

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DZHOKHAR TSARNAEV

No. 13-CR-10200-GAO

MOTION TO SUPPRESS STATEMENTS

Defendant, Dzokhar Tsarnaev, by and through counsel, respectfully moves that this Court suppress all statements that he made to law enforcement agents while he was hospitalized at Beth Israel Deaconess Medical Center. The agents began interrogating him approximately 20 hours after he arrived at the hospital. They questioned him on and off over a period of 36 hours, despite the fact that he quickly allayed concerns about any continuing threats to public safety, repeatedly requested a lawyer, and begged to rest as he recovered from emergency surgery and underwent continuing treatment for multiple and serious gunshot wounds.

Suppression is required for the following reasons:

- 1) The statements were involuntary, *see Mincey v. Arizona*, 437 U.S. 385 (1978);
- 2) The so-called “public safety exception” does not permit admission of the statements; and
- 3) The delay in presenting Mr. Tsarnaev to a court, for the purpose of prolonging interrogation without counsel, violated his due process rights.

Facts

In the early morning hours of April 19, 2013, Mr. Tsarnaev was shot and his brother, Tamerlan, was killed during a gun battle in the streets of Watertown. Mr. Tsarnaev fled. He was arrested some 20 hours later, after suffering multiple gunshot wounds when police unleashed a

barrage of bullets into the boat where he was hiding, unarmed. Before he surrendered to law enforcement, he also was subjected to a number of “flash-bang” grenades, designed to disorient a suspect.

Mr. Tsarnaev was transported by ambulance to Beth Israel Deaconess Medical Center (“BIDMC”) at approximately 9 p.m. on April 19. He was in critical condition, with numerous serious injuries from gunshot wounds to his head, face, throat, jaw, left hand, and both legs.¹ Although oriented upon arrival, Mr. Tsarnaev's mental status suddenly declined and he required intubation to keep him alive during the initial examination of his injuries. After being stabilized, he underwent emergency surgery to address life-threatening wounds. At about 7 a.m. on April 20, he was transferred to the Surgical Intensive Care Unit. He was given narcotic pain medication throughout the following days.

The news media publicized Mr. Tsarnaev's arrest and hospitalization around the world. Many of these news accounts highlighted federal officials' announcement that they intended to interrogate him without first giving him constitutionally-required Miranda warnings. *See, e.g.*, ABC News, “Feds Make Miranda Rights Exception for Marathon Bombing Suspect Dzhokhar Tsarnaev” April 19, 2013, <http://abcnews.go.com/blogs/politics/2013/04/next-for-bombing-suspect-high-value-detainee-interrogation-group/>.

Agents from the FBI “High Value Interrogation Group” began questioning Mr. Tsarnaev at 7:22 p.m. on April 20. *See* FBI 302 report dated April 21, 2013 (filed under seal as Exhibit 1S), at 6-7; agent notes dated April 20, 2013 (filed under seal as Exhibit 2S). The interrogation continued, with breaks ranging from 30 minutes to 3 hours and 13 minutes, until 7:05 a.m. the next day. *Id.* The agents resumed interrogation at 5:35 p.m. on April 21, and continued, with

¹ The description of Mr. Tsarnaev's medical condition and treatment is based on a review of records from the Beth Israel Deaconess Medical Center.

breaks of varying lengths, until 9:00 a.m. the following day, April 22, when counsel was appointed to represent Mr. Tsarnaev. FBI 302 Report dated April 22, 2013 (filed under seal as Exhibit 3S), at 8-9; agent notes dated April 21, 2013 (filed under seal as Exhibit 4S). A complaint charging Mr. Tsarnaev with crimes carrying a potential death sentence had been filed the previous evening, under seal. *See* DE 1, 3. Throughout the time that Mr. Tsarnaev was being questioned, lawyers from the Federal Public Defender's Office repeatedly asked the court to appoint them to represent Mr. Tsarnaev.

Before interrogation began, two lawyers from the Federal Public Defender Office and a private lawyer who had been appointed by the state public defender's office (pursuant to its authority to assign lawyers before charges are filed in homicide cases) attempted to meet with Mr. Tsarnaev at the hospital. They were turned away by FBI agents, who refused to accept a letter to Mr. Tsarnaev notifying him of counsel's availability. *See* Affidavit of Charles P. McGinty ("McGinty Aff."), attached as Exhibit 1. One of the agents insisted, nonsensically, that Mr. Tsarnaev was not in custody. *Id.*

Hospital records show that Mr. Tsarnaev suffered gunshot wounds, including one to the head, which likely caused traumatic brain injury. Following emergency surgery, Mr. Tsarnaev was prescribed a multitude of pain medications, including Fentanyl, Propofol and Dilaudid.² The side effects of these medications include confusion, light-headedness, dizziness, difficulty concentrating, fatigue, and sedation. Damage to cranial nerves required that his left eye be

² The FBI reports state that, according to two nurses, Mr. Tsarnaev was taking only "phenatyl" (presumably Fentanyl) and antibiotics. The medical records reflect that Mr. Tsarnaev received Dilaudid during this time period and may have received Propofol as well. "Fentanyl, which is used to relieve severe pain and is often given to end-stage cancer patients, can be as much as 40 times more powerful than heroin and 100 times more powerful than morphine." Brian MacQuarrie, *Deadly opioid Fentanyl confirmed in Boston overdose*, Boston Globe, April 30, 2014, available at <http://www.bostonglobe.com/metro/2014/04/29/fentanyl-deadly-opiod-confirmed-boston-overdose/LVVkH6Jzng1CJypurWWM1L/story.html>.

sutured shut; his jaw was wired closed; and injuries to his left ear left him unable to hear on that side. Although apparently able to mouth words when asked about his medical condition by hospital staff, he was unable to talk, in part because of a tracheotomy. He was handcuffed to the bed railing and under heavy guard.

