UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Criminal No. 92-10369-Z
ALFRED W. TRENKLER, Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTIONS TO SUPPRESS

I. **FACTS**

On November 5, 1991, a small army of Special Agents of the Bureau of Alcohol, Tobacco and Firearms and Detectives from the Boston Police Department Homicide Squad descended upon the basement apartment located at 133 Atlantic Street in Quincy, shared by the Defendant, Alfred Trenkler, and his roommate John Cates. The group consisted of at least the following: AFT Special Agents, D'Ambrosio, Leahy, LaCourse, and Palaza; Boston Homicide Detectives Murray, O'Malley, Fogerty, McCarthy, Harris, and Mahoney. Also present was Quincy Police Detective Tierney.

This group, with the addition of Special Agent Kerr, had since approximately 5:00 p.m. that day been involved in a surveillance of the Defendant,

his business partner Richard Brown, ARCOMM (the Defendant's place of business located at 82 Broad Street, Weymouth), and the Defendant's home at 133 Atlantic Street, in Quincy.

During the six hour period from 5:00 p.m. to 11:00 p.m., at least five Detectives and five Special Agents staked out ARCOMM, and followed a silver Lincoln Continental belonging to Brown and occupied by Brown and Trenkler. At least four unmarked vehicles were involved in the surveillance. Brown and Trenkler were followed to various locations in Quincy and Weymouth, including a restaurant and a parking lot, where Trenkler's broken down car was parked. At various times throughout the evening, the group of law enforcement officers lost track of Trenkler and Brown.

The original express purpose of this surveillance was to gather intelligence about Trenkler to see where he went, who he visited, where he lived, etc. At the time of the surveillance, neither the Boston Police, nor the ATF had an address for Trenkler.

Simultaneously with this surveillance, Det. Mahoney of the Boston Police Department and Det. Tierney of the Quincy Police were in the process of surveilling Trenkler's residence at 133 Atlantic

Street, in Quincy. At approximately 4:00 p.m. that same day, Det. Mahoney had visited Det. Tierney at the Quincy Police station to seek help in locating an address for Trenkler. Tierney was familiar with Trenkler from a 1986 incident in which Trenkler had pleaded guilty to building a firecracker-like device which exploded while attached to a delivery truck. (The ATF was already aware of this information.)

Because Trenkler had recently reported suspicious activity in his neighborhood, Det. Tierney was quickly able to pull Trenkler's address from a computer file. Thereafter, at approximately 5:30 p.m., Detectives Mahoney and Tierney drove to the 133 Atlantic Street address to watch the apartment.

Upon arrival, they introduced themselves to the landlord at 133 Atlantic Street, one Michael Green, also known to Det. Tierney, and were given access to the common area in the basement where Trenkler and Cates' apartment was located. Neither Trenkler nor Cates was home at that time.

At about 8:30 p.m., Detectives Mahoney and Tierney drove to a parking lot in Quincy to watch the Defendant's broken down car, and after approximately 45 minutes, met up with the larger team of agents and detectives for a meeting.

At approximately 10:30 p.m., Mahoney and Tierney returned to 133 Atlantic Street. About 15 minutes later, they spotted Trenkler at his home in the backyard. The larger group was notified by radio and made a collective decision to go to Trenkler's apartment. Thereupon, all the Boston detectives and ATF agents, with the exception of Agent Kerr, proceeded to 133 Atlantic Street.

Upon arrival, at approximately 11:00 p.m., a meeting of the detectives and agents was convened around the corner where the unmarked cars were parked, following which the assembled forces divided into two groups. One group, consisting of 2-3 officers or agents, stayed in front, to prevent the escape of anyone. The other group proceeded to the rear of the building and entered an unlocked rear door which led to a descending staircase, at the bottom of which was the common area of the basement and the door to Trenkler and Cates' apartment. Detectives Murray and Tierney stayed outside, in the rear of the house, positioned at the rear door and a basement window, presumably to prevent flight from those exits. All the law enforcement personnel were armed.

At least six agents entered the building and occupied the common area in the basement and the

stairs above. These included Detectives McCarthy, O'Malley, Fogerty, and Agents D'Ambrosio, Leahy, and Palaza. One of the detectives banged on the door and identified himself as police. Trenkler went to the door. When Cates' dog started barking, the occupants of the apartment were instructed to put the dog in the bathroom, which Trenkler did.

