

APPLICATION FOR SEARCH WARRANT

G.L. c. 278, §§ 1-7

TRIAL COURT OF MASSACHUSETTS

West Roxbury District



COURT DEPARTMENT

NAME OF APPLICANT

Criminal

DIVISION

William Fogerty

POSITION OF APPLICANT

SEARCH WARRANT DOCKET NUMBER

Detective, Boston Police Department

91-06-SW-294

I, the undersigned **APPLICANT**, being duly sworn, depose and say that:

1. I have the following information based upon the attached affidavit(s), consisting of a total of 5 pages, which is (are) incorporated herein by reference.

2. Based upon this information, there is **PROBABLE CAUSE** to believe that the property described below:

- has been stolen, embezzled, or obtained by false pretenses.
- is intended for use or has been used as the means of committing a crime.
- has been concealed to prevent a crime from being discovered.
- is unlawfully possessed or concealed for an unlawful purpose.
- is evidence of a crime or is evidence of criminal activity.
- other (specify) _____

3. I am seeking the issuance of a warrant to search for the following property (describe the property to be searched for as particularly as possible): Components for the manufacture of explosive devices including ~~batteries, detonators, explosives and/or residual materials, switches, paint, wire, nails, tape, soft metal scrapings, residual magnetic material, metal burrs and scrape marks.~~ Affiant requests permission to search the said motor vehicle and remove and/or dismantle any parts therein or thereon necessary to uncover explosive material.

4. Based upon this information, there is also probable cause to believe that the property may be found (check as many as apply): at (identify the exact location or description of the place(s) to be searched):

A black, 1986 Buick Century, four door Sedan with Massachusetts registration number of 125 LLO, and a Vehicle Identification Number of 1G4AL19R3G6415738.

which is occupied by and/or in the possession of: Thomas Shay (Owner); secured at Boston Police garage on Frontage Road

on the person or in the possession of (identify any specific person(s) to be searched):

on any person present who may be found to have such property in his or her possession or under his or her control or to whom such property may have been delivered.

THEREFORE, I respectfully request that the court issue a Warrant and order of seizure, authorizing the search of the above described place(s) and person(s), if any, to be searched, and directing that such property or evidence or any part thereof, if found, be seized and brought before the court, together with such other and further relief that the court may deem proper.

- have previously submitted the same application.
- have not previously submitted the same application.

PRINTED NAME OF APPLICANT

William B Fogerty

SIGNED UNDER THE PENALTIES OF PERJURY

x William B Fogerty

Signature of Applicant

SWORN AND SUBSCRIBED TO BEFORE

Michael J. [Signature]

Signature of Justice, Clerk, Magistrate or Assistant Clerk

10/30/91

DATE

APPLICATION FOR SEARCH WARRANT

G.L. c. 276, §§ 1-7

TRIAL COURT OF MASSACHUSETTS



West Roxbury District COURT DEPARTMENT

Criminal DIVISION

NAME OF APPLICANT

William Fogerty

POSITION OF APPLICANT

Detective, Boston Police Department

SEARCH WARRANT DOCKET NUMBER

91 06 SW 295

I, the undersigned APPLICANT, being duly sworn, depose and say that:

1. I have the following information based upon the attached affidavit(s), consisting of a total of 6 pages, which is (are) incorporated herein by reference.

2. Based upon this information, there is PROBABLE CAUSE to believe that the property described below:

- has been stolen, embezzled, or obtained by false pretenses.
- is intended for use or has been used as the means of committing a crime.
- has been concealed to prevent a crime from being discovered.
- is unlawfully possessed or concealed for an unlawful purpose.
- is evidence of a crime or is evidence of criminal activity.
- other (specify) _____

3. I am seeking the issuance of a warrant to search for the following property (describe the property to be searched for as particularly as possible):

Fingerprints and/or palm prints; the detection of explosive residue fumes.

4. Based upon this information, there is also probable cause to believe that the property may be found (check as many as apply):

at (identify the exact location or description of the place(s) to be searched):

A black 1986 Buick Century, four door sedan, with Massachusetts Registration number of 125-LLO, Vehicle Identification Number of 1G4AL19R3G6415738.

which is occupied by and/or in the possession of: Thomas Shay (Owner); secured at the Boston Police garage at 273 D Street, South Boston.

on the person or in the possession of (identify any specific person(s) to be searched):

on any person present who may be found to have such property in his or her possession or under his or her control or to whom such property may have been delivered.