A “high powered” gunshot wound had fractured the base of his skull. *See* transcript of April 22, 2013 testimony of Dr. Stephen Odom, at 4, DE 13. This injury would likely have caused a concussion. Immediately before the initial appearance on April 22, Dr. Odom, who was treating Mr. Tsarnaev, described his condition at that time — approximately 36 hours after the agents began their interrogation and two hours after it ended — as “guarded.” *Id.* Mr. Tsarnaev had received Dilaudid, a narcotic painkiller, at 10 a.m. on April 22. *Id.*

The first interrogation began at 7:22 p.m. on April 20 and continued through the night until 7 a.m. on April 21. Exhibit 1S, 2S. Mr. Tsarnaev wrote answers to questions in a notebook because he was unable to speak. These notes reflect his attempt to respond to urgent questions (he assured the agents that no public safety threat remained), as well as his poor functioning and limited cognitive ability. On the first page, he wrote his address in Cambridge incorrectly the first time. *See* notes (filed under seal as Exhibit 5S). His next note assured the agents that there were no more bombs. On the fourth page, he wrote, “is it me or do you hear some noise,” an indication of how those injuries were interfering with his cognitive processes.³ The notes contain repeated requests to be allowed to rest and for a lawyer.

Interspersed with these pleas are his assurances that no one other than his brother was involved, that there was no danger to anyone else, and that there were no remaining bombs. In all, he wrote the word “lawyer” ten times, sometimes circling it. At one point, he wrote, “I am

³ It is unclear whether Mr. Tsarnaev was hearing actual sounds or experiencing auditory hallucinations at that point. A later note reads, “whats that noise, she made it stop can you tell her please”.

tired. Leave me alone. I want a l[illegible].” His pen or pencil then trails off the page, suggesting that he either fell asleep, lost motor control, or passed out. At least five other times in these pages, he begged the agents to leave him alone and to let him sleep. He also wrote, “I’m hurt,” “I’m exhausted,” and “Can we do this later?” At one point, he wrote, “You said you were gonna let me sleep.” Another note reads, “I need to throw up.”

According to the FBI report regarding the interrogation on April 20-21, Exhibit 1S, Mr. Tsarnaev “asked to speak to a lawyer on multiple occasions” sometime between 8:35 pm and 9:05 pm on April 20. “JAHAR was told that he first needed to answer questions to ensure that the public safety was no longer in danger from other individuals, devices, or otherwise.” *Id.* The reports omit any mention of Mr. Tsarnaev’s repeated pleas for sleep.

Mr. Tsarnaev also asked the agents several times about his brother, who, by the time of questioning, had been dead for nearly 48 hours. It is apparent that the agents falsely told him that Tamerlan was alive. One of Mr. Tsarnaev’s notes reads: “Is my brother alive I know you said he is are you lying Is he alive? One person can tell you that.” Exhibit 5S. Another asked: “Is he alive, show me the news! Whats today? Where is he?” *Id.* In his last note,⁴ Mr. Tsarnaev wrote, “can I sleep? Can you not handcuff my right arm? Where is my bro Are you sure.” *Id.*

Despite Mr. Tsarnaev’s entreaties to be left alone, allowed to rest, and provided with a lawyer, the agents persisted in questioning him throughout the night and into the morning of April 20. The FBI report and notes makes it clear that the interrogation was wide-ranging, covering everything from how and where the bombs were made to his beliefs about Islam and U.S. foreign policy, as well as his sports activities, future career goals, and school history. The interrogation resumed on the afternoon of April 21. *See* FBI report dated April 22, Exhibit 3S;

⁴ The notes do not contain any indication of when they were written. Apart from the sequence in which they were provided, it is impossible even to determine on what day they were written.

Agent notes, Exhibit 4S. This second round of interrogation covered many of the same topics as the first one, eliciting a detailed description of the brothers' activities during the days after the bombings.

It is hard to ascertain exactly what questions the agents posed, since their reports simply summarize his statements in a continuous narrative format and their notes reflect only a few questions. In keeping with its controversial and much-criticized practice, the FBI chose not to make any audio or video recording of the questioning. Such a recording would have permitted the Court to assess Mr. Tsarnaev's condition and functioning, to hear the actual words he used and the way he used them, and to verify the sequence of events. Instead, the FBI reports reconfigure Mr. Tsarnaev's statements into an unbroken narrative. Mr. Tsarnaev's handwritten notes provide a much clearer picture of the circumstances of the interrogation than the 302 reports do.

At 6:45 p.m. on Sunday evening, April 21, a criminal complaint was filed under seal. DE 3. However, counsel were not appointed until the next morning. It was only at that point that the agents ceased interrogation.

Argument

I. THE STATEMENTS WERE NOT VOLUNTARY AND THEREFORE MUST BE SUPPRESSED.

Any use of an involuntary statement against a defendant is a denial of due process. *See Mincey v. Arizona*, 437 U.S. 385, 398 (1978). A statement is involuntary if it was not "the product of a rational intellect and a free will." *Townsend v. Sain*, 372 U.S. 293, 306 (1963) (quoting *Blackburn v. Alabama*, 361 U.S. 199, 208 (1960)). The government bears the burden of proving that any statements it seeks to introduce were made voluntarily. *Lego v. Twomey*, 404 U.S. 477, 489 (1972).

In *Mincey*, the Supreme Court ordered a new trial based on its conclusion that statements made in a hospital bed by an injured suspect, who repeatedly requested a lawyer, should not have been used to impeach him. The Court wrote:

It is hard to imagine a situation less conducive to the exercise of “a rational intellect and a free will” than Mincey’s. He had been seriously wounded just a few hours earlier, and had arrived at the hospital “depressed almost to the point of coma,” according to his attending physician. Although he had received some treatment, his condition at the time of [the] interrogation was still sufficiently serious that he was in the intensive care unit.

Mincey, 437 U.S. at 398.

The facts presented here may be distinguishable in some respects; for example, Mr. Tsarnaev did not complain of “unbearable pain,” as Mincey did, although hospital records reflect that Mr. Tsarnaev’s pain level fluctuated during this period⁵ and increased as medications started to wear off. Of course, Mincey had not been shot in the head or subjected to flash-bang grenades. Like Mincey, Mr. Tsarnaev “was questioned [while] lying on his back on a hospital bed,” connected to tubes and medical equipment. Like Mincey, “[h]e was, in short, ‘at the complete mercy’ of [his interrogators], unable to escape or resist the thrust of [the] interrogation.” *Id.* at 399 (citation omitted).

