

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY

)
)
) CRIMINAL NO. 92-10369-Z
)
)
)

AFFIDAVIT OF NANCY GERTNER TO PRECLUDE EVIDENCE
OF FLIGHT AND USE OF NAME "JAMES KEOUGH" DURING FLIGHT

I, Nancy Gertner, being duly sworn, do depose and say:

1. My name is Nancy Gertner and I represent the defendant Tom Shay, Jr. ("Shay, Jr.") in the above entitled case.

2. In early November of 1991, Shay Jr. was charged with communicating a false bomb threat in November of 1990, in violation of Massachusetts law. He was released on bail on or about January 3, 1992 and was on probation as a condition of release, with strict daily reporting requirements. See Exhibit A, letter from William C. McPhee to Hugh Curran, dated January 7, 1992.

3. On information and belief, Shay Jr. failed to meet with or call his probation officer on two occasions, between January 10 and January 17, 1992. On one occasion, Shay Jr. had a transportation problem; on the other occasion, James Keough, the boyfriend of Paula Shay (one of Shay Jr.'s sisters), slashed his left wrist at Shay Jr.'s mother's home, where Shay Jr. was then living. There was no telephone on Shay Jr.'s mother's home. See Exhibit B, Quincy Police Department Investigative Case Report, 1/14/92.

4. Shay Jr. allegedly left the Commonwealth between January 15 and February 1, 1992.

5. At her grand jury appearance on February 13, 1992, when asked why her son left Massachusetts, Shay Jr.'s mother Nancy Shay plainly implied that the incidents described above precipitated his leave taking, and not the instant charges. Ms. Shay was unable to give a complete rendition of the circumstances surrounding her son's leaving because the Assistant United States Attorney cut her off:

Q. Why did he leave Massachusetts?

A. Oh because he---an incident happened in our home, and it happened at six in the morning and he was---

Mr. Kelly: I think I know what you're going to say so let's...jump over that to the point of the story.

By Mr. Kelly:

Q. Why did he leave Massachusetts?

* * *

A. his probation officer told him he was going to go back to jail for a year because he didn't show up at Court.

Q. Okay. So--

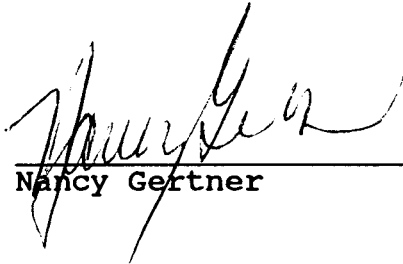
A. And it wasn't his fault that he didn't show up for Court. See Exhibit C, Grand Jury testimony, dated February 13, 1992.

6. As Boston Homicide Detective Frank Armstrong stated in his affidavit in support of the federal UFAP warrant, "Thomas A. Shay was leaving Massachusetts because he did not want to go back to jail for 'jumping bail' on an outstanding court charge." See

Exhibit D, Affidavit of Frank W. Armstrong. The UFAP complaint charged Shay Jr. with fleeing to avoid prosecution for "communicating a false bomb threat (G.L. c. 269 § 14)."

7. Shay Jr. was not charged with violations of 18 U.S.C. §§ 371, 844(d) and 844(i) until December of 1992.

Subscribed and sworn to under the pains and penalties of perjury.



Nancy Gertner

WILLIAM C. McPHEE

ATTORNEY AT LAW

21 McGrath Highway, Suite 403

P.O. Box 229

Quincy, Massachusetts 02269

William C. McPhee
Katie J. Silverman

TEL: 617-471-9307
FAX: 617-471-8383

January 7, 1992

Hugh Curran, Asst. District Attorney
Suffolk County District Attorney's Office
New Courthouse
Pemberton Square
Boston, MA 02108

RE: Commonwealth vs. Thomas Shay

Dear Mr. Curran:

This letter will confirm our understandings reached at the Boston Municipal Court on January 3, 1992. On that date, we made a joint recommendation to Judge Richard Chin that my client, Mr. Thomas Shay, be released on \$10,000.00 personal recognizance on the following conditions:

1. That he report by telephone daily to Ms. Moy of the Boston Municipal Court Probation Department;
2. That he meet with Ms. Moy on a weekly basis;
3. That he attend at least one Alcoholics Anonymous meeting each day;
4. That he present himself to the Quincy Mental Health Center for out-patient treatment.