THEREFORE, I respectfully request that the court issue a Warrant and order of seizure, authorizing the search of the above described place(s) and person(s), if any, to be searched, and directing that such property or evidence or any part thereof, if found, be seized and brought before the court, together with such other and further relief that the court may deem proper.

- I have previously submitted the same application.
- I have not previously submitted the same application.

PRINTED NAME OF APPLICANT

William Fogerty

SIGNED UNDER THE PENALTIES OF PERJURY

X William Fogerty

Signature of Applicant

SWORN AND SUBSCRIBED TO BEFORE

X Maria D. [Signature]

Signature of Justice, Clerk, Magistrate or Assistant Clerk

10/31/91

DATE

1. Now comes the affiant who swears to the following. My name is William Fogarty. I am a Boston Police Detective assigned to the Boston Police Homicide Unit. On 10/29/91 at approximately 9:30 AM, Judge Maria Lopez of the West Roxbury District Court issued three search warrants on which I was the affiant. The affidavit in support of those warrants, which consisted of three pages, is hereby incorporated by reference. It shall be heretofore referred to as the "affidavit."

2. Thomas Shay, first referred to in paragraph 2 of the "affidavit", is the registered owner of a black, 1986 Buick Century, four door sedan, with a Massachusetts registration number of 125-LLO, and a Vehicle Identification Number of 1G4AL19R3G6415738.

3. Shay told this affiant on 10/28/91, that he left his home at 39 Eastbourne on Sunday, 10/27/91, at about 8 AM. He drove to the Malden area, then to visit someone at the Chelsea Soldiers' Home, then to a doughnut shop in South Boston, then to Castle Island, finally returning home at about 11:30 AM. This trip was made in the above mentioned Buick. When he returned home, his usual parking space in front of his home was occupied. Therefore, he backed the Buick up and into his driveway. From the street, the driveway is sloped upward at approximately a 20% slope until it suddenly crests and levels off approximately 12 feet in from the sidewalk. While Shay was backing the Buick up, he heard a scraping noise. He characterized the car as "bottoming out." Shay then got out of his car and looked underneath it from the rear. He observed no damage or anything unusual. About fifteen minutes later, Shay drove the Buick forward out of the driveway. Again, he heard the same noise which he characterized as "bottoming out." He then parked the Buick in the customary space directly in front of his house. Shay then looked up into his driveway and noticed the suspicious object referred to in paragraph 2 of the "affidavit."

4. After the explosion referred to in paragraph 3 of the "affidavit", Boston Police assigned to the Bomb Unit, had the Buick lifted up with the aid of a tow truck for the purpose of determining whether there were any more devices still underneath. There were none. However, they did notice under the area of the front driver's side, markings on the undercarriage consistent with the "magnets" Shay described, as referred to in paragraph 2 of the "affidavit." Furthermore, they noticed "scraping" marks along the undercarriage from the purported point of attachment towards the rear of the car.

5. After determining that there were no more devices under the car, it was removed to a secure location, with Shay's permission. The car is presently stored at the Boston Police garage on Frontage Road.

6. ATF agents, as part of their ongoing consultation with the Boston Police, have stated that a complete investigation will necessitate further examination of the Buick. In addition to examining the undercarriage for evidence of the "attachment" referred to above in paragraph 4, ATF would also like to examine for evidence related to the bomb blast due to the Buick's being parked within a line of sight from the blast site.

7. It is this affiant's opinion, as well as the collective opinion of other Boston Police investigators and ATF agents, that issuance of a search warrant for the 1986 Buick will reveal evidence related to the murder of Jeremiah Hurley, specifically components for the manufacture of explosive devices including batteries, detonators, explosives and/or residual materials, switches, paint, wire, nails, tape, soft metal scrapings, residual magnetic material, metal burrs and scrape marks.

Now comes the affiant who swears to the following. I William Fogerty am a Boston Police Detective assigned to the Homicide Unit of the Boston Police Dept. I have been a police officer for twenty four years. I have been rated a detective for the past sixteen years. I have been assigned to the Homicide Unit for six years. During my police career I have been involved in over one hundred homicide investigations, including bombing and arson investigations.

