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Ruling by judge limits bomb prosecution

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A federal judge has dealt a major blow to the government's efforts to prosecute Thomas A. Shay for the 1991 bomb blast that killed a Boston police officer, by throwing out the testimony of a store clerk that linked Shay to components of the kind used in the bomb.

With the stroke of a pen and no immediate explanation, US District Judge Rya W. Zobel ruled Tuesday that the government cannot call Radio Shack clerk Dwayne Armbrister as a witness to testify that he sold Shay a toggle switch, an AA battery holder and a small lamp capable of testing circuitry.

"This case is a circumstantial case, and any time you start taking away evidence it weakens the case," said a law enforcement source familiar with the investigation. "Armbrister's identification was important to us."

Since Zobel is scheduled to hear the case against Shay's codefendant, Alfred Trenkler - who federal officials think built the bomb - her ruling could also hamper efforts to prosecute Trenkler, because the case against him is even more circumstantial, sources said.

The bomb, which federal officials think Shay enticed Trenkler into building, was attached to the undercarriage of Shay's father's car. After the device was discovered, the Boston police bomb squad was called to Thomas L. Shay's house on Eastbourne

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US judge throws out testimony, crimps prosecution in bomb case

■ SHAY

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Street in Roslindale on Oct. 28, 1991. The bomb then exploded, killing Officer Jeremiah Hurley and maiming Officer Francis Foley.

Neither Paul V. Kelly nor Frank A. Libby Jr., the two assistant US attorneys prosecuting Shay and Trenkler, could be reached for comment.

At a suppression hearing in April, Shay's attorneys, Nancy Gertner, Amy Baron-Evans and Jefferson Boone, argued that Armbrister's identification was unduly suggestive, since Armbrister did not pick Shay out of a set of photographs of various people and recognized him only when shown an individual photograph of Shay.

"The identification plays a substantial role in the government's case, and we thought it was unreliable," said Baron-Evans. "He was

shown the photo array four or five months after the purchase and could not identify Tom Shay. Even after he was shown an individual photograph, he could not connect Shay to the transaction.

"We are gratified by the decision and think it is the right one."

Zobel also ruled that several incriminating statements Shay made to police following the bombing are admissible, but suppressed statements he made to federal Alcohol, Tobacco and Firearms agents a year ago.

ATF agents canvassed electronics stores in the Boston area, reviewing sales receipts for components that were in the bomb.

Agents discovered a Radio Shack receipt dated Oct. 18, 1991 - 10 days before the bomb blast - that contained many of the same items used in the bomb and listed the customer as "Sahy." The Radio Shack store was across Massachusetts Avenue from the Christian Science Church, where Trenkler was working.

Agents initially dismissed the receipt and pursued other leads, but returned to the store in February to interview Armbrister, the clerk whose initials were on the receipt. The receipt also had a customer identification number - the last four digits of a telephone number - that

matched Shay's father's telephone number with two digits transposed.

Armbrister did not recognize Shay until he was shown the individual photograph, and was not able to connect him to the purchase until some time in March.

The government is alleging that Trenkler built the remote-controlled bomb with the Radio Shack toggle switch and AA batteries and used the lamp to test the circuitry.

Zobel did not rule on a government motion to present evidence at Shay's trial that Trenkler was involved in a 1986 bombing in Quincy that was remarkably similar to the 1991 bomb blast.

Law enforcement sources said the case would still be strong if Zobel allows them to point out the similarities between the two bombings.

"As a practical matter, in order to prove the charged offense, the government will be required to prove at trial that one of the conspirators, either Shay Jr., or Trenkler, had the knowledge, skill, ability and experience to build an explosive device," the government argued in a filing last week.

Zobel also has yet to rule on whether the fees charged by Shay's court-appointed attorneys - \$200 an hour for Gertner, \$85 for Boone and \$50 for Baron-Evans - are too high.