I understand that my client has been complying with those court orders.

In addition, I provided you with a signed release to enable the Suffolk County District Attorney's Office to obtain the psychiatric records of my client to aid you in determining whether or not the this District Attorney's Office should seek a reduction in the charge so that the matter be kept in the District Court process as opposed to requiring a probable cause hearing and indictment by a Grand Jury.

We also filed a joint motion to continue the case for status on January 17, 1992 at 9:00 a.m.

Hugh Curran, A.D.A.

-2-

January 7, 1992

Lastly, I understand you will be forwarding a copy of the motion and the release to my attention at your earliest convenience and will be forwarding any and all medical records and reports received by your office relating to my client when they are received.

Thank you for your anticipated cooperation.

Very truly yours,

William C. McPhee

WCM:mpk

cc: Mr. Thomas Shay

QUINCY POLICE DEPARTMENT INVESTIGATIVE CASE REPORT

1. TIME OF OCCURRENCE M 1 D 14 Y 92 T 0330 2. S M T W TH F S UNKNOWN 3. TIME RECEIVED M 1 D 14 Y 92 T 0335 4. CA TIME DISPATCHED 920

OFFENSE

5. OFFENSE(S) *Attempted Suicide* 6. LOCATION OF OFFENSE (HOUSE NO., STREET, APT. NO., BUSINESS, OTHER) *200 Falls Blvd. D 107*
 7. VICTIM'S NAME (LAST, FIRST, MI., OR PROP. BUSINESS NAME) *Keough James* 8. SEX *M*
 9. VICTIM'S ADDRESS (HOUSE NO., STREET, APT. NO.) *200 Falls Blvd D 107* 10. S.S. NO.
 11. CITY, STATE *Quincy MASS* ZIP CODE *02169* 12. HOME PHONE NO.
 13. TYPE OF PREMISE *Condo Building* 14. VICTIM'S PLACE OF EMPLOYMENT/SCHOOL *M.I.T.* 15. BUSINESS

WITNESS/VICTIM

16. WAS THERE A WITNESS TO THE CRIME? IF NO, PLACE AN X IN THE BOX
 17. INDICATE WITH PROPER CODE IN BOXES PROVIDED, PERSON'S RELATIONSHIP TO INVESTIGATION, W-1: WITNESS NO. 1 NI: NOT INTERVIEWED
 PK: PERSON WITH KNOWLEDGE, V-2: ADDITIONAL VICTIM RP: REPORTING PERSON
 PERSON INTERVIEWED *James Keough* AGE *23* HOME ADDRESS (HOUSE NO., STREET, APT.) *200 Falls Blvd D-107*
 T E L *None*

SUSPECT

18. CAN A SUSPECT BE NAMED? IF NO, PLACE AN X IN THE BOX
 SUSPECT NO. 1 NAME (INCLUDE ANY AKA INFO) S. S. NO. SUSPECT NO. 2 NAME (INCLUDE ANY AKA INFO) S. S. NO.
 19. CAN A SUSPECT BE LOCATED? IF NO, PLACE AN X IN THE BOX
 SUSPECT NO. 1. CAN BE LOCATED AT SUSPECT NO. 2. CAN BE LOCATED AT.
 20. CAN A SUSPECT BE DESCRIBED? IF NO, PLACE AN X IN THE BOX
 AGE SEX RACE HT. WT. HAIR EYES BEARD COMPLEXION AGE SEX RACE HT. WT. HAIR EYES BEARD COMPLEXION
 MUSTACHE MUSTACHE
 CLOTHING AND UNUSUAL CHARACTERISTICS CLOTHING AND UNUSUAL CHARACTERISTICS
 21. CAN THE SUSPECT BE IDENTIFIED? IF NO, PLACE AN X IN THE BOX
 USING APPROPRIATE CODES (See block 17) IN THE BOXES PROVIDED, INDICATE WHO CAN IDENTIFY SUSPECT 22. WEATHER CONDITIONS CLEAR CLDY. RAIN SNOW FOGGY SLEET

VEH

23. CAN SUSPECT VEHICLE BE IDENTIFIED? IF NO, PLACE AN X IN THE BOX
 24. REG INFO STATE YR MAKE MODEL TYPE COLOR CHARACTERISTICS/VIN NO.

