

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
 vs. ) Criminal No.:  
 ) 92-10369-Z  
 ALFRED W. TRENKLER )

DEFENDANT'S MEMORANDUM IN OPPOSITION TO THE  
GOVERNMENT'S MOTION *IN LIMINE* TO ADMIT CERTAIN  
STATEMENTS OF THOMAS SHAY, JR. PURPORTEDLY  
AGAINST HIS INTEREST AT TRIAL

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Defendant, Alfred W. Trenkler, submits this memorandum in opposition to the government's motion *in limine* to admit two specific statements by Thomas Shay, Jr. (hereinafter "Shay, Jr.") during his trial.

1. Remote Control Statement to Detective Thomas on October 29th.

The government has made a proffer that Detective Miller Thomas will testify that Shay, Jr. made a statement to him as follows:

Without either Detective having first raised the matter, Shay, Jr. spoke about "radio control" and "remote control" matters involving toys. See Government's Memorandum In Support of Motion *In Limine* To Admit In Evidence Shay, Jr.'s Statements Against Penal Interest (hereinafter "Government's Memorandum"), p. 4, ¶ 3.

The Government alleges that this statement is admissible because it was against Shay, Jr.'s interest. During argument yesterday, this Court deferred its decision on this matter finding that, in essence, whether the statement is admissible depends on the context.

Defendant submits that a review of Detective Thomas' testimony in Shay, Jr.'s trial clearly indicates that this statement was not against his penal interest despite the government's attempt to characterize it as such. In fact, Detective Thomas testified, in essence, that the terms "remote controlled" were used by Shay, Jr. in the context of discussing the 1987 Dedham Service Center incident and how he (Shay, Jr.) knew that a quarter stick of dynamite was involved in said incident. Detective Thomas testified:

Q. Was there any conversation about that [1/4 stick of dynamite]?

A. Yes.

Q. What was that, please?

A. I think I said, How do you know about what's a quarter stick of dynamite? And he told us about when he was younger and trips he'd make to the Carolinas with his parents apparently. They would purchase fireworks. They would come back to his home, and they would light the fireworks and try to explode, sink a submarine that he had that he played with.

Q. I'm sorry?

A. Try to sink a submarine that he had that he played with.

Q. Did he say anything about that submarine?

A. That it was remotely controlled.

See Shay Trial Transcript, p. 9-127, lines 9-21 (Exhibit A).

Thereafter, Officer Thomas was asked on direct:

Q. At any time during the course of that conversation of the 29th, with Shay, Jr. in the conference room at the Boston homicide, did you or Detective O'Malley, in the first instance, did either of you raise any suggestion as to radio control or remote control as related to the explosion that had taken place the day before?

A. No.

Q. But there was in fact some discussion involving the term of remote control, right?

A. Yes.

Q. And who raised that, please?

A. Mr. Shay.

See Shay Transcript, pp. 9-131, line 21 through 9-132, line 7 (Exhibit B).

On cross-examination, Detective Thomas further testified as to why the term "remote controlled" did not appear in his second report although he testified that it was included in his first report which report was subsequently destroyed. See Shay Transcript, p. 10-36, line 11 (Exhibit C).

Detective Thomas testified:

Q. In one report you say, he would bring them back to Boston, that is to say, the fire crackers and his friends would throw them in the water at a remotely controlled submarine that he owned, that was in one report. And in a second report you simply say he and his friends would throw them in the water at a submarine he owned and blow it up. Which is correct, sir?

A. The first report in terms of a remotely controlled submarine was. When I revised the report, the second report is a revised report. It had no significance to me so it was not there. It was a submarine, I didn't care whether it was remotely controlled or not just the idea of it being a submarine, that's why it is in with one report, not the other.

The second report is the fact, the report that I wrote after the initial report, the initial report has "remotely controlled." It had insignificance to me, so I took it out of the report after discussing it with Detective O'Malley, and that's why it's not in that second report.