Trenkler then put on some clothes and cracked open the door. He and Cates had been in bed. Cates remained in bed, a convertible sofa.

Three or four of the officers immediately entered the small apartment, and as one or two of them engaged Trenkler and Cates in conversation, the others looked around the apartment lifting things up as they did. The apartment consisted of one room, approximately 12 x 16, with a bathroom and small kitchenette.

Trenkler was asked if he knew why the police were there, to which he responded, either the suspicious activity he had reported, or the Roslindale bombing. Cates was told to "get the fuck up, scumbag, get some clothes on." Cates did as he was told. He did not, however, have time to put on either his glasses or contact lenses.

Trenkler and Cates were then asked if the officers could search the apartment. Trenkler and

Cates asked if the officers had a warrant. When the officers said no, they declined to give consent.

Cates was then escorted by Det. Murray out of the apartment. This was done pursuant to the standard ATF technique of separating and isolating witnesses.

Cates was placed in the rear of S.A. D'Ambrosio's car, with Det. Murray and S.A. LaCourse in the front seat. After some general interrogation regarding his relationship with Trenkler, Det. Murray got out of the car and had a brief conversation with Det. McCarthy, who had just come from the apartment. McCarthy showed Murray a baggie containing a small amount of marijuana that had been discovered in the apartment.

Det. Murray took the baggie back into the car where he confronted Cates with it. He asked Cates whether the marijuana was the reason he had refused consent to search the apartment. Cates responded that it did not seem as if they needed his consent as they had already searched the apartment.

In the meantime, as Cates was in the car, the agents and detectives, principally Det. Peter O'Malley and S.A. Dennis Leahy and S.A. D'Ambrosio were interrogating Trenkler in the apartment, questioning about his relationship with Shay and his

knowledge of explosives and electronics. Other agents were searching the apartment and standing guard in the common area and the back stairs. During this search, a disassembled speaker with an exposed circular magnet was discovered on a shelf, and in a closet, a book entitled "Dirty Tricks" was found.

At no time did a member of either the Boston Police or the ATF ask Trenkler or Cates to sign a Consent to Search form, although such forms were readily available.

Trenkler was then asked to accompany the officers to ARCOMM, which he did. As Trenkler was escorted out of the apartment, Cates was escorted back in. Detectives Murray, Harris and Fogerty remained at 133 Atlantic Street where a thorough search, lasting approximately 40 minutes, ensued. The others, in approximately four vehicles, drove for approximately 15 minutes to ARCOMM, located at 82 Broad Street, Weymouth. Trenkler rode in Tierney's car, in the company of Det. Mahoney.

The group arrived at ARCOMM at approximately midnight. Trenkler was asked to open the door and disable the alarm system, which he did. The office consisted of a larger front room, with a desk and chairs, and a small storage and work room in the

back. Various tools and equipment used by Trenkler and Brown in their communications business were on the premises, as well as various records and files.

Upon entering, Special Agents D'Ambrosio and Leahy went to the back room to search. The other agents and officers stayed in the front room with Trenkler.

Returning to the front room, S.A. Leahy questioned Trenkler regarding ARCOMM's business. The agents searched through some toolboxes from which 15 items were seized, including rolls of tape and various tools. Agent Leahy prepared a receipt for these items and gave it to Trenkler. (Exhibit 12) Again, though a consent form was readily available, none was shown to Trenkler or even discussed with him.

With Trenkler sitting at his desk, Leahy then proceeded to question Trenkler relative to Trenkler's knowledge of explosives. In addition to Leahy, Special Agents D'Ambrosio and Palaza, and Det. O'Malley were also in the immediate vicinity, hovering around the desk. Leahy knew that Trenkler had been involved in the 1986 incident, and he also knew that the Roslindale bomb contained one very special feature: it was composed of at least two blasting caps and two sticks of dynamite.

D'Ambrosio asked Trenkler to draw a diagram of the 1986 device, which Trenkler did. D'Ambrosio agreed the 1986 device involved only a large firecracker. D'Ambrosio then claims to have asked Trenkler to draw a picture showing how he would construct a device, assuming it contained dynamite and was remote controlled.[1] According to D'Ambrosio, this second diagram depicted a device composed of two sticks of dynamite and two blasting caps. Both D'Ambrosio and Leahy then had a private discussion, noting the extreme significance of the diagram in that it depicted a signature characteristic of the Roslindale bomb. Despite this significance however, neither D'Ambrosio nor Leahy, nor any member of the Boston Police Homicide Squad saw fit to seize the diagram. According the Leahy and D'Ambrosio it was left on Trenkler's desk out of negligence. D'Ambrosio's reconstruction of both diagrams, created one week before the suppression hearing commenced and more than one and a half years after the event, was admitted as Exhibit 5 to the suppression hearing.

