

Judge drops city, Roache from Stuart case lawsuit

By Judy Rakowsky
GLOBE STAFF

The city of Boston and former Police Commissioner Francis M. Roache have been dropped as defendants in a civil suit brought by William Bennett, who says he was wrongly targeted as a suspect in the Carol DiMaiti Stuart slaying.

The suit is expected to go to trial next week in US District Court in Boston.

US District Judge William Young dismissed Roache and the city from the civil rights suit. The judge had previously released Detective William Dunn from the case.

The remaining defendants are: Boston homicide Capt. Edward J. McNelley, homicide Detective Miller Thomas and Detective Trent Holland. Retired homicide Detective Peter O'Malley is also a defendant in the suit, but has filed for bankruptcy and it was not clear yesterday if the case would go forward against him.

Bennett contends that police wrongly accepted the description of the assailant furnished by the victim's husband, Charles Stuart.

Carol Stuart, who was pregnant, was shot to death Oct. 23, 1989, after a birthing class at Brigham & Women's Hospital near Mission Hill. Her unborn child did not survive.

Charles Stuart died in an apparent suicide plunge from the Tobin Bridge after he was implicated in his wife's slaying by his brother, Matthew.

Stuart investigator to fight suspension

By SAMSON MULUGETA

The only officer accused of misconduct in the Carol Stuart murder case will face a Boston Police Department disciplinary committee this morning three months before he is scheduled to retire from a 30-year career.

Homicide Detective Peter O'Malley will be represented by legal counsel provided by the Boston Police Detectives Benevolent Association as he challenges the three- to five-day suspension recommended by a Boston Police internal investigation.

The Office of Internal Investigations report issued in August reprimanded O'Malley for cursing in the presence of witnesses, making inappropriate statements to a witness and making an error in preparing a search warrant during the Stuart investigation.

A detectives' union spokesman said the charges were baseless and that O'Malley will be vindicated.

"They're saying he swore.

Give me a break," said union secretary Willaim Dwyer. "Peter O'Malley is a skilled and accomplished detective whose honor is being tarnished without substantiation."

Detective Dwyer was, along with O'Malley and Detective Miller Thomas, a lead investigator in the Carol Stuart murder case.

Although a federal probe headed by then-prosecutor Ralph C. Martin II found "serious police misconduct," O'Malley was the only one of the three charged with wrongdoing by the department's internal affairs unit.

The three veteran detectives recently survived a move by Martin, who is now Suffolk County District Attorney, to have them transferred from the homicide unit when Commissioner Francis "Mickey" Roache intervened on their behalf.

Today's hearing, headed by Deputy Superintendent Joseph Carter, will be the first time a formal charge would be lodged against O'Malley.

Ex-cop sues DA, U.S. attorney over Stuart case

By RALPH RANALLI

A former Boston police detective filed a federal suit against former U.S. Attorney Wayne Budd and Suffolk County District Attorney Ralph C. Martin II yesterday, charging they defamed him by releasing information about the Carol DiMaiti Stuart murder case.

Budd immediately hit back, however, charging that the suit — filed as Martin is seriously gearing up an election campaign — is politically motivated.

In 1991, U.S. Attorney Budd and then-Assistant U.S. Attorney Martin were conducting a federal probe into allegations of police miscon-

duct during the Stuart investigation.

Boston Police first investigated several black men for the Stuart murder until evidence led them to her husband Charles, who later plunged to his death from the Tobin Bridge.

The suit alleges that Budd and Martin forced former detective Peter

O'Malley into premature retirement by issuing a press release that named O'Malley and alleged misconduct but said there was insufficient evidence for a prosecution.

O'Malley also alleges that Budd and Martin issued the press release despite Justice Department orders not to re-

lease it. Martin could not be reached for comment on the matter.

Budd said O'Malley's allegation of violated Justice Department orders is "absolutely not true."

"I am absolutely confident that the lawsuit will be dismissed summarily," Budd said. "I believe

the lawsuit is politically motivated and in my view it reflects politics at its worst. We did the right thing."

As for the press release, Budd said he thought he "had to advise the public as to why we were not going forward, a decision which was painful but very clear."