On Monday 10-28-91 I was one of numerous Homicide Investigators assigned to investigate the Homicide of Jeremiah Hurley. Jeremiah Hurley was a Boston Police Officer assigned to the Boston Special Operations Bomb Squad. His duties included responding to calls of suspicious objects that may be explosive. On 10-28-91 at about 11:55A.M. Officer Hurley with Officer Frank Foley responded to 39 Eastbourne St. in Roslindale to investigate a suspicious object. Once there, Officers Hurley and Foley were met by the E433 a marked police unit, and the occupant of 39 Eastbourne St, a Mr. Tom L. Shay, who lives with his girlfriend Mary Flanagan who owns the residence. The officers were directed to the driveway of 39 Eastbourne St. where they observed an object black in color. The object was described by Mr. Shay, who had reportedly already handled it, as being about 10 to 12 inches long, 5 to 6 inches wide and 1 inch thick. Mr. Shay stated that the object had several magnets on one side with two donut shaped circles about 3 or 4 inches in diameter on one side and a black box about 2 inches by 4 inches by 2 inches on the other side. This black box had a wire coming out of it and running towards the end of the wooden piece that it was attached to. The object had two magnets that had been removed or fallen off while Mr. Shay was handling it.

While the two Officers from the Bomb Squad were examining the above described device it exploded. The two Officers were removed to Brigham and Womens Hospital where Officer Hurley died as a result of his wounds at 7:22PM 10-28-91, and was pronounced by Dr. Neil Fine. Det. Fogerty along with other homicide investigators responded to 39 Eastbourne St. arriving at about 1:00P.M.

The initial observations in the area of the detonation shows that the explosion went in a 360 degree circle. The explosion occurred in the rear of the driveway between a white Chevrolet Ma. Reg. A60443 and a 1969 Grey GTO Pontiac, unregistered which were parked in the driveway. The explosion blast traveled towards the rear of the driveway up to and beyond the garage which is behind the grey Pontiac, as evidenced by the existence of fragmentation particles fanning in that direction. The explosion also traveled towards and over the 6 foot fence

into the rear of the yard behind the house and to the left of the above mentioned garage. The explosion also traveled forward towards the front of the street, as evidenced by the existence of fragmentation particles fanning in that direction. The fragmentation particles also were observed fanning towards and into the adjoining house at 35 Eastbourne St. as evidenced by an unexploded detonator stuck into the side of the house.