PROPERTY

25. IS THE STOLEN PROPERTY TRACEABLE? IF NO, PLACE AN X IN THE BOX
 26. NO. 1 DESCRIBE THE PROPERTY NO. 2 DESCRIBE THE PROPERTY
 PROPERTY I.D. INFORMATION CODE PROPERTY I.D. INFORMATION CODE
 EVID STOL REC. REMOVED FROM VALUE T.O.T. EVID STOL REC. REMOVED FROM VALUE T.O.T.
 NO. 3 DESCRIBE PROPERTY NO. 4 DESCRIBE PROPERTY
 PROPERTY I.D. INFORMATION CODE PROPERTY I.D. INFORMATION CODE
 EVID STOL REC. REMOVED FROM VALUE T.O.T. EVID STOL REC. REMOVED FROM VALUE T.O.T.

EVID

27. IS THERE SIGNIFICANT PHYSICAL EVIDENCE PRESENT? IF YES, DESCRIBE IN NARRATIVE IF NO, PLACE AN X IN THE BOX
 28. HAS EVIDENCE TECH WORK BEEN PERFORMED BY REQUESTED? IF NO, PLACE AN X IN THE BOX
 TECH WORK PERFORMED REQUESTED PHOTO FINGERPRINT COMPOSITE OTHER

M.O.

29. IS THERE A SIGNIFICANT M.O. PRESENT? IF NO, PLACE AN X IN THE BOX
 30. TRADE MARK OF M.O. (UNUSUAL FEATURE OF CRIME THAT IS MOST APT TO RECUR FROM CRIME TO CRIME)

VIEW

31. POINT OF ENTRY UNK 32. POINT OF EXIT UNK 33. TYPE OF INSTRUMENT/WEAPON OR FORCE USED *Knife*
 34. IS FOLLOW-UP INVESTIGATION NECESSARY? IF NO, PLACE AN X IN THE BOX
 35. IS THERE A SIGNIFICANT REASON TO BELIEVE THAT THE CRIME MAY BE SOLVED? IF NO, PLACE AN X IN THE BOX
 36. OFFICERS (S) BADGE NO. (S) SUPERVISOR APPROVING DATE SIGNED

NARRATIVE

ARREST REPORT

CASE NO. 100017

VICTIMS NAME (LAST, FIRST, MIDDLE)
OR FIRM NAME IF A BUSINESS

Keagh James

LOCATION OF INCIDENT
HOUSE NO., ST. NAME

200 Falls Blvd D-107

DATE OF INCIDENT

1-14-9.

BLOCK NO.

INDICATE BLOCK NO. IN LEFT MARGIN FROM INVESTIGATIVE CASE REPORT

Sirs; On above date I responded to the above location on call of a disturbance. Upon my arrival, I saw the above named standing in the doorway and he was bleeding severely from his left wrist. After first aid was administered, he told me he had had a fight with his girlfriend and wanted to end his life.

X-Ray transported to QCH and he went up voluntarily.

Respectfully,

REPORTING OFFICER(S)

Michael A. King

BADGES # (S)

#25/4848

SUPERVISOR

A. M. Evers

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES ATTORNEY

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UNITED STATES OF AMERICA,

VS.

JOHN DOE.

Case No.

Federal Grand Jury
U.S. Post Office and Courthouse
Boston, Massachusetts

Thursday
February 13, 1992

APPEARANCE: PAUL V. KELLY
Assistant U.S. Attorney

WITNESS: NANCY SHAY

APEX REPORTING
Registered Professional Reporters
(617) 426-3077

1 disability.

2 That way, he'll have money because I give him
3 money all the time when he needs money for food or anything.
4 Begged him to get on SSI, try to get in some training program
5 and stop running from state to state and living this kind of
6 life.

7 Because some -- what he does is he goes and bums
8 rides from truck drivers. Then he unloads the trucks for him
9 and they feed him. This is how he's making it now.

10 He has not hustled his body in two years. He
11 doesn't want to--

12 MR. KELLY: To your knowledge.

13 A He told me.

14 MR. KELLY: Okay.

15 A Just before he left, ma, I'm not do -- I haven't
16 done that and I don't want to do it any more, it's very
17 degrading to me.