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[1]The Defendant denies this second diagram was ever discussed or made; however, for present purposes the Defendant agrees the government will produce oral testimony that it was.

At the completion of the search of ARCOMM, the seizure of the tools, and the alleged discussion between D'Ambrosio and Leahy concerning the extreme significance of Trenkler's alleged second diagram, the assembled law enforcement officers asked to be taken to the home of Trenkler's parents, at 7 Whitelawn Avenue, in Milton. The time was then approximately 1:15 a.m.

When Trenkler protested that it was too late and that his parents would be awakened, S.A. Leahy and others suggested they only wanted to look in the garage and that they would pretend they worked for Trenkler and were only looking for parts. They offered to take only one car. Leahy, D'Ambrosio and O'Malley then drove Trenkler to 7 Whitelawn Avenue. They arrived at approximately 1:45 a.m.

The garage on the premises was a detached structure, packed with woodworking and electrical equipment. It was used by both Trenkler and his brother for storage. At the agent's direction, Trenkler opened the garage. The agents made a cursory search of the garage and seized two pieces of wire and a piece of wood.

Again no member of law enforcement sought a written consent to search.

The agents then asked to search Trenkler's inoperable car, which was parked in a lot in Quincy. When they arrived at about 2:00 a.m., the agents had Trenkler open the trunk, the lock of which was broken. The agents seized a sample of the carpet from the trunk, again without written consent.

On the way back to Atlantic Street, Det. O'Malley resumed his discussion with Trenkler which had been on-going throughout the night, encouraging Trenkler to take a polygraph test. Trenkler said he would think about it, and an appointment for a polygraph was set up for November 7.

Finally, Trenkler was returned home at approximately 2:45 a.m.

In the afternoon of November 6, Trenkler called the ATF to cancel the November 7 appointment for the polygraph examination. Trenkler told the ATF that, on advice of his counsel, Martin Cosgrove, he would not be submitting to the test. Shortly thereafter, Attorney Cosgrove, as Trenkler's counsel, called Det. O'Malley to advise him that Trenkler would not be taking the polygraph.

Subsequent to the warrantless searches of November 5-6, the federal government sought and was issued warrants to search the premises that had already been searched without warrants: i.e., 133

Atlantic Street, Quincy; 82 Broad Street, Weymouth; and the garage at 7 Whitelawn Avenue, Milton. S.A. Kerr's affidavit in support of the applications for the warrants relied in substantial part on evidence derived from the events of November 5-6. In particular, the affidavit relates the substance of the conversation with Cates; the observation of speaker magnet and "Dirty Tricks" book in Trenkler's apartment; the presence of electrical tools at ARCOMM; Trenkler's description of his business; the drawing of the two explosive devices; and the observation of electrical and mechanical equipment at the Milton garage. **See**, Exhibit 14, pars. 17-21.

The three searches pursuant to warrant were executed simultaneously on January 31, 1992, when three teams of officers arrived at 133 Atlantic Street, 82 Broad Street, and 7 Whitelawn Avenue.

Trenkler left his apartment early in the morning on January 31, and arrived back home at 133 Atlantic Street, at approximately 8:00 a.m. The search of his apartment was by then in progress. After a brief conversation with S.A. Kerr, Trenkler left for 7 Whitelawn Avenue, Milton.

When Trenkler arrived in Milton at approximately 9:00 a.m., the search there was well underway. Trenkler was immediately engaged in

conversation by S.A. Leahy and Det. Fogerty and was asked to consent to the search of his car by an electronic sniffer. Trenkler agreed and signed an ATF Consent to Search form, at 9:15 a.m. Trenkler remained at the scene for approximately one hour.

In the meantime, S.A. D'Ambrosio was in charge of the team executing the search warrant at ARCOMM. At about 11:30 a.m. Attorney Cosgrove called and spoke to D'Ambrosio. Cosgrove was advised that a federal search was underway pursuant to a warrant. Attorney Cosgrove asked whether they had an arrest warrant for Trenkler. He was advised they did not.