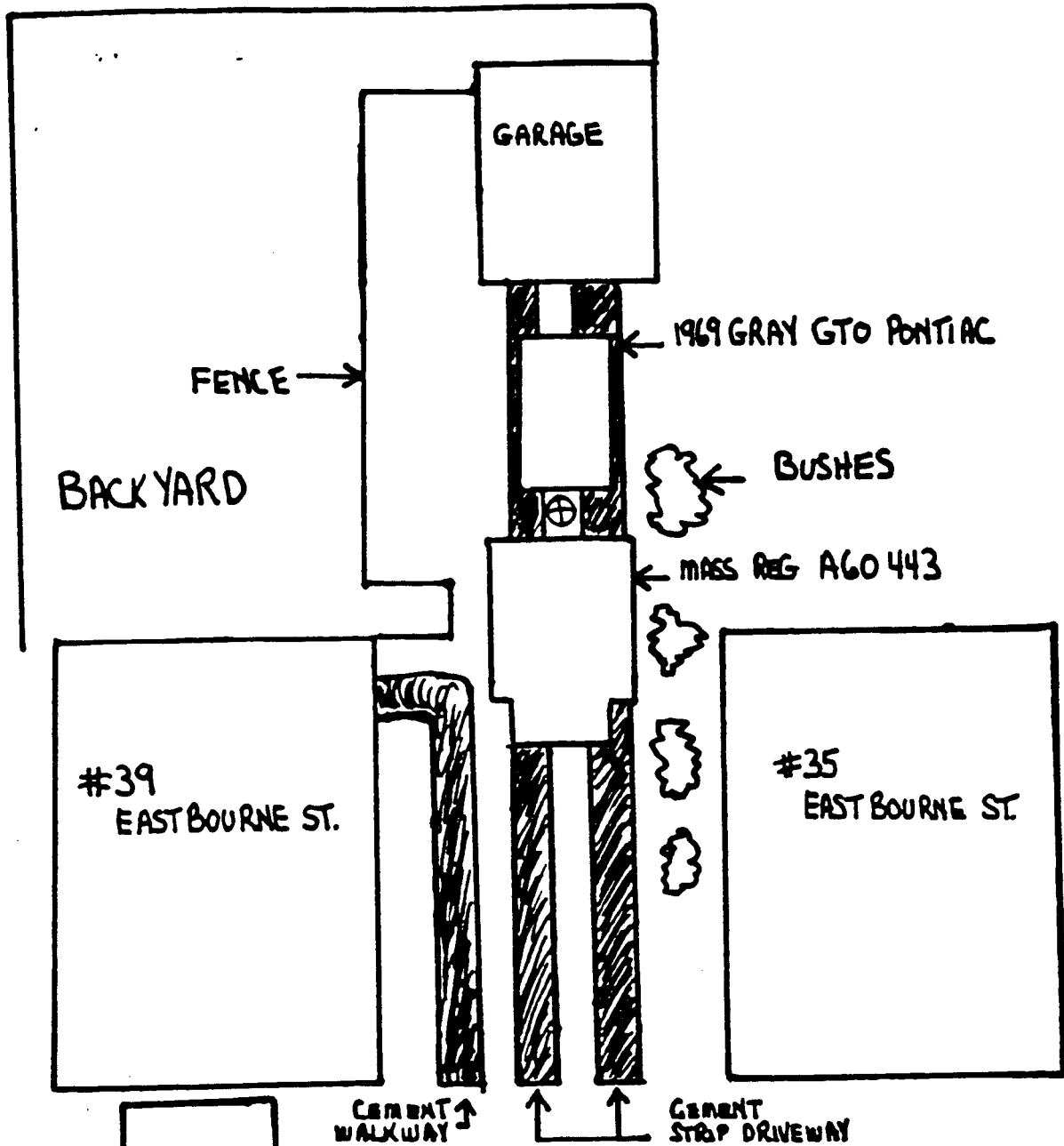
As part of the investigation, Agents from the Bureau of Alcohol, Tobacco and Firearms were called in for consultation. Agent Wayne M. Miller, who has over ten years experience in that agency, told Det. Fogerty that an explosion of the demonstrated power, which he observed evidence of, would probably cause fragments and other evidence to travel minimally one hundred feet. The exact dimensions of the lot at 39 Eastbourne were not measured to minimize any contamination of the crime scene. Det. Fogerty would estimate the lot at 39 Eastbourne to be 70 feet wide and 90 feet deep.

The aforementioned white Chevy, step van, Mass Reg:A60443, showed evidence of damage from the blast at the rear of the van, specifically a broken lens cap. The aforementioned, unregistered Pontiac GTO, showed evidence of damage from the blast to the front of the vehicle.

Agents from ATF have agreed to give expert consultation. As part of their consultation, in order to adequately investigate the explosion area, soil sifting to a depth of 5 inches is necessary. It is also the collective opinion of Agent Miller and other ATF agents consulted that evidence of an explosive device might have fanned into the above mentioned garage, Chevy stepvan and Pontiac GTO. Agent Miller informed Det. Fogerty that in his cursory examination of the Blast area he saw evidence of wood and metal fragments, wires, batteries, timers, blasting caps, nails, and other fragmentation particles. It was also his opinion that a device of this type would leave evidence of explosive material such as black powder, smokeless powder, dynamite, plastic explosive, or similar material, and clocks, screws, tape, and fabric.

It is this affiant's opinion and the collective opinion of other Homicide Investigators and consulted ATF agents that issuance of a search warrant for the lot at 39 Eastbourne St. excluding the house itself but including the entire lot, the assigned garage, the Chevrolet Step Van, and the Pontiac GTO will produce evidence which will further aid in identifying the exact make-up of the explosive device which caused the death of Officer Jeremiah Hurley.

The attached map is hereby incorporated by reference into this affidavit.



#39
EAST BOURNE ST.

#35
EAST BOURNE ST.

GARAGE

FENCE →

← 1969 GRAY GTO PONTIAC

← BUSHES

← MASS REG A60443

↑
MASS REG. 125 LLO

↑
CEMENT WALKWAY

↑
CEMENT STRIP DRIVEWAY

⊕ BOMB EXPLOSION
OCTOBER 28, 1991

JEREMIAH J HURLEY HOMICIDE
#105-91

NOT TO SCALE - DET. WM B FOGERTY
BOSTON POLICE INCIDENT #11919390