Mincey was questioned for four hours, with breaks for medical treatment. Mr. Tsarnaev was questioned during two sessions, lasting a total of more than 27 hours, with breaks. During these breaks, he was receiving medical treatment. The government may argue that Mr. Tsarnaev,

⁵ The hospital records reflect “generalized” complaints of pain on April 20 and “significant surgical pain” on April 21 at 3:28 pm. On April 21, he had “incisional pain and generalized discomfort”. On April 22, he rated the pain in his hand as 7 on a scale of 1 to 10, which is considered “severe” and “very intense.” It is defined as pain that “completely dominates your senses, causing you to think unclearly about half the time.” See https://lane.stanford.edu/portals/cvicu/HCP_Neuro_Tab_4/0-10_Pain_Scale.pdf.

unlike the defendant in *Mincey*, did not give incoherent answers.⁶ That is not necessarily true. Mr. Tsarnaev gave inconsistent responses — for example, in answering questions about when he first learned of the bombing plan — and his written notes are at times illegible or simply trail off. But more to the point, the medication that Mr. Tsarnaev was administered before and during both interrogation sessions — including the opioid painkiller Dilaudid, given intravenously — had disinhibiting and sedative effects and impaired his judgment, increasing his susceptibility to pressure. *Cf. Townsend v. Sain*, 372 U.S. 293, 307-08 (1963) (confession given after “truth serum” administered to suspect).

Like *Mincey*, Mr. Tsarnaev “clearly expressed his wish not to be interrogated.” *Id.* These entreaties — along with his pleas for a lawyer, for a chance to rest, and to be left alone — were ignored by the agents. The *Mincey* Court’s conclusion is equally applicable here:

[T]he undisputed evidence makes clear that *Mincey* wanted *not* to answer Detective Hurst. But *Mincey* was weakened by pain and shock, isolated from family, friends, and legal counsel, and barely conscious, and his will was simply overborne. Due process of law requires that statements obtained as these cannot be used in any way against a defendant at his trial.

Mincey, 437 U.S. at 402.

In some respects, moreover, the interrogation in *Mincey* was less coercive than the agents’ relentless interrogation here. In *Mincey*, the interrogator at least told the suspect, “If you want a lawyer now, I cannot talk to you any longer, however you don’t have to answer any questions if you don’t want to.” *Id.* at 401. No such assurances were given to Mr. Tsarnaev. Instead, agents made clear by word and deed that they would not allow him to see a lawyer until

⁶ At the initial appearance, which occurred an hour or two after the last round of interrogation ended, the magistrate judge found Mr. Tsarnaev to be “alert, mentally competent, and lucid.” DE 11 at. 7. That finding does not, however, demonstrate that he was competent to waive his rights and voluntarily submit to questioning.

they had finished questioning him.⁷ He was thus given no choice but to submit to lengthy interrogation. That fact distinguishes this case from others where a defendant who was questioned while recovering from injuries challenged the use of statements against him or her. *Cf. United States v. Siddiqui*, 699 F.3d 690, 707 (2d Cir. 2012) (agent routinely asked defendant hospitalized in Afghanistan if she wished to speak with them; if she said she did not, the agent remained silently in the room).

United States v. Abdulmutallab, No. 10-20005, 2011 U.S. Dist. LEXIS 105462 (E.D. Mich. Sept. 16, 2011), and *United States v. Khalil*, 214 F.3d 111 (2d Cir. 2000), are not to the contrary. In *Abdulmutallab*, unlike here, “there was no evidence that Defendant was reluctant to answer questions.” *Abdulmutallab*, 2011 U.S. Dist. LEXIS 105462 at *4. Nor did he apparently request a lawyer. The same was true in *Khalil*, 214 F.3d 111 (2d Cir. 2000).

The undisputed fact that the agents expressly told Tsarnaev that he would not get a lawyer until they were done questioning him also renders the statements involuntary. *See Haynes v. Washington*, 373 U.S. 503 (1963) (pre-*Miranda* case holding that written statements obtained from suspect by police who rejected his request to contact his wife so she could get him a lawyer until he cooperated and signed a confession rendered his ensuing statements inadmissible). In *Haynes*, the Court emphasized that “[t]hough the police were in possession of evidence more than adequate to justify his being charged without delay . . . Haynes was not taken before a magistrate and granted a preliminary hearing until he had acceded to demands that he give and sign the written statement.” *Id.* at 510. Based on those facts, the Court found that Haynes “was alone in the hands of the police, with no one to advise or aid him, and he had ‘no reason not to believe that the police had ample power to carry out their threats . . . to continue,

⁷ Here, there is the additional fact that counsel unsuccessfully tried to see Mr. Tsarnaev, who was not informed of their availability.

for a much longer period if need be, the incommunicado detention – as in fact was actually done.” *Id.* at 514. Despite a half-century of precedents since *Haynes* forbidding the use of such tactics, law enforcement resorted to them here.

Before leaving this issue, a word must be said about the government’s failure to record the interrogation. Presumably, given the fact that the FBI arranged for members of its High Value Intelligence Group to travel to Boston, it could easily have arranged for electronic recording of the questions asked and the answers given. Such recordings would have provided this Court with direct evidence of Mr. Tsarnaev’s condition, his demeanor, and the manner in which the questions were posed. It is clear that government officials — who surely conferred at the highest levels about the scope and timing of the questioning, given the U.S. Attorney’s televised announcement of how it would proceed — made a deliberate decision not to create such a record. Indeed, a 2006 internal FBI memorandum, cited as among the reasons not to tape a defendant’s statement, explains that techniques used by investigators to question suspects “do not always come across in recorded fashion to lay persons as proper means of obtaining information from defendants.” FBI Memorandum dated March 23, 2006, attached as Exhibit 2. The memorandum goes on: “Initial resistance may be interpreted as involuntariness and misleading a defendant as to the quality of the evidence against him may appear to be unfair deceit.” *Id.*

According to recent disclosures, current FBI policy permits interviews to be recorded with prior approval of the Assistant Special Agent in Charge. *See* FBI Domestic Investigations and Operations Guide (2011) (“DIOG”) at 18.6.⁸ Given the massive mobilization of FBI

⁸ The memorandum and policy have been widely criticized for being too restrictive. *See, e.g.,* Steve Chapman, *The FBI shuts a window on the truth: recording interrogations is way overdue*, THE CHICAGO TRIBUNE, July 8, 2010, available at http://articles.chicagotribune.com/2010-07-08/news/ct-oped-0708-chapman-20100708_1_recording-interrogations-fbi-device. In one

personnel and resources, this could have easily been obtained — if the government wished to create a record. The FBI policy is not intended to “indicate that the FBI disfavors recording. Indeed, there are many circumstances in which audio or video recording of an interview may be prudent.” Exhibit 2. If this case did not present such circumstances, it is hard to imagine one that would. The government’s apparently deliberate refusal to create an electronic record should weigh against any claim it now makes that Mr. Tsarnaev’s hospital statements were voluntarily given.