As a result of these searches, some of Trenkler's personal papers and business records were seized.

Thereafter, on February 3, 1992, Trenkler called the ATF office in Boston and spoke to S.A. Leahy. Trenkler asked for xerox copies, or the return of the originals, of his business papers that were taken in the searches. Leahy told Trenkler to come in the following day to pick up his papers.

Trenkler arrived at 11:30 a.m. on February 4. He remained at the ATF office for approximately 2-1/2 hours. Except for a brief period when he left to have a cigarette, he was kept in a conference room with at least two ATF agents at all times, from

among Special Agents Leahy, LaCourse and D'Ambrosio. During this 2-1/2 hour period, D'Ambrosio, rather than sitting in silence, initiated conversation with Trenkler regarding inconsistencies in what Trenkler had already told the ATF about his relationship with Tom Shay. Trenkler was then questioned about Shay and details of the 1986 incident.

When Trenkler eventually left the ATF, he had been given copies of only a few of the documents he had requested.

II. **ARGUMENT**

A. The Searches of November 5-6, 1991 Were Unconstitutional and Executed in the Absence of a Valid Consent.

As a matter of fact, the Defendant denies that consent was given. To the extent members of the ATF and Boston Police testified otherwise, their testimony was entirely self-serving and not to be credited. However, insofar as the Court may find otherwise, such consent or acquiescence as there was, was the product of official coercion, both subtle and blatant. After a "careful scrutiny of all the surrounding circumstances," this Court must find that any consent as may have been given was involuntary. **Schneckloth v. Bustamonte**, 412 U.S. 218 (1973).

There can be little questions that the manner in which the joint ATF-Boston Police personnel acted was calculated to put extreme pressure on Trenkler and Cates to "consent" to a search of their apartment. At least twelve armed Special Agents and Homicide Detectives were involved; they arrived late at night when Trenkler and Cates were in bed; they used abusive language; they crowded themselves into a small area, blocking all avenues of exit or escape; they posted guards at the front and back of the building; they separated Trenkler and Cates from each other, the better to overcome the will of each individually; they used the results (the marijuana) of an admittedly non-consensual search as to Cates to extract what was at best a resigned acquiescence to a subsequent search; and they crowded against Trenkler in the narrow confines of his apartment after removing Cates. If Trenkler gave consent, it was surely not an act of free will. **See, Harless v. Turner**, 456 F.2d 1337 (10th Cir., 1972) (no valid consent where four or five officers routed defendant out of bed at 1:45 a.m.); **United States v. Mapp**, 476 F.2d 67 (2d Cir., 1973).

Contributing to this conclusion is the obvious fact that although there was a veritable army of law enforcement, not one could produce a consent form,

which could have provided the best evidence that consent was given. Such a form was used under much less coercive circumstances on January 31 when the warrant to search Whitelawn Avenue was being executed. Although the Defendant's awareness of Fourth Amendment rights and his right to refuse consent is not determinative, it is probative of police coercion, especially where under other, less coercive circumstances, the police gave such advice and sought a written waiver. Cf. **United States v. Mapp**, 476 F.2d 67 (2d Cir., 1973).

Under the totality of the circumstances present here, no valid consent was given. As a result not only the fruit of the search of 133 Atlantic must be suppressed, but the fruit of the subsequent searches at ARCOMM and 7 Whitelawn Avenue must also be suppressed.

The three searches conducted the night of November 5-6 were part of one continuous, coercive show of force by the ATF and the Boston Police. The Defendant was deliberately overwhelmed by their presence and control over him; and as the night grew later and his distance from home grew larger, his ability to resist grew smaller. There was therefore no intervening act of free will to purge the subsequent searches that night from the original

taint. **See, Wong Sun v. United States**, 371 U.S. 471 (1963).

Accordingly, the physical evidence and observations made, derived from the warrantless searches of November 5-6, must be suppressed.

B. The Statements Made by Trenkler during the Night of November 5-6 Were Involuntary and the Product of Custodial Interrogation.