Q. So in the first report, you wrote, you mention "remotely controlled submarine," right, in the first report?

A. That's correct.

Q. But in the second report, you take out the order word "remote," right ?

A. That's correct.

Q. And you take it out because someone to whom you spoke said it had no significance?

A. No.

Q. Did you talk --

A. We disagreed as to that particular word being spoken. It was my memory that it had been said. And it was Detective O'Malley's memory that it hadn't been said. It was not something I was going to fight about over a report. I put just the words submarine. There was no significance to the word.

See Shay Transcript pp. 10-31, line 24 through 10-33, line 8 (Exhibit D).

Thus, we submit that it is clear from Detective Thomas' testimony that Shay, Jr.'s statements to him and Detective O'Malley were not against his penal interest. In fact, the comments did not relate in any way to the 1991 bombing. On the contrary, Shay, Jr. mentioned the words "remote controlled" in the context of describing a toy he played with as a child. Although the government has attempted to characterize this statement as having some relationship to the 1991 bombing by carefully phrasing its questions to Thomas as "did either of you [Thomas & O'Malley) raise any suggestion as to radio control or remote control as related to the explosion that had taken place the day before", and then asking "whether there was a discussion involving the term remote control", and finally asking "who raised the topic", this line of questioning mischaracterized the content and context in which the term "remote

control" was presumably uttered by Shay, Jr. A full and complete reading of Detective Thomas' testimony clearly indicates the term came up in a discussion of a subject far removed from the bombing in 1991. Thus, the claim that this statement was against Shay, Jr.'s interest is misplaced.

**2. Detective Thomas' Testimony relative to a diagram drawn by Shay, Jr. of a remote-controlled radio transmitter for the detectives.**

The government also has proffered that Detective Thomas will testify to a diagram that Shay, Jr. drew on October 31, 1991. The government alleges that this diagram depicts a fairly accurate diagram of a remote control radio transmitter. See Government's Memorandum, pp. 4-5, ¶ 6. It is noted that in the Shay Trial Detective Fogerty testified about this diagram. Detective Thomas did not. It is further noted that the only report about Shay, Jr.'s drawing of this diagram is unsigned and states: "Shay stated that the items on the table in the next room were a remote control for a car and that he had a similar one when he was a kid for his remote car. Shay then drew a diagram of a remote control devise (sic) and explained how it worked." See October 31st report, p. 4, (Exhibit E).

Officer Fogerty's testimony in the Shay trial indicates the circumstances under which this drawing was made.

Officer Fogerty testified as follows:

Q. And where did you go when you came back?

A. He [Shay, Jr.] came back into the conference room.

Q. How many people are there now?

- A. At that time there was myself and Detective Thomas.
- Q. Where was he seated, please, same seat as before, if you recall?
- A. He [Shay, Jr.] was sitting on the side with his back to the door.
- Q. And to his right, sir, what's to his right in the conference room?
- A. To his right there is a glass -- sliding glass door, and there is another room off that.
- Q. And what, if you recall, is in the room, if anything?
- A. There is a table and on the table there was a remote control device for an automobile. There was pictures of some switches on the wall.
- Q. Was there any conversation at that point or thereafter about remote control in general?
- A. Yes, sir, there was.
- Q. Will you describe for the jury, please, that conversation?
- A. Mr. Shay, Jr. recognized the device [in the next room] and said he had a similar device for a remote control car when he was a child and when asked if he knew how it operated he then drew a diagram and explained how a remote control device worked.
- Q. How far was Shay, Jr. from that item that was on the table in the next room. You say he pointed to it?
- A. Yes, sir.
- Q. About how far away was he when he pointed to it?
- A. 8 to 10 feet.

[Diagram then introduced]

See Shay Transcript, pp. 10-90, line 12 through 10-91, 15 (Exhibit F).

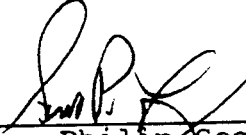
On cross-examination, Detective Fogerty further testified in response to Ms. Gertner's question "You say Mr. Shay looked at the

remote control and then drew a diagram as to how it worked; is that right?; Answer: Yes, ma'am." Transcript pp. 11-10, line 25 through 11-11, line 2 (Exhibit G). Detective Fogerty also testified that: "My memory is that device, the one that was on the laying flat on the table was similar to that, but it also had I believe there was a round wheel for steering." Transcript pp. 11-11, line 24 through 11-12, line 1 (Exhibit G). Regardless of Detective Fogerty's memory as to what the device that was in the next room looked like, Detective Fogerty further testified that he had no idea where this device was at the time of Shay, Jr.'s trial. Transcript at 11-13, lines 18-22 (Exhibit G).