If the statements were not voluntary, they must be excluded. The public safety exception to *Miranda*, first recognized in *New York v. Quarles*, 467 U.S. 649 (1984) does not apply to involuntary statements. *United States v. DeSantis*, 870 F.3d 536, 540 (9th Cir. 1989). Cf. *Quarles* at 654 (case involved “no claim that respondent’s statements were actually compelled by police conduct which overcame his will to resist”).

II. THE PUBLIC SAFETY EXCEPTION TO *MIRANDA* DOES NOT PERMIT ADMISSION OF THE STATEMENTS.⁹

In *Quarles*, the Supreme Court addressed the admissibility of a rape suspect’s response to a police officer’s question, posed before *Miranda* warnings were given, concerning the location of a missing gun. The suspect, who was wearing an empty holster when arrested, told police

highly publicized case, a U.S. Attorney in Arizona was fired after requiring agents in his district to record statements by defendants. See E. Lipton, J. Steinhauer, *Battle Over F.B.I. Policy Against Taping of Suspects Comes to Light in Firing Inquiry*, THE NEW YORK TIMES, April 2, 2007, available at <http://query.nytimes.com/gst/fullpage.html?res=9C03E5D71E30F931A35757C0A9619C8B63>.

⁹ This issue may be moot, as government counsel informed defense counsel by e-mail on the afternoon of May 7, as this motion was being finalized, “that it does not intend to use Mr. Tsarnaev’s statements at Beth Israel in its case-in-chief at trial or sentencing.” Because, however, the government has not agreed to forego all potential uses of the statement, e.g., in rebuttal, and has explicitly declined to disavow reliance on *Quarles*, defendant seeks by this motion to preserve all issues regarding the admissibility of the statements.

where to find the weapon. The Supreme Court held that the statement was admissible, where the police, “in the very act of apprehending a suspect, were confronted with the immediate necessity of ascertaining the whereabouts of a gun which they had every reason to believe the suspect had just removed from his empty holster and discarded in the supermarket.” *Quarles*, 467 U.S. at 657.

The scope of the public safety exception has been debated ever since the Supreme Court first recognized its existence in *Quarles*. Defense counsel submit that, however broad it may be, applying it to the facts of this case cannot be justified.

A. The Public Safety Exception does not Apply Here.

In *Quarles*, the Supreme Court upheld the admission of statements made moments after arrest to officers who, “in the very act of apprehending a suspect, were confronted with the immediate necessity” of determining where the suspect had discarded a gun. *Quarles*, 467 U.S. at 657. As soon as the suspect told them where the gun was, they read him his *Miranda* rights before asking further questions. *Id.* at 652.

The prolonged and comprehensive interrogation at issue here is the very opposite of what the Court approved in *Quarles*. When Mr. Tsarnaev’s interrogation began, more than five days had passed since the bombings and he had been in custody for nearly 24 hours. His brother was dead. Agents had spent nearly 12 hours searching the Tsarnaev family’s Cambridge home. They had also searched and secured all cars known to have been used by the Tsarnaev brothers. Whatever emergent circumstances might have existed earlier in the week had largely, if not completely, dissipated.

The first round of interrogation lasted nearly 12 hours, with breaks. The second round, resumed on the afternoon of April 21, lasted more than 15 hours and ended only when counsel

were appointed. Mr. Tsarnaev had assured his interrogators — apparently within the first few minutes — that there were no other bombs, that no one else had been involved in the plot, and that no further danger remained. He provided them with details about how the bombs were built. But still the questioning continued for hours, in what was obviously an effort to extract as much incriminating information as possible, without regard for the protections of the Fifth Amendment.

The FBI agents elicited information about the brothers' activities before and after the bombings, about the murder of Sean Collier, about the carjacking, and about their family relationships and history. These questions went well beyond even the Department of Justice's own written policy regarding use of the public safety exception to interrogate members of terrorist organizations. This policy contemplates limited questioning outside of *Miranda* about “possible impending or coordinated terrorist attacks; the location, nature and threat posed by weapons that might post (sic) an imminent danger to the public; and the identities, locations, and activities or intentions of accomplices who may be plotting additional imminent attacks.” FBI, “Custodial Interrogation for Public Safety and Intelligence-Gathering Purposes of Operations Terrorists Inside the United States,” (October 21, 2010), as published in *The New York Times* on March 25, 2011, attached as Exhibit 3. The memorandum encourages agents to “ask any and all questions that are reasonably prompted by an immediate concern for the safety of the public or the arresting agents without advising the arrest (sic) of his Miranda rights.” *Id.* Here, the agents instead used the opportunity to conduct a thorough debriefing of Mr. Tsarnaev, with no regard for constitutional restrictions.

Some courts have extended the *Quarles* exception to situations lacking the immediacy presented in *Quarles* itself. *See, e.g., Trice v. United States*, 662 A.2d 891 (D.C. App. 1995)

(questioning regarding presence of gun in apartment where defendant was arrested four days after shooting). But undersigned counsel is unaware of any case that has applied the public safety exception to an interrogation as prolonged, wide-ranging, and remote in time from the public safety emergency as this one.