1. The Defendant was in custody on the night of November 5-6.

From the moment the joint team entered the Defendant's apartment, the Defendant believed, and reasonably so, that he was not free to leave. Clearly, Trenkler was the "focus" of the investigation and the agents and detectives intended that he not be able to leave; thus the use of 12 armed officers, the posting of guards at the front and rear of the house and the basement window, and the officers' occupation of the common area and back stairs during the search and interrogation. The tight confines of the apartment and basement area, and the comings and goings of at least six to eight of the officers involved, ensured Trenkler's ability to appreciate that the police force involved was quite substantial. The determination and aggression of the force were communicated to Trenkler by the lateness of the hour and the unannounced entry into

the basement. And if Trenkler had any thought of gaining emotional or physical support from his roommate, this hope was dashed by the coercive removal of Cates from the building. Thus, law enforcement intended to convey to Trenkler the notion that they were in complete control of the situation, and did so, quite successfully.

Thus, although not technically under arrest, the Defendant was clearly "deprived if his freedom in a significant way." **Miranda v. Arizona**, 384 U.S. 436, 444 (1966). As in **Orozco v. Texas**, 394 U.S. 324 (1969), where only four officers invaded the Defendant's bedroom in the middle of the night, the situation here was custodial and the absence of **Miranda** warnings violated the Defendant's Fifth Amendment privilege of self-incrimination.

Moreover, the custodial character of the situation grew as the night wore on. Trenkler was removed from his home by the police, in a police vehicle, and was totally subject to their physical control. Once Trenkler was placed in the car and taken from 133 Atlantic Street, what little freedom of movement he had up to that point evaporated.

Trenkler was in custody the entire night and was not free to leave until he was released to his apartment at 2:30 a.m. Cf. **Oregon v. Mathiason**, 429

U.S. 492 (1977). All his statements (and drawings) of that evening were the product of custodial interrogation.

2. The Defendant's statements (and drawings) of November 5-6 were the product of interrogation.

"Interrogation" for **Miranda** purposes is "express questioning or its functional equivalent." **Rhode Island v. Innis**, 446 U.S. 291, 300 (1980). The term "functional equivalent" encompasses "any words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response from the suspect." **Id.** at 301; **Arizona v. Mauro**, 481 U.S. 520, 526 (1987).

Here, Trenkler was specifically questioned about his relationship with Shay and his knowledge of explosives and electronics. He was specifically asked to draw diagrams of real or hypothetical explosive devices.

There can be no question that Trenkler was interrogated throughout the night.

The Defendant's statements of November 5-6 must be suppressed as the product of unwarned custodial interrogation.

3. The Defendant's statements of November 5-6 were involuntary.

Even if the Defendant was not in custody on November 5-6, his statements of that night must be suppressed as involuntary. The same circumstances that gave rise to the coerciveness and restriction on the Defendant's freedom, rendered his responses to his police interrogators involuntary, and the product of police overreaching. **See, Moran v. Burbine**, 475 U.S. 412, 420 (1986).

The overwhelming show of police force, the time and duration of the interrogation, the removal of the Defendant from his surroundings, the absence of **Miranda** warnings, all lead to the conclusion that the Defendant's statements were not "the unfettered exercise of his own will...." **Malloy v. Hogan**, 378 U.S. 8 (1964).

The Defendant's statements of November 5-6 must be suppressed as being involuntary.

C. The Defendant's Statements of January 31 and February 4, 1992, Were Deliberately Elicited from Him in Violation of His Sixth Amendment Right to Counsel.

It is undisputed that by November 6, members of the joint ATF, Boston Police investigative team knew that Trenkler was represented by an attorney. On that date, Trenkler called the ATF to say he was

cancelling the polygraph appointment on advice of counsel. (Exhibit 9) Shortly thereafter, Attorney Cosgrove spoke to Det. O'Malley and told him in no uncertain terms that he represented Trenkler in **this** investigation, and that law enforcement was not to talk to Trenkler without the presence of counsel.[2] And on January 31, Cosgrove had a telephone conversation with D'Ambrosio, inquiring about the warrants. Thereafter on the same day, S.A. Moniz and Det. Ahern followed Trenkler to Attorney Cosgrove's office. (Exhibit 24)

The Defendant's conduct in consulting Attorney Cosgrove to represent him in this matter and Attorney Cosgrove informing law enforcement of that fact and instructing them accordingly, was a clear invocation of the Defendant's Sixth Amendment right to counsel. The government's attempts to elicit information from Trenkler on January 31, during the searches, and on February 4, at the offices of the ATF in the absence of counsel, and in defiance of Attorney Cosgrove's instructions was a clear violation of that right. **United States v. Thomas**, 474 F.2d 110, 112 (2d Cir., 1973); cf.