Thus, at best, it appears that Shay, Jr.'s drawing depicts either the transmitter of the radio-controlled car Shay, Jr. had as a child, or the one for the car purchased by the Boston Police and placed in plain view of Shay, Jr. at the time of his drawing. Regardless of which transmitter Shay, Jr. drew, however, it is clear that this drawing does not constitute a statement against his penal interest with respect to the 1991 bombing. Thus, Shay, Jr.'s drawing cannot be considered a statement against his "penal interest" under the circumstances present here.

For these reasons, we submit the government's request to admit the above two (2) "statements" as declarations against penal interest should be denied.

Respectfully submitted,  
For the Defendant,  
ALFRED W. TRENKLER,  
By his attorneys,

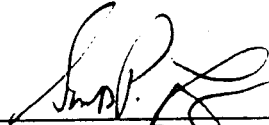


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Terry Philip Segal  
BBO # 450760  
Scott P. Lopez  
BBO # 549556  
Brenda R. Sharton, Esq.  
BBO # 556909  
**Segal & Feinberg**  
210 Commercial Street  
Boston, MA 02109  
(617) 720-4444

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by hand on November 3, 1993.



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Scott P. Lopez



1 He said, him and his father disagreed as to the  
2 drum. That he told his father that it was a drum that  
3 contained paint thinner. And his father stated, No, it was an  
4 oil drum. He stated that he knew the difference because an  
5 oil drum wouldn't go as high as a drum with paint thinner in  
6 terms of up in the air from the explosion.

7 Q Did he tell you what would be in the explosion?

8 A He said it would be a quarter stick of dynamite.

9 Q Was there any conversation about that?

10 A Yes.

11 Q What was that, please?

12 A I think I said, How do you know about what's a quarter  
13 stick of dynamite? And he told us about when he was younger  
14 and trips he'd make to the Carolinas with his parents  
15 apparently. They would purchase fireworks. They would come  
16 back to his home, and they would light the fireworks and try  
17 to explode, sink a submarine that he had that he played with.

18 Q I'm sorry?

19 A Try to sink a submarine that he had that he played with.

20 Q Did he say anything about that submarine?

21 A That it was remotely controlled.

22 Q Did he give any indication during giving that description  
23 as to who he believed to be responsible for that incident?

24 A Yes.

25 Q Please describe that for us.

1 to go or whether he wanted to go back to E-5 p B 1000  
2 and he stated, No, he wanted to go over to his house in  
3 Quincy.

4 Q And to your knowledge, did he do that?

5 A To my knowledge, there was a police officer that brought  
6 him there to subsequently transported him back to Quincy.

7 Q All right. Now, as of the time of this conversation at  
8 the homicide unit in the early morning hours of Tuesday, the  
9 29th of October, Detective Thomas, did either you or Detective  
10 O'Malley have any information with respect to the type of an  
11 explosive device which had initiated the day before at  
12 39 Eastbourne?

13 A No, sir.

14 Q Were you aware of any forensic evidence or the nature of  
15 any kind of debris which had been collected from the crime  
16 scene at that time?

17 A There was a -- the only thing I was aware of was there  
18 was a blasting cap identified by one of the bomb guys as an --  
19 it was inside the wall of a house next door, that is the only  
20 thing that I knew that was in terms of, whatever had exploded.

21 Q At any time during the course of that conversation of the  
22 29th, with Shay, Jr. in the conference room at the Boston  
23 homicide, did you or Detective O'Malley, in the first  
24 instance, did either of you raise any suggestion as to radio  
25 control or remote control as related to the explosion that had

1 taken place the day before?