The use of the “public safety” exception in terrorism cases was brought into sharp focus by the arrest of the so-called “underwear bomber” on Christmas Day in 2009. In that case, agents questioned the suspect within four hours of his arrival at the hospital. *See Abdulmutallab*, 2011 U.S. Dist. LEXIS 105462 at *3. The agents gave Abdulmutallab *Miranda* warnings after questioning him for 50 minutes. *Id.* at *4. The pre-*Miranda* questions “sought to identify any other attackers or other potentially imminent attacks[.]” *Id.* at *17. The suspect told the agents that he was not in pain and expressed no reluctance to answer questions. *Id.* at *4. In that case, the agents knew that Abdulmutallab “claimed to be acting on behalf of al-Qaeda,” *id.* at *3, a circumstance which made the threat of other attacks far more grave. *Cf. Khalil*, 214 F.3d at 121 (brief questioning of suspected terrorist at hospital immediately after bombs were discovered and before they were disarmed produced admissible statements). These cases illustrate the narrow scope of the *Quarles* exception to *Miranda* and provide no support for the radical expansion of *Quarles* that would be required to uphold admission of the statements obtained here.

B. The Public Safety Exception does not Permit Admission of Statements Obtained after a Defendant Invokes his Right to Counsel and Seeks to Stop Questioning.

Neither the Supreme Court nor the First Circuit have decided whether *Quarles* provides a public safety exception to the rules requiring police to cease interrogation when a suspect invokes his right to counsel under *Edwards v. Arizona*, 451 U.S. 477 (1981) and right to remain silent under *Michigan v. Mosley*, 423 U.S. 96 (1975). Those cases held that once a suspect

asserts his rights to counsel or against self-incrimination, questioning must stop and can only begin again if initiated by the suspect. As the *Mosley* court put it: “Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation.” *Id.* at 103.

That is precisely the option that Mr. Tsarnaev sought to exercise, by pleading with the agents to let him rest and to allow him to see a lawyer. The entreaties were ignored.

The Fourth and Ninth Circuits have held that the public safety exception permits police to override a suspect’s request for a lawyer. *United States v. Mobley*, 40 F.3d 688, 693 (4th Cir. 1990); *United States v. DeSantis*, 870 F.2d 536 (9th Cir. 1989). We submit that these cases were wrongly decided, and are, in any event, factually distinguishable. First, *Mobley* recognized that “the reasoning of *Quarles* is not on all points with the situation in which the accused has claimed his right to counsel[.]” *Id.* at 692. After all, *Quarles* permits police to forego a prophylactic warning about a defendant’s right to remain silent; it does not permit police to override those rights once they are asserted.

Second, the *Mobley* court found that the facts of that case did not support the application of the *Quarles* exception, stressing that:

the [*Quarles*] “public safety” exception applies only where there is “an objectively reasonable need to protect the police or the public from any immediate danger associated with [a] weapon.” *Id.* at 659 n. 8, 104 S.Ct. at 2633 n. 8. Absent such circumstances posing an objective danger to the public or police, the need for the exception is not apparent, and the suspicion that the questioner is on a fishing expedition outweighs the belief that public safety motivated the questioning that all understand is otherwise improper.”

Id. at 693. In *Mobley*, officers executing a search warrant asked the defendant, after he had invoked his right to counsel and they were preparing to leave his apartment with him in custody, if there were any guns or weapons in the apartment. *Id.* at 690-91. The Fourth Circuit concluded

that his response — informing police of the presence of a gun — was not covered by the public safety exception, where officers had already conducted a sweep of the apartment, determined that no one else was present or resided there, and had arrested the defendant. *Id.* at 693.

United States v. DeSantis, 870 F.2d 536 (9th Cir. 1989) also concluded that the *Quarles* exception can be applied to a claimed violation of *Edwards*. *Id.* at 541. In that case, officers arresting the defendant on a warrant asked him whether there were any weapons in his bedroom before allowing him to enter the room to get dressed. “The inspectors lawfully were entitled to question DeSantis for the purpose of securing their safety, even after he had asserted his desire to speak with counsel.” *Id.* No such compelling, immediate threat to safety was present here, where Mr. Tsarnaev was in custody, gravely injured, and heavily guarded. Even assuming *arguendo* that some limited questioning was permissible, it should have ceased after Mr. Tsarnaev assured the agents that no other bombs existed and there were no accomplices who posed a danger to public safety.

The government may argue that the interrogation that began on the afternoon of April 21 does not suffer from the same flaws as the first one. It is unclear whether Mr. Tsarnaev repeated his request for a lawyer during the second night of interrogation. But neither a failure to do so nor the lapse of time between the morning and afternoon of the April 21 constitute a “break” sufficient to permit renewed questioning despite Mr. Tsarnaev’s earlier request for counsel. *See Edwards*, 451 U.S. at 484-85 (once defendant asserts right to counsel, police may not further interrogate him unless he initiates further contact with them); *Mosley*, 423 U.S. at 104 (police must “scrupulously honor” invocation of right to remain silent).

It is undisputed that Mr. Tsarnaev was not provided with *Miranda* warnings before this second session, either. The argument that these statements fall within the public safety exception

is even weaker, since any danger to the public was further diminished by the passage of time and by the information that Mr. Tsarnaev already had provided.

III. THE POSTPONEMENT OF MR. TSARNAEV'S INITIAL APPEARANCE BEFORE A JUDICIAL OFFICER IN ORDER TO PROLONG INTERROGATION REQUIRES SUPPRESSION OF HIS STATEMENTS.

Even before suspects were identified in the Boston Marathon bombing, lawyers with the Federal Public Defender Office notified officials in the U.S. Attorney's office that they were available on a 24-hour basis to represent any suspect taken into custody. While thousands of officers searched for Mr. Tsarnaev in Watertown, this offer was repeated.

Mr. Tsarnaev was arrested on the night of April 19 and rushed to Beth Israel Deaconess Medical Center, where he arrived in critical condition. During the press conference that immediately followed his capture, government officials announced that agents would not read the suspect his rights and were invoking "the public safety exception." Lawyers from the Federal Public Defender Office contacted prosecutors and court officials in an effort to provide representation. Two of the lawyers went to the hospital in the early morning hours of April 20. McGinty Aff. They were turned away. The agent with whom they spoke refused to accept a letter to him from the lawyers, although she did take a business card, on which a cell phone number was written.