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[2]For purposes of the Sixth Amendment analysis, it is proper to impute the knowledge of one law enforcement officer to another. **Michigan v. Jackson**, 475 U.S. 625 (1986).

United States v. Masullo, 489 F.2d 217 (2d Cir., 1983) (distinguished on the ground that retained counsel represented the defendant on an unrelated matter.)

There is little question that the elaborate drama enacted at the ATF office in the delay in producing his papers, was for Trenkler's benefit and calculated to encourage him to talk.

Knowing full well that Trenkler would be coming to ATF offices, by appointment, only to pick up copies of badly needed business records taken in the search, the ATF agents nonetheless arranged for most of the records not to be ready when Trenkler arrived. Thus while the xeroxing was supposedly, and laboriously going on, Trenkler was placed in a room with a rotating team of ATF agents, whose mission was to engage the Defendant in conversation during the lengthy delay. D'Ambrosio agreed he initiated conversation with him regarding the 1986 device and his relationship with Shay, to break the silence and clear up discrepancies in Trenkler's prior statements.

That the scheme was deliberately devised to elicit statements from the Defendant is confirmed by the manner in which the ATF physically monitored Trenkler during the 2-1/2 hours he was present. The

ATF was careful to leave at least two agents involved with the investigation with Trenkler in the conference room at all times, the admitted purpose of which was to provide more than one witness to whatever statements the agents could elicit.

This conduct clearly violated the Sixth Amendment, and amounted to "interrogation" for Sixth Amendment purposes. **Brewer v. William**, 430 U.S. 387 (1977); **United States v. Henry**, 447 U.S. 264 (1980). The ATF "deliberately and designedly set out to elicit information" from the Defendant by holding him hostage to the release of his business records. **William** at 399.

So too, did S.A. Leahy and Det. Fogerty deliberately elicit statements from Trenkler on January 31 at the search of 7 Whitelawn Avenue. The consent form for the search of his car shows that immediately upon his arrival, he was set upon by law enforcement and lured into conversation.

Accordingly, the Defendant's statements made on January 31, 1992 and February 4, 1992 must be suppressed.

D. The Warrants Authorizing the Searches of January 31, 1992 Are Invalid insofar as the Affidavit in Support of the Warrant Relied Substantially on the Fruit of Prior Warrantless, Nonconsensual Searches.

Thomas D'Ambrosio of the ATF submitted the affidavit in support of the applications for warrants to search the Defendant's residence at 133 Atlantic Street, Quincy; his business, ARCOM, at 82 Broad Street, Weymouth; and his storage garage at the home of his parents at 7 Whitelawn Avenue, Milton. Not coincidentally, the itinerary for these warrant searches mimicked exactly the path taken by the ATF and Boston Police when they conducted their warrantless searches on November 5-6, 1992. It is therefore not surprising that D'Ambrosio's affidavit relies nearly entirely on the fruits of the November 5-6, 1992, warrantless searches in his effort to demonstrate probable cause for the warrants. However, the affidavit fails to mention the warrantless searches as the source of his information about Trenkler.

Paragraphs 17 - 21 describe in detail the information the police gathered during the warrantless searches: that Trenkler was skilled at electronics, that he kept tools in the Milton garage, that there was an exposed speaker with magnets attached on his kitchen shelf, that he kept

tools and wire at ARCOMM, that he drew a diagram of the 1986 device and (allegedly) a diagram of a remote controlled device with two sticks of dynamite and two blasting caps, and that he stored electrical equipment in the Milton garage.

Absent this information, the only facts alleged which relate to Trenkler are contained in paragraphs 13, 14 and 16: that Trenkler's name and number appeared in Shay's address book, and that Trenkler was involved in the 1986 incident; clearly insufficient on their own to establish probable cause.

Where an affidavit is tainted by ill-gotten information, the fruit of any search conducted pursuant to a warrant issued in reliance on the affidavit must be suppressed unless the probable cause is established independent of the taint. **Grimaldi v. United States**, 606 F.2d 332, 336 (1st Cir., 1979).

The untainted information in the D'Ambrosio affidavit fails to pass muster. Accordingly, the fruit of the January 31, 1992 searches must be suppressed.

III. CONCLUSION

For all the above reasons, the Defendant prays his motions to suppress be allowed.

Alfred W. Trenkler,
BY HIS ATTORNEYS,

9/24/93
Date

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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 9/24/93

Matthew H. Feinberg (ug)