and Harding, Evans, Plant and Goldrick, including but not limited to bargains, agreements or arrangements whereby potential or actual criminal charges against them, or against anyone with whom they are closely associated were abandoned, altered, or otherwise not pursued.

b) A full and complete statement of any and all criminal cases, investigations, or potential prosecutions

¹ Evans, Plant and Goldrick are jail inmates who claims to have heard the defendant make incriminating statements. harding was an individual who attempted to tape record Trenkler, the co-defendant.

presently pending against Harding, Evans, Plant, and Goldrick, or which have been pending against them, regardless of whether or not those cases, investigations, or potential prosecutions have been the subject of an explicit promise, reward, or other inducement to them.

c) A full and complete statement of any and all criminal conduct, misconduct, or "bad acts", whether or not the subject of criminal charges, which have been committed by them, whether or not such conduct and/or "bad acts" have been the subject of an explicit promise, reward, or other inducement to them;

d) A full and complete statement of any arrests and/or criminal convictions of Harding, Evans, Plant and Goldrick, and, if they have been convicted, a full and complete statement of their probationary or parole status.

e) The social security numbers of Harding, Evans, Plant and Goldrick.

f) A full and complete statement of any civil, tax, administrative, or other legal dispute or transaction in which Harding, Evans, Plant or Goldrick was or is involved, and in which any state or federal government agent may have a real, apparent, or perceivable influence.

g) A full and complete statement of rewards or inducements of any kind, including threats, express or implied, direct or indirect, made by the government or by any state agency, to encourage or induce the giving of testimony or

information by Harding, Evans, Plant and Goldrick, including the following: i) promises of non prosecution of them or of any of their friends, associates, or relatives, for any offenses; ii) aid or assistance to them in procuring a job or similar benefits; iii) money; iv) forgiveness of debts or potential debts, including tax liabilities and other potential civil liabilities; v) promises that cooperation would be brought to the attention of judicial, parole or probation authorities, or state officials, for the benefit of them; vi) statements to the effect that the government has significant evidence of criminal conduct by them, including evidence of violations of the perjury laws, and that they would be or would likely to be indicted if they did not cooperate with the Government.

g) A full and complete statement of any requests or authorizations for the payment of any sums of money, by the government or by any state agency, to them, and if any such payments were made, any logs, records, or other documents relating to such payments.

h) Any information which may be used to impeach or discredit the testimony of Harding, Evans, Plant or Goldrick including: 1) inconsistent statements of Harding, Evans, Plant or Goldrick and other persons whom the government has interviewed in the course of its investigation in this case; ii) statements by Harding, Evans, Plant or Goldrick evidencing bias or prejudice, grudge, or animus against the defendant for any reason including but not limited to sexual preference; iii) admissions

of poor memory; iv) evidence of drug or alcohol abuse by, or mental disease, defect or disorder; v) results of polygraph examinations or other tests purporting to examine the credibility of Harding, Evans, Plant or Goldrick; vi) information that they have made false or inaccurate statements to the government in the course of its investigation or its preparation of this case.

i) A full and complete statement of any and all admissions made by any Government attorney in federal or state court or before the grand jury concerning Harding, Evans, Plant and Goldrick, their reliability, their character, their veracity, their ability to conform their conduct to the requirements of law.

j) Evidence that after Harding, Evans, Plant and Goldrick gave their statements to the federal or state authorities, they committed additional acts which were inconsistent with the terms their deals with the government, or violated any state or federal law.

k) Information concerning the circumstances that led Harding, Evans, Plant and Goldrick to become cooperating witnesses, including but not limited to information as to whether or not they were confronted with evidence of their criminal conduct, when and under what circumstances they decided to cooperate, correspondence between them (or their counsel) and the government, memoranda, and the like.

l) Information concerning the \$50,000 reward offered by the Boston Police Patrolmen's Association and ATF, how the

information with respect to that reward was disseminated, by whom and when.

2. Information outlined above (paragraphs a-m) concerning any other potential government witness.

3. Information bearing on innocence or mitigating the degree of culpability:

a) evidence relevant to the issue of defendant's lack of possession and control of items connected with the explosives at issue in the instant case;

b) evidence tending to show that the defendant was incapable of building the explosive at issue, because he lacked the technical skills or resources to do so.

c) evidence tending to show the limited relationship between the defendant and the codefendant Alfred Trenkler.

d) evidence tending to show the investigative leads pursued by the Commonwealth of Massachusetts or the federal authorities with respect to other individuals, suspects and targets, notably Thomas Shay, Sr. or Mr. Giamarco.


e) evidence casting doubt on the identification of Thomas Shay, Jr. as the individual purchasing certain electronic equipment on October 18, 1991 at a Boston Radio Shack Store, including but not limited to any and all grand jury testimony of Allan Kingsbury, or James Guy, individuals unable to identify the defendant.²

² We believe such testimony is both exculpatory and will bear on the testimony of the purported identification of Shay by a third Radio Shack employee, Dwayne Armbrister.

Respectfully submitted,

THOMAS SHAY
By his attorneys,

Dated: March 2, 1993


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was
served upon the attorney of record for each other party
by mail (by hand) on 3/2/93