A lawyer assigned by the state public defender agency also went to the hospital on the night of April 19 and again in the afternoon on April 20, in an attempt to see Mr. Tsarnaev. He, too, was turned away and a law enforcement officer refused to accept a letter from him to Mr. Tsarnaev. The lawyer sent two emails to a federal prosecutor, asking to be permitted to see Mr. Tsarnaev and to have Mr. Tsarnaev informed of his availability and of his advice that Mr. Tsarnaev remain silent until he could speak to counsel. The prosecutor did not respond.

Throughout April 20 and 21, the Federal Public Defender and other lawyers from her office contacted court officials, asking to be appointed. Court personnel informed the lawyers that they would be appointed as soon as a complaint was filed. McGinty Aff.

This turned out to be incorrect. A complaint was signed at 6:47 pm on April 21, DE 3, and filed under seal. Interrogation continued through the night and well into the morning of April 22. The government's motion to seal, DE 1, explained that "public disclosure of these materials might jeopardize the ongoing investigation of this case." This baffling assertion ignores the fact, well-known to anyone with access to a television, radio, newspaper, smartphone or computer, that Mr. Tsarnaev was in custody. Nothing in the application for the complaint revealed information that had not already been reported by media around the world. It thus appears that the sole reason to seal the complaint was to allow the interrogation to continue by delaying the defendant's initial appearance before a judicial officer and the appointment of counsel.

Here, as in *Haynes v. Washington*, "the only fair inference to be drawn under all the circumstances is that" the defendant would not be charged and brought to court "until the police had secured the additional evidence they desired[.]" *Haynes*, 373 U.S. at 512. In *Haynes*, decided before *Miranda*, the Supreme Court held that the confession was involuntary and its use at trial violated the Due Process Clause of the Fourteenth Amendment.

Fed. R. Crim. P. 5(a)(1)(A) requires that an arresting officer "must take the defendant without unnecessary delay before a magistrate judge." The Supreme Court has held that even a voluntary confession must be suppressed if this rule is violated. See *Mallory v. United States*, 354 U.S. 449 (1957) (holding that delay for purpose of interrogation is, by definition, unnecessary delay).

Section 3501 of Title 18 prohibits exclusion of a voluntary confession, based on a delayed presentment, if the statement was made within six hours of arrest. In *Corley v. United States*, 556 U.S. 303 (2009), the Supreme Court interpreted this statute in light of the *McNabb-Mallory* line of cases, noting, “In a world without *McNabb-Mallory*, federal agents would be free to question suspects for extended periods before bringing them out in the open, and we have always known what custodial secrecy leads to.” *Id.* at 320. As a result, the Supreme Court held, statements made more than six hours after arrest are admissible only if the delay in presentment is shown to be reasonable and necessary.

Here, the delay meets neither requirement. The government cannot contend that presentment was delayed due to the unavailability of the magistrate-judge. On April 21, the magistrate-judge approved five search warrant applications in connection with the investigation of the bombing.

Furthermore, the complaint and arrest warrant issued on the evening of April 21, shortly after the second round of interrogation began. Nevertheless, appointment of counsel and the initial appearance were delayed until the following morning, despite the fact that counsel were ready, willing, and available to immediately represent Mr. Tsarnaev. During that time, agents continued to interrogate him for another 15½ hours.

The 2010 Department of Justice policy regarding interrogation of terrorism suspects who are under arrest but not yet indicted specifically warns, “Presentment of an arrestee may not be delayed simply to continue the interrogation, unless the defendant has timely waived prompt presentment.” DOJ Memo, Exhibit 3. No such waiver occurred here.

Conclusion

For the reasons set forth above, this Court should suppress the statements made by Mr. Tsarnaev to FBI agents at Beth Israel Deaconess Medical Center on April 20 through 22.

Request for Evidentiary Hearing

Defendant requests an evidentiary hearing on this motion.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/ Miriam Conrad

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 7, 2014.

/s/ Miriam Conrad

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES)	
)	
)	CRIMINAL NO. 13-10200-GAO
v.)	
)	
DZHOKHAR TSARNAEV)	

Affidavit of Charles P. McGinty

I, hereby state the following under the pains and penalties of perjury:

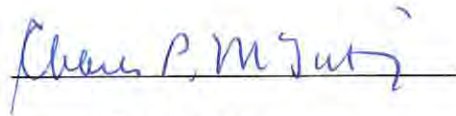
1. I am the First Assistant Federal Public Defender for the Districts of Massachusetts, New Hampshire, and Rhode Island.
2. After learning of the arrest of Dzhokhar Tsarnaev on April 19, Assistant Federal Public Defender Timothy G. Watkins and I went to Beth Israel Deaconess Medical Center ("BIDMC") to see Mr. Tsarnaev. We arrived shortly after midnight on April 20. We spoke with FBI Special Agent Kristin O'Neill, who told us that 1) Mr. Tsarnaev was not in custody; 2) he had not been given his Miranda warnings, and agents did not intend to do so; and 3) because he had not yet been formally charged, we did not represent him and had no right to meet with him.
4. At about 1 a.m., I sent an email to the U.S. Attorney, First Assistant U.S. Attorney, head of the USAO counter-terrorism, and Assistant U.S. Attorney Aloke Chakravarty, as well as Magistrate-Judge Marianne B. Bowler, describing our efforts to meet with Mr. Tsarnaev and to inform him of our availability.

5. On the afternoon of April 20, I spoke twice with Brendan Garvin, the courtroom clerk for Magistrate-Judge Marianne B. Bowler. He told me that our office would be appointed as soon as a complaint was signed.

6. At 3:42 pm on April 20, First Assistant U.S. Attorney Jack Pirozzolo sent me an email, copied to Magistrate Judge Bowler and Chief Judge Saris. In it, he stated, "We are currently proceeding in accordance with legal standards applicable in cases, such as this, that implicate public safety and national security concerns."

7. The above is true to the best of my knowledge.

Signed under the pains and penalties of perjury, this 22nd day of April, 2014.



Charles P. McGinty, Esq.