2 A No.

3 Q But there was in fact some discussion involving the term  
4 of remote control, right?

5 A Yes.

6 Q And who raised that, please?

7 A Mr. Shay.

8 Q Now, did you have any contact with Shay, Sr. later that  
9 day, Tuesday the 29th?

10 A Yes.

11 Q Where did that take place?

12 A Back at his home in Eastbourne Street.

13 Q What were you doing there?

14 A We were seeking to get any more background developing,  
15 whatever he could in terms of leads.

16 Q Who were you with?

17 A Detective O'Malley, Detective Fogerty.

18 Q Could you briefly describe for us the nature of your  
19 discussions with Shay, Sr. at that time?

20 A We were trying to focus in more on anyone that he  
21 believed there were, thought may have been responsible for  
22 this incident.

23 Q And what was, where did the discussion go in that  
24 respect?

25 A He stated that at some point recently he had been

1 Pransky, did you remember that or was that some  
2 Detective O'Malley reminded you of.

3 A No, I remembered it.

4 Q Was there a third version of this report, of 10/29, was  
5 there a third version?

6 A No, ma'am.

7 Q Are there underlying notes concerning this 10/29 report?

8 A No, ma'am.

9 Q So essentially these two versions are the only ones that  
10 are out there?

11 A Those are reports -- the first report got destroyed. And  
12 the revised report was going to be the report that was going  
13 to be submitted.

14 Q On 10/29 did you think that Shay, Jr. looked, in addition  
15 to looking agitated and upset, would you say he looked  
16 confused or nervous like he was on drugs?

17 A No, ma'am.

18 Q Did you believe he looked a little retarded or seemed  
19 slow?

20 MR. LIBBY: Objection, your Honor.

21 THE COURT: Well, I think it's going a bit over the  
22 line; the objection is sustained.

23 Q Were you present on October 31st during the second  
24 interview of Shay, Jr.?

25 A Yes, ma'am.

1 Q Did he ask him when whether or not he had  
2 controls devices?

3 A No.

4 Q It's your testimony that he simply volunteered the  
5 subject of playing with remote toy submarines?

6 A It was in relation to the throwing of the fireworks at  
7 the submarine.

8 Q He said that he went, he was describing his childhood to  
9 you essentially; is that right, trying to describe his  
10 childhood to you; is that right?

11 A We were trying to get background information of the  
12 family.

13 Q And so talks about going to South Carolina and then he  
14 talks about blowing up submarines?

15 A Yes.

16 Q And he mentioned to you, he used the word "remote  
17 control," is that right, with respect to submarines?

18 A Yes.

19 Q Now, you did two reports of this October 29th  
20 conversation, did you not?

21 A That's correct.

22 Q And what's the time between report 1 and report 2?

23 A A matter of maybe an hour or less.

24 Q In one report you say, he would bring them back to  
25 Boston, that is to say, the fire crackers and his friends

1 would throw them in the water at a remotely controlled  
2 submarine that he owned, that was in one report. And in a  
3 second report you simply say he and his friends would throw  
4 them in the water at a submarine he owned and blow it up.

5 Which is correct, sir?

6 A The first report in terms of a remotely controlled  
7 submarine was. When I revised the report, the second report  
8 is a revised report. It had no significance to me so it was  
9 not there. It was a submarine, I didn't care whether it was  
10 remotely controlled or not just the idea of it being a  
11 submarine, that's why it is in with one report, not the  
12 other.

13 The second report is the fact, the report that I  
14 wrote after the initial report, the initial report has  
15 "remotely controlled." It had in significance to me, so I  
16 took it out of the report after discussing it with Detective  
17 O'Malley, and that's why it's not in that second report.

18 Q So in the first report, you wrote, you mention "remotely  
19 controlled submarine," right, in the first report?

20 A That's correct.

21 Q But in the second report, you take out the order word  
22 "remote," right?

23 A That's correct.

24 Q And you take it out because someone to whom you spoke  
25 said it had no significance?

1 A No.

2 Q Did you talk --

3 A We disagreed as to that particular word being spoken. It  
4 was my memory that it had been said. And it was Detective  
5 O'Malley's memory that it hadn't been said. It was not  
6 something I was going to fight about over a report. I put  
7 just the words submarine. There was no significance to the  
8 word.

9 Q Okay. So there was a division among the officers who had  
10 interviewed Shay, Jr. as to whether the word remote was  
11 spoken; is that fair to say?