18 Q Where is your son now?

19 A I have no idea where he is. but he will call me,
20 I'm sure.

21 Q You last saw your son three weeks ago?

22 A Right.

23 Q Okay. And what--

24 A He said to me, he said, I'm not going to tell you
25 where I'm going, ma, but I'm not going back to jail.

1 Q Okay. Your son told you that he was leaving the
2 area?

3 A Right.

4 Q And why did he leave the area?

5 A (No verbal response.)

6 Q Why did he leave Massachusetts?

7 A Oh, because he -- an incident happened in our
8 home, and it happened at six in the morning, and he was--

9 MR. KELLY: I think I know what you're going to
10 say so let's--

11 THE WITNESS: Oh, yeah.

12 MR. KELLY: Let's jump over that to the point of
13 the story.

14 BY MR. KELLY:

15 Q Why did he leave Massachusetts?

16 A (No verbal response.)

17 Q What would happen to him? What did he feel was
18 happening to him or would happen to him if he stayed?

19 A His probation officer told him he was going to go
20 back to jail for a year because he didn't show up at Court.

21 Q Okay. So--

22 A And it wasn't his fault that he didn't show up for
23 Court.

24 Q He -- he has jumped bail on an outstanding Court
25 charge and is, essentially, a fugitive from justice?

United States District Court

DISTRICT OF

UNITED STATES OF AMERICA
v.

THOMAS A. SHAY
LNA 200 FALLS BLVD.
QUINCY, MA

CRIMINAL COMPLAINT

CASE NUMBER: 92-31-J

Name and Address of Defendant

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about January 14, 1992 in Quincy, Norfolk county, in the District of Massachusetts defendant(s) did, ~~with the intent to avoid or~~

move and travel in interstate and foreign commerce with intent to avoid prosecution under the laws of the place from which he flees, to wit, Massachusetts, for a crime which is a felony under the laws of the place from which the fugitive flees, to wit, communicating a false bomb threat (M.G.L. c. 269, §14).

in violation of Title 18 United States Code, Section(s) 1073

I further state that I am a(n) Detective, Boston Police Department and that this complaint is based on the following facts:

See Affidavit, attached hereto

Continued on the attached sheet and made a part hereof:

Yes No

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
MAR 21 12 27 PM '92

Sworn to before me and subscribed in my presence.

March 20, 1992

Date

Joyce London Alexander
U.S. Magistrate Judge

Name & Title of Judicial Officer

Signature of Complainant
Thomas A. Shay



at
City of Boston
Signature of Judicial Officer
Joyce London Alexander

AFFIDAVIT

Boston, Massachusetts
March 20, 1992

I, Francis W. Armstrong, Jr., being duly sworn, heraby depose and state:

1. I am a Boston Police Department, (BPD) Detective assigned to the Homicide Unit and a Special Deputized U.S. Marshal.


2. The Boston Police Department has requested the assistance of the Bureau of Alcohol, Tobacco and Firearms as well as the Office of the United State Attorney for the District of Massachusetts in the location and apprehension of Thomas A. Shay.

3. I have been informed by Suffolk County Assistant District Attorney, Hugh Curran, as follows:

- (a) Thomas A. Shay was charged with the crime of communicating a false bomb threat on November 4, 1991 (Boston Municipal Court Criminal Docket No. 9101CR10188);
- (b) The crime of communicating a false bomb threat is a felony under Massachusetts General Laws chapter 269, §14.
- (c) Thomas A. Shay thereafter appeared before the Boston Municipal Court and was released, the terms of which release included further appearance before the Boston Municipal Court;
- (d) According to both Nancy Shay, Thomas A. Shay's mother and Shay himself, Shay has fled the Commonwealth of Massachusetts to avoid prosecution: More particularly, Nancy Shay has testified, under oath, that her son, Thomas A. Shay, was leaving Massachusetts because he did not want to go back to jail for "jumping bail" on an outstanding court charge. Moreover, on February 9, 1992, Thomas A. Shay telephoned Russell Bonanno, a former roommate and told Bonanno that he "knew that the cops were looking for [him]" and, in response to Bonanno question as to his whereabouts, stated that he was thirty two hundred miles away.";
- (e) The Suffolk County District Attorney has advised the Office of the United States Attorney for the

District of Massachusetts that it will rendite
Thomas A. Shay if he is apprehended outside the
District of Massachusetts.

4. Attached hereto and made a part hereof is a copy of
Boston Municipal Court Default Warrant dated February 7, 1992.


FRANCIS W. ARMSTRONG
Boston Police Detective

Sworn to and subscribed before me this _____
March, 1992.


JOYCE LONDON ALEXANDER
U.S. Magistrate Judge

