

# Trial review ordered in fatal bombing case

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A federal appeals court ruling yesterday jeopardized the conviction of Thomas A. Shay Jr. in the 1991 bombing in Roslindale that left one Boston police officer dead and another badly injured.

The court said the jury that in 1993 convicted Shay, 23, of conspiracy and aiding and abetting in the death of Officer Jeremiah Hurley may have been entitled to hear from a psychiatrist who attributed Shay's incriminating statements to a mental condition that causes him to make false and grandiose boasts.

US District Judge Rya Zobel refused to allow the testimony at Shay's trial. But the US Court of Appeals yesterday returned the case to her to reexamine that ruling.

If the judge now finds that the psychiatrist should have testified, Shay will get a new trial.

If Zobel backs up her reasons for preventing him from testifying, the appeals court will again review her

findings.

At the trial, Zobel agreed with the prosecution's contention that jurors could determine Shay's credibility based on their common sense and that the expert would prejudice and confuse them.

Boston Police Sgt. Robert O'Toole, a former partner of the slain officer, said the decision means delayed closure for everyone who mourns him.

"It's never-ending," said Hurley's daughter Lisa.

Nonetheless, O'Toole said, "We have faith in the judicial system, and if we need to march back up there for a retrial we will go forward because we have a good case and it's the right thing to do."

Shay is serving a 15-year, eight-month sentence for his role in the blast that occurred Oct. 28, 1991, after Shay's father, Thomas L. Shay, found a device in the driveway and called police.

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