

# Bomber's attorney seeking new trial

By Paul Langner  
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Thomas Shay Jr., now serving a 15-year sentence for conspiring to make the bomb that killed Boston bomb squad officer Jeremiah Hurley, is trying to get a new trial based on the argument that he is a pathological liar.

In a hearing yesterday before US District Judge Rya W. Zobel, Shay's attorney, William Kettlewell, tried to persuade the judge that she was wrong at Shay's 1993 trial when she ruled that there was no need to present expert testimony saying Shay was a liar. She held, instead, that the jurors should be allowed to make that judgment.

The federal appeals court disagreed, and, in an opinion written by Judge Paul Barbadoro, ordered Zobel to hold hearings to determine whether Shay was afflicted with what the standard reference book calls "factitious disorder" and whether that disorder meant he was in the grip of a condition that the manual calls "pseudologica fantastica."

That phrase, said Kettlewell's expert witness, Dr. Robert T.M. Phillips, means a pathological liar, specifically someone who lies to attract attention, to look grand and important. Especially noteworthy, Phillips testified yesterday, is the fact that a person in the thrall of pseudologica fantastica will make self-incriminating statements.

The bomb was intended for Shay's father, Thomas Shay Sr. It was attached to the bottom of the elder Shay's car with magnets but fell off when the elder Shay pulled into his driveway in Roslindale on Oct. 27, 1991. He called the police, and bomb squad officers Hurley and Francis Foley responded. Foley survived with serious injuries.

A co-defendant, Alfred Trenkler, was also convicted and is serving a life sentence.

Normally, wrote Barbadoro, common sense and legal philosophy assume that if a person makes so-called "declarations against interest," that person just wants to tell the truth and is reckless of the consequences.

When Nancy Gertner, now a federal judge, was representing Shay during his July 1993 trial, she offered Phillips' testimony to Zobel, saying it would "explode those common-sense notions."

Now Shay's attorney is trying to show that self-incriminating statements Shay made to a television reporter and statements made to fellow jail inmates and to police are not to be believed.

Phillips testified that Shay had a childhood of abuse and a history of telling lies and setting fires. Once when he was 10, Shay called police in Quincy to say a man had fallen through the ice off Wollaston Beach. He reveled in the subsequent media attention and admitted his lie only after a dozen divers failed to find anyone.

A prosecution psychiatrist, Dr. Martin Dr. Kelly, testified that pseudologica fantastica is "not a mental disease, not a mental defect, not a term of diagnosis." It is merely "descriptive of some behavior that some individuals show who tell self-aggrandizing tales."

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