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION**Precedence:** ROUTINE**Date:** 3/23/2006**To:** All Field Offices
All HQ Divisions**Attn:** ADIC, SAC, and CDC
EAD, AD
FBIHQ, Manuals Desk
Legal Attache

All Legats

From: Office of the General Counsel
Investigative Law Unit
Contact: Jung-Won Choi (202)324-9625**Approved By:** Caproni Valerie E
Lammert Elaine N
Larson David C**Drafted By:** Choi Jung-Won**Case ID #:** 66F-HQ-1283488-3
66F-HQ-CL384970**Title:** ELECTRONIC RECORDING OF CONFESSIONS AND WITNESS
INTERVIEWS**Synopsis:** To clarify existing FBI policy on electronic recording of confessions and to provide guidance on some of the factors that the SAC should consider when deciding whether to authorize recording.**Administrative:** This document is a privileged FBI attorney communication and may not be disseminated outside the FBI without OGC approval. To read the footnotes in this document, it may be required to download and print the document in WordPerfect.**Details:** FBI policy on electronic recording of confessions and witness interviews is contained in SAC Memorandum 22-99, dated 10 August 1999, which revised SAC Memorandum 22-98, dated 24 July 1998. Under the current policy, agents may not electronically record confessions or interviews, openly or surreptitiously, unless authorized by the SAC or his or her designee. See MIOG, Part II, Section 10-10.10(2). Consultation with an AUSA, CDC, or OGC may be appropriate in certain circumstances, but it is not required.¹ In certain circumstances (set forth in the above)

¹ If the recording is going to be surreptitious, SACs are urged to obtain the concurrence of the CDC or the appropriate OGC attorney. In addition, in accordance with the Attorney General's "Procedure for Lawful, Warrantless Monitoring of Verbal Communication," dated May 30, 2002, advice that the proposed surreptitious recording is both legal and appropriate must be obtained from the USA, AUSA or DOJ attorney responsible for the investigation.

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Re: 66F-HQ-1283488-3, 3/23/2006

guidance),² FBIHQ concurrence is required.

In recent years, there has been on-going debate in the criminal justice community whether to make electronic recording of custodial interrogations mandatory. According to a study published in 2004 by a former U.S. Attorney,³ 238 law enforcement agencies in 37 states and the District of Columbia electronically record some or all custodial interviews of suspects. In four of those jurisdictions, electronic recording is mandated by law - by legislation in Illinois and the District of Columbia and by case law opinions issued by the state supreme courts of Alaska and Minnesota. In addition, it is the practice in some foreign countries--such as Great Britain and Australia--to record all interviews of suspects, and some U.S. Attorneys feel strongly that at least some interviews should be required to be recorded.⁴

There is no federal law that requires federal agents to electronically record custodial interviews and, to our knowledge, no federal law enforcement agency currently mandates this practice. There have been isolated incidents in which federal district court judges, as well as some United States Attorneys, have urged the FBI to revise its current policy to require recording all custodial interviews, or at least those involving selected serious offenses. In addition, agents testifying to statements made by criminal defendants have increasingly faced intense cross-examination concerning this policy in apparent efforts to cast doubt upon the voluntariness of statements in the absence of recordings or the accuracy of the testimony regarding the content of the statement. Furthermore, in some task force cases that result in state prosecution, FBI state or local partners have been precluded from using FBI agent testimony of the defendant's confession because of restrictive state law or policy.

² These circumstances include, among other things, extensive media scrutiny, difficult legal issues, complex operational concerns, or significant involvement by FBIHQ.

³ Thomas P. Sullivan, *Police Experiences with Recording Custodial Interrogations*, Northwestern University School of Law, Center on Wrongful Convictions, Number 1, Summer 2004.

⁴ There is a group within the Department of Justice, which includes the FBI, DEA, ATF and the Marshals Service, that has met periodically to discuss this issue. It is conceivable that an outgrowth of those discussions will be a pilot program in one or more judicial districts in which recording at least certain interviews will be required.

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Against this backdrop, FBI executive management has reviewed the current policy. After a careful deliberation of all the available options, the Director has opted for now to retain the current policy but has tasked the General Counsel to issue guidance on the factors that the SAC or his or her designee should consider before granting exceptions.

Before listing those factors, a brief review of the sound reasons behind the FBI policy on electronic recording of confessions and interviews is in order. First, the presence of recording equipment may interfere with and undermine the successful rapport-building interviewing technique which the FBI practices.⁵ Second, FBI agents have successfully testified to custodial defendants' statements for generations with only occasional, and rarely successful, challenges. Third, as all experienced investigators and prosecutors know, perfectly lawful and acceptable interviewing techniques do not always come across in recorded fashion to lay persons as proper means of obtaining information from defendants. Initial resistance may be interpreted as involuntariness and misleading a defendant as to the quality of the evidence against him may appear to be unfair deceit. Finally, there are 56 field offices and over 400 resident agencies in the FBI. A requirement to record all custodial interviews throughout the agency would not only involve massive logistic and transcription support but would also create unnecessary obstacles to the admissibility of lawfully obtained statements, which through inadvertence or circumstances beyond control of the interviewing agents, could not be recorded.

Notwithstanding these reasons for not mandating recording, it is recognized that there are many situations in which recording a subject's interview would be prudent. For this reason, it has been FBI policy for nearly eight years to grant an SAC the authority and flexibility to permit recording if he or she deems it advisable.

Often, during the time this policy has been in effect, SAC discretion has been viewed negatively; i.e., as an "exception" to the "no recording" policy, instead of positively; i.e., as a case-by-case opportunity to use this technique where and when it will further the investigation and the subsequent prosecution. Supervisors are encouraged to seek permission to record, and SACs are encouraged to grant it, whenever it is determined that these objectives will be met.

⁵ In theory, surreptitious recording would not affect this approach. However, if recording became routine practice, it would not take long before that practice became well known--especially among members of organized crime.