U.S. Department of Justice

United States Attorney

District of Massachusetts

*1107 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109*

October 17, 1993

BY HAND

Terry Philip Segal, Esquire
Segal & Feinberg
210 Commercial Street
Boston, Massachusetts 02109

Re: United States v. Alfred W. Trenkler
Criminal No. 92-10369-Z

Dear Terry:

This letter will summarize the Jencks and other pretrial discovery material provided herewith.

1. Criminal Records Checks On Prospective Witnesses

I am enclosing computerized Massachusetts Board of Probation checks on prospective government witnesses. If there is some specific record entry that you think you may want after reviewing the material, please let me know. Once admissibility issues are resolved, stipulations as to unauthenticated records of conviction should not be a problem.

2. Jencks Material

I have voluntarily provided you with early Jencks material for the following prospective government witnesses:

Dwayne Armbrister
Richard Bender (see ATF reports)
Jeff Berry
William Bridgeforth
Richard Brown
Phillip Caldwell
Nurdan Cagdis

standard report forms (FBI and ATF "Explosives Incident Report 1991,") and computer analysis of "bombings and attempted bombings". This material relates to the government's pending motion in limine concerning the 1986 bomb. *SHOW FIRST REPORT DIFFERENT FROM SECOND*

J. Letter from Austin Powder Company to ATF dated June 23, 1993.

5. Physical Evidence, Trial Exhibits

This will confirm that you plan to review the government's proposed trial exhibits on Wednesday, October 20th at 4:00 p.m.

6. Proposed Stipulations

In the interest of attempting to streamline the trial, we would like you to consider stipulating to the following facts or to the admissibility of the evidence described below:

I. FACTS

- A. That the detonators (basting caps) described in Count Two of the Superseding Indictment were manufactured outside of Massachusetts and shipped or transported in interstate commerce prior to October 28, 1991.
- B. That Thomas L. Shay's 1986 Buick automobile, as referenced in Count Three of the Superseding Indictment, was used in interstate commerce and in activities affecting interstate commerce. ?
- C. That Thomas L. Shay's automotive repair business, which he was conducting on the property at 39 Eastbourne Street in Roslindale in October, 1991, affected interstate commerce.
- D. The indictment in this case was returned by a federal grand jury on December 16, 1992.
- E. On or about Wednesday, October 30, 1991, The Boston Herald reported that Thomas Shay, Jr. had stated on the ... had

grand jury on December 15, 1992.

- E. On or about Wednesday, October 30, 1991, The Boston Herald reported that Thomas Shay, Jr. had stated on the previous day, October 29, 1991, that Boston Police had "grilled" him for 90 minutes and during this interview asked if his father "could . . . build a remote control?"

II. EVIDENCE

- A. Admissibility of the death certificate -- Jeremiah Hurley, Jr.
- B. Admissibility of the autopsy report -- Jeremiah Hurley, Jr.

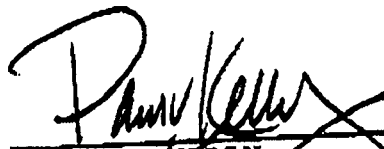
- C. Admissibility of all crime scene photographs and diagrams.
- D. Admissibility of videotape of October 31, 1991 press conference by Shay, Jr.
- E. Admissibility of Radio Shack receipt dated October 18, 1991. — NOT WITHOUT ~~DATE~~ CONTROL CODE ON BOTTOM OF RECEIPT AND POST/PRE P&H INVOICES SHOWING PROPER SEQUENCE
- F. Admissibility of Shay, Jr.'s videotaped interview by Karen Marinella of WLVI-TV on October 17, 1992. How²
- G. Admissibility of brief excerpt from videotape of "People Are Talking" television show (WBZ-TV) in June, 1990.


We would appreciate hearing from you concerning these proposed stipulations, by the end of the week if possible.

Very truly yours,

A. JOHN PAPPALARDO
United States Attorney

By:


PAUL V. KELLY
Assistant U.S. Attorney


FRANK A. LIBBY, JR.
Assistant U.S. Attorney

Enclosures

cc: Honorable Rya W. Zobel
U.S. District Judge