12 A There were two of us. We both heard something  
13 different. We both heard submarine. One of us heard remotely  
14 controlled, the other one of us didn't so we just took it out.

15 Q In your second report, you took it out; is that right?

16 A That's correct, ma'am.

17 Q Now, in your second report, though, you testified on  
18 direct examination that Shay, Jr. had talked about, while he  
19 was at his father's lawyer's law office he was looking for a  
20 through Fortune magazine, and asked Attorney Pransky whether  
21 his father would be able to afford an item in Fortune  
22 magazine; do you remember that testimony?

23 A Yes, ma'am.

24 Q And Shay, Jr. asked the lawyer whether or not he could  
25 afford a particular item, and the lawyer said, absolutely; is

File Title	Investigator(s)	Page
Jeremiah J Hurley Homicide	Det's O'Malley, Thomas and Fogerty	1 of 5
Incident location	Case #	Method
39 Eastbourne Street Roslindale	105/91	Explosion
Report Re:	Date	
Interview of Thomas Shay, the younger		

On Thursday October 31, 1991 Thomas Shay called the electronic and print media to announce a press conference at the Trailways Bus Station in Boston. Some time after 8:00 pm Shay arrived on a Peter Pan bus and was met by TV and newspaper reporters and conducted a press conference. Shay stated that the bomb that went off at his father home was meant for him because he owed \$50,000 to a man named Pace. Shay stated that he would be in the Boston Common the next day walking around if Pace wanted to speak with him.

After the press conference, Shay was asked to come with the Detectives to the Homicide Unit. Shay accompanied the Detectives to the Homicide Office in South Boston. At about 10:00 pm Shay was interviewed in the conference room by Detectives O'Malley, Thomas, Fogerty and Agent Tom Bowen of the ATF.

Shay stated that he had spoken with his father three times since the explosion at his father's house. He stated that his father was in shock and that in the conversation he had with his father one conversation consisted of five words and the second conversation consisted of seven words. Shay stated that his father stated, " I'm scared and worried."

Shay had come to the Homicide Office on the night of the bombing and spoke with the Detectives. Shay stated again stated that he heard about the bombing on Monday night on the 10 o'clock news on Channel 56. Shay stated that he spoke with Mary and Mary told Shay that his father was ok and could not speak with him. Shay stated that hitched hiked to his father's house and the Police would not let him cross the Police lines and he went to the Area 5 Police Station and then was driven to the Homicide Office where he spoke with the Detectives. Shay stated that there was nothing in his story to change.

Shay stated that he wanted to take a polygraph test and that he did not drink or do drugs. Shay stated that all the information he knew is from his sister and TV. Shay stated that the members of the press killed him at the press conference and that Byron Barnett at Channel 7 was helping him. He stated that he was going to give him



the phone number where he was staying so Barnett could contact him further. Again Shay stated that he had no access to his father's house.

Shay stated that he never had a driver's license and showed identification of an EMT's badge that he purchased at the AAA Supply Store and his Massachusetts Identification Card. Shay stated that he has driven his father's car four times in the last four years. Stated that the last time he saw his father was last week when his father gave him \$120 to have some dental work done and that they had gone to the track and then to the Franklin (Bar in South End).

Shay was asked about the incident that happened at the garage and Shay stated that a 50 gallon drum with very explosive paint thinner inside had a Class C quarter stick set off inside the drum. Stated that the quarter stick is made in South Carolina and that he has been to South Carolina and that as you are leaving the State they have a park with a range where you can light off your fireworks.

Shay stated that he used to make model submarines and sink them by throwing M 80's at them and because the M 80's are water proof they will go off in the water. Shay stated that the models were bought at hobby shops and assembled with glue. Stated that once he built an aircraft carrier, but that all this was a long time ago. He stated he would be 20 years old this Sunday.

Shay stated that after the press conference, when the Detectives asked him to come to the Station, he did so freely and was not forced. Again he stated that Ralph Pace of 23 Jefferson Ct Stoughton is the one that owned a 1988 Monte Carlo that Shay had rolled over in Manchester N.H. Stated that Pace said that Shay had stolen the car and that Shay went to court. He further stated that he borrowed money from Pace and that he had lost the money at the track. Shay stated that he was a masseur and Pace was one of his customers. Shay stated that Pace was like a father to him and that Pace wanted to adopt him at one point when Shay was about 16 or 17 years old.