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When deciding whether to exercise this discretion, SACs are encouraged to consider the following factors:

- 1) Whether the purpose of the interview is to gather evidence for prosecution, or intelligence for analysis, or both;
- 2) If prosecution is anticipated, the type and seriousness of the crime, including, in particular, whether the crime has a mental element (such as knowledge or intent to defraud), proof of which would be considerably aided by the defendant's admissions in his own words;
- 3) Whether the defendant's own words and appearance (in video recordings) would help rebut any doubt about the voluntariness of his confession raised by his age, mental state, educational level, or understanding of the English language; or is otherwise expected to be an issue at trial, such as to rebut an insanity defense; or may be of value to behavioral analysts;
- 4) The sufficiency of other available evidence to prove the charge beyond a reasonable doubt;
- 5) The preference of the United States Attorney's Office and the Federal District Court regarding recorded confessions;
- 6) Local laws and practice--particularly in task force investigations where state prosecution is possible;
- 7) Whether interviews with other subjects in the same or related cases have been electronically recorded;
- 8) The potential to use the subject as a cooperating witness and the value of using his own words to elicit his cooperation;
- 9) Practical considerations--such as the expected length of the interview; the availability of recording equipment and transcription (and, if necessary, translation) services; and the time and available resources required to obtain them. If cost factors prove prohibitive, consider whether the requesting U.S. Attorney's Office will agree to pay for the services.

These factors should not be viewed as a checklist and are not intended to limit the SAC's discretion. It is recognized, however, that establishing reasonable standards on the type of cases, crimes, circumstances, and subjects for which recording is a desirable objective so as to maintain internal field office consistency and to inform field agents and supervisors when and why to request recording.

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Field office standards are to be encouraged for another very important reason. The absence of any standard by which field office discretion in this matter is exercised will render testifying agents vulnerable to attack on cross-examination. If, on the other hand, an agent can point to identifiable standards that provide a reasonable explanation for why some interviews are recorded and others are not, the implication that the agent chose not to record an interview to mask the involuntary nature of the defendant's admissions will be much harder to argue.⁶ This office is prepared to assist in the preparation of such standards if desired.

Finally, in order to assist agents who testify to unrecorded admissions, an explanation of this policy and the reasons behind it should be added to field office quarterly legal training. Questions may be directed to Assistant General Counsel Jung-Won Choi, at the Office of the General Counsel, Investigative Law Unit, at 202-324-9625.

⁶ Carrying this point further, it would be even easier to withstand cross-examination if a fixed policy as to when to record and when not to record were established at FBI Headquarters that permits no field office or agent discretion. Yet, such an advantage would be far off set by the loss of flexibility that field office SACs and supervisors need to make sound investigative decisions such as the choice of interviewing techniques.

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LEAD(s):

Set Lead 1: (Action)

ALL RECEIVING OFFICES

Disseminate to all personnel. The CDC of each field office should be the principal point of contact for this EC and should provide a briefing to the agents in his or her office consistent with this EC.

♦♦

1 - Ms. Caproni
1 - Mr. Kelley
1 - Ms. Gulyassy
1 - Ms. Thomas
1 - Ms. Lammert
1 - Mr. Larson
1 - Mr. Choi
2 - ILU

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March 25, 2011

F.B.I. Memorandum

Below is the text of an unsigned, internal F.B.I. memorandum, obtained by The New York Times, that provides guidance to agents about when, in the course of interrogating a terrorism suspect, they should advise the suspect of his so-called Miranda rights to remain silent and have an attorney present during questioning.

U.S. Department of Justice

Federal Bureau of Investigation

October 21, 2010

Custodial Interrogation for Public Safety

and Intelligence-Gathering Purposes of Operational

Terrorists Inside the United States [1]

Identifying and apprehending suspected terrorists, interrogating them to obtain intelligence about terrorist activities and impending terrorist attacks, and lawfully detaining them so that they do not pose a continuing threat to our communities are critical to protecting the American people. The Department of Justice and the FBI believe that we can maximize our ability to accomplish these objectives by continuing to adhere to FBI policy regarding the use of Miranda warnings for custodial interrogation of operational terrorists [2] who are arrested inside the United States:

1. If applicable, agents should ask any and all questions that are reasonably prompted by an immediate concern for the safety of the public or the arresting agents without advising the arrestee of his Miranda rights. [3]
2. After all applicable public safety questions have been exhausted, agents should advise the arrestee of his Miranda rights and seek a waiver of those rights before any further interrogation occurs, absent exceptional circumstances described below.

3. There may be exceptional cases in which, although all relevant public safety questions have been asked, agents nonetheless conclude that continued unwarned interrogation is necessary to collect valuable and timely intelligence not related to any immediate threat, and that the government's interest in obtaining this intelligence outweighs the disadvantages of proceeding with unwarned interrogation. [4] In these instances, agents should seek SAC approval to proceed with unwarned interrogation after the public safety questioning is concluded. Whenever feasible, the SAC will consult with FBI-HQ (including OGC) and Department of Justice attorneys before granting approval. Presentment of an arrestee may not be delayed simply to continue the interrogation, unless the defendant has timely waived prompt presentment.

The determination whether particular unwarned questions are justified on public safety grounds must always be made on a case-by-case basis based on all the facts and circumstances. In light of the magnitude and complexity of the threat often posed by terrorist organizations, particularly international terrorist organizations, and the nature of their attacks, the circumstances surrounding an arrest of an operational terrorist may warrant significantly more extensive public safety interrogation without Miranda warnings than would be permissible in an ordinary criminal case. Depending on the facts, such interrogation might include, for example, questions about possible impending or coordinated terrorist attacks; the location, nature, and threat posed by weapons that might post an imminent danger to the public; and the identities, locations, and activities or intentions of accomplices who may be plotting additional imminent attacks.

As noted above, if there is time to consult with FBI-HQ (including OGC) and Department of Justice attorneys regarding the interrogation strategy to be followed prior to reading the defendant his Miranda rights, the field office should endeavor to do so. Nevertheless, the agents on the scene who are interacting with the arrestee are in the best position to assess what questions are necessary to secure their safety and the safety of the public, and how long the post-arrest interview can practically be delayed while interrogation strategy is being discussed.

[1] This guidance applies only to arrestees who have not been indicted and who are not known to be represented by an attorney. For policy on interrogation of indicted defendants, see Legal Handbook for Special Agents (LHBSA) Section 7-3.2 For policy on contact with represented persons, see LHBSA Sections 7-4.1 and 8-3.2.2.

[2] For these purposes, an operational terrorist is an arrestee who is reasonably believed to be either a high-level member of an international terrorist group; or an operative who has