Shay stated that he had all the videos from all the TV stations and all the newspaper clippings. Stated the reason was to see if there was anyone in the back ground he knew. Stated that he like cops and fireman because they help people and that someone who did this would return to the scene of the crime. Shay was asked if he had ever applied to be a policeman or fireman and he smiled and stated no. He stated that the Police would not let me see his father and the Police told him to go to the Police Station and he did. Shay was asked about a remark that he made when the Police from Area 5 drove Shay over to the Homicide Office on the night of the bombing and he denied that he said, " If I could only turn the clock back".

Shay stated that he was going to have a press conference with his mother sometime next week. He stated that he had a friend named Scott who lives at 223 Centre Street Quincy, tel # 471 6156. Shay stated that he has a beeper from Metro Media but did not have it with him at this time. Stated that he was a part time volunteer for a disaster truck. Shay asked how the media knew so much about his past personal life and was told the information came from his father's lawsuit in Court and Shay nodded his head in agreement.

Shay stated that until this is over he did not want to see his father. Shay stated that he had borrowed \$30,000 from Pace to start a masseur business and that Pace did not know that Shay was using the money for the track. Shay stated that he received small amounts of money, 2/3 thousand dollars at a time and lost it at the track. Shay was asked about his remarks in the newspaper about remote control and Shay said that he did not say that and that his father did not tell him. Shay was asked about him telling the press that the explosive was C something and remote control and Shay stated that it was a guess on his part.

Shay stated that if his father made the bomb or bought it from someone, then his father has lost his mind in two weeks. Shay stated that he was at the Gable School at Waltham, Met. State Hospital and that was in the past tense and you could not use that against him, because he is over 18 years. He stated that he graduated from the Baird Center.

Shay was told that his father was coming over to see him. Shay asked if he could leave (10:40 pm) and was told that he could if he wanted. Shay stated that he was a homosexual and had been on TV with his mother in regards to being gay. Stated that his mother used the name Tina on the TV show. Shay was asked where he learned about explosives and remotes and he stated that he watched the "A Team" and "McGyver" on TV. Shay stated that he did not want to see his father now because he will hit me and that his father had hit him before. Shay stated that he wanted to help the Police find the guy who tried to get his father.

Shay again asked if he could leave and he did leave and was arrested on Milton default warrants at 10:48 pm and advised of his right by Detective Thomas. Shay was read his rights and after each part of the rights stated that he understood them. At 10:50 Shay made a phone call to Byron Pitts (Channel 5). Shay told who ever answered the phone that he had been arrested and for them to call the other TV station and tell them and to call his mother and let her know that he was under arrest. Shay did not ask to make anymore calls.

Shay stated that the items on the table in the next room were a remote control for a car and that he had a similar one when he was a kid for his remote car. Shay then drew a diagram of a remote control device and explained how it worked. Shay stated that he had spent last two days with a Patrolman on the Norwood Reserve Police Department who also was the Director of Housing at the Dartmouth campus of U of Mass.

Shay's bag was examined and all the newspaper clippings were inside. Some of them had black tape at the top and Shay became very concerned about the Police looking at the articles and looking at the tape. Shay stated that "you people make me sick". Shay stated that the Police are going to frame him because he was the one with fires in his past when he was little. Shay was asked what he thought of Mary and Shay stated that he did not care for her.

Shay stated that he knows cops who are gay who will speak up for him. Shay stated that he had been to 20 cities and in Canada. He was paid as a masseur to massage legs, ass, heels, and backs and that he could make about \$600 to \$700 a week. Shay stated the names of some of the gay Police Officers that he knew: Jim Burke, 4 Tyler Ter 731 1249, Newton Police; Russ Baneno (spelling) Chief of Reserve Police in Norwood and Director of Housing Development work tel # 999 8836, home # 999 8852. Shay stated that the tape for the newspapers came from Baneno's home and that the black tape was over by the radio where he (Baneno) keeps his weapons. Also mentioned Robert Zampell of the Woburn Constable Services; James Pasqualli of the Boston Municipal Police: Scott tel # 508 678 0521 civil defense/Dartmouth Police/State Police: Jeff McKinnon, Boston Police D 103: Bill Jessep, 425 E Broadway South Boston.

Shay was asked if he set the bomb at his father house and he stated no. Asked if he knew who set the bomb at his father's house and he stated no. Asked if he made the bomb and he stated no. Asked if he had any information about the bomb and he stated no. Stated that he loved his father.

Shay stated that he was raped at age 10 when he hung around the Greyhound Bus station. Shay was asked if his father was the one that raped him and he stated no. Shay did stated that his father used to hit his mother. Shay was asked about the incident in Florida where two men were arrested on charges alleged by Shay that they had kidnaped Shay and forced him to witness a murder. Shay stated that they had hassled him and that they were assholes. Shay was asked about the bomb threat at the train station and he stated that a guy was hassling him in the men's room and that he called in the bomb threat and had the men's room evacuated. Shay stated that the guy was an asshole. Shay

was asked if everyone who hassles him is an asshole and does he try to hurt them. Shay stated no. Shay was asked if his father was an asshole and he stated no.

Shay was taken to the Identification section to be printed and photographed. When he returned Shay was told that his father wanted to speak with him and a call was made to his father and Shay spoke with his father. Shay mostly listened and did state that he loved his father. Shay was asked if he was the kind of person who would make a bomb to hurt someone or to get the attention of someone and he stated neither. Shay stated that he wanted to speak with an attorney and make another phone call and he called Russ Baneno. He told him to call all the Police Officers that he knew, and mentioned their names and telephone numbers to him. He stated he was arrested on warrants but that the Police thought he had set the bomb at his fathers home and that he was going to sue everyone and to have Russ contact Congressman Garry Studds and let him know what was happening.

The Milton Police then took Shay to the Milton Police Station to await court action in the Quincy District Court.

1 if we can crop it, it's an enlargement of the

2 THE COURT: Same thing. 27 A and B are in evidence  
3 subject to your fixing them.

4 MR. LIBBY: Thank you, your Honor.

5 (Government's Exhibits 27 A and 27 B entered into  
6 evidence.)

7 Q Detective, when we left a moment ago, Shay, Jr. had been  
8 transported out of the ID section?

9 A Yes, sir.

10 Q And he returned about how much later after that?

11 A About 30 minutes.

12 Q And where did you go when you came back?

13 A He came back into the conference room.

14 Q How many people are there now?

15 A At that time there was myself and Detective Thomas.

16 Q Where was he seated, please, same seat as before, if you  
17 recall?

18 A He was sitting on the side with his back to the door.

19 Q And to his right, sir, what's to his right in the  
20 conference room?

21 A To his right there is a glass-- sliding glass door, and  
22 there is another room off that.

23 Q And what, if you recall, is in that room, if anything?

24 A There is a table and on the table there was a remote  
25 control device for an automobile. There was pictures of some

1 switches on the wall.

2 Q Was there any conversation at that point or thereafter  
3 about remote control in general?

4 A Yes, sir, there was.

5 Q Will you describe for the jury, please, that  
6 conversation?

7 A Mr. Shay, Jr. recognized the device and said he had a  
8 similar device for a remote control car when he was a child  
9 and when asked if he knew how it operated he then drew a  
10 diagram and explained how a remote control device worked.

11 Q How far was Shay, Jr. from that item that was on the  
12 table in the next room. You say he pointed to it?

13 A Yes, sir.

14 Q About how far away was he when he pointed to it?

15 A 8 to 10 feet.

16 MR. LIBBY: If I may, your Honor.

17 Q I show you Government's Exhibits 29 and ask you if you  
18 recognize that?

19 A Yes, sir, I do.

20 Q What is it?

21 A It's a drawing drawn freehand by Mr. Thomas Shay, Jr. It  
22 was drawn on October 31st, 1991. It was done on a sketch pad,  
23 and I've signed it and attached it to an 8 by 10 piece of  
24 paper.

25 Q And showing you Government's Exhibit 27 A, what is that,

1 remote control device on it?

2 A No. The only times we spoke to him initially were at his  
3 home.

4 Q Did you try to see if he knew anything about remote  
5 control devices?

6 A At time that we spoke to him initially, I don't believe  
7 that we knew about remote controls at that point.

8 Q When you found out about remote controls, did you put him  
9 in a room next to -- strike that. Was this a toy remote  
10 control device?

11 A No, it was a real one.

12 Q That is, to say, from a toy, the kind of remote control  
13 device that you see in little cars and little planes?

14 A Yes, ma'am. It was an actual remote control device and  
15 it was part of a toy car.

16 Q Okay. And was there ever any occasion when you did the  
17 same thing to Shay, Sr., that is to say question him next to a  
18 toy remote control device?

19 A No.

20 Q And after you found out that there may have been a remote  
21 control device in the, in the bomb, did you ever go back to  
22 Shay, Sr.'s house to find out whether Crysten Flanagan had  
23 toys involving remote controls?

24 A No, ma'am.

25 Q You say Mr. Shay looked at the remote control and then

1 drew a diagram as to how it worked; is that right?

2 A Yes, ma'am.

3 Q The diagram was the diagram -- do you have that?

4 (Pause.)

5 Q This was a blowup of the diagram?

6 A Yes, ma'am, it is.

7 Q And this is essentially a drawing of the device, isn't  
8 it?

9 A Yes, ma'am.

10 Q In other words, Mr. Shay took the remote control device  
11 and drew it; is that right?

12 A No, ma'am.

13 Q Is that a diagram of the internal wiring of it?

14 A He never touched the device, ma'am.

15 Q Do you see any internal wiring in here?

16 A No, ma'am.

17 Q These two little doodads -- let ask the question -- is  
18 this essentially what the intact remote control device looked  
19 like?

20 A Somewhat so, yes.

21 Q In other words, there are two little -- for want a better  
22 word -- two doodads that are the toggle switches, little  
23 switches on the remote control?

24 A My memory is that that device, the one that was on the  
25 laying flat on the table was similar to that, but it also had



1 I believe there was a round wheel for steering.

2 Q Okay, so it had, this was essentially a depiction of an  
3 on/off switch, right. It says it on here?

4 A That's what he drew here.

5 Q And then there are two little devices like you'd find  
6 in -- one controlling one, for one wing of the plane and  
7 another controlling another wing of the plane?

8 A I don't know what, I don't understand what kind of  
9 airplane.

10 Q Frequently in these toy devices if you push one doodad,  
11 it goes in one direction; if you push the other, it goes in  
12 another direction?

13 A I have no knowledge of that, ma'am.

14 Q What was the device you had on the table?

15 A It was a remote control.

16 Q And what way does that remote control differ from this  
17 one?

18 A To the best of my recollection is that it was, it was an  
19 attachment or another thing, like a round wheel in the  
20 middle.

21 Q So it was a different kind than this one, is that what  
22 you're saying?

23 A It's similar to that except my best recollection is that  
24 the device that we had purchased had also, like, a silver  
25 wheel that, I don't know how it works, I don't know, he talked

1 to the gentleman from the ATF and he explained it to them. He  
2 knew more about it than I did.

3 Q Who is he?

4 A Mr. Shay, Jr.

5 Q He talked to the ATF about remote controls so far as you  
6 know?

7 A That's what he was drawing he was talking to them.

8 Q He was talking to the ATF representative who was there?

9 A Yes, ma'am.

10 Q But where, sir, do you have any description of the kind  
11 of remote control device that was on the table in the next  
12 room? Do you have it in your report as to the kind of device  
13 that was in the next room?

14 A It was a remote control device, ma'am.

15 Q My question is, do you know where the entity is, where  
16 the item is, where the actual device is? The device that you  
17 guys used on the table in the next room?

18 A Do I know where it is now?

19 Q Yes.

20 A Now?

21 Q Yes.

22 A No, I have no idea.

23 Q So you have only your memory as to whether or not Shay,  
24 Jr. was just copying the device that was on the table next to  
25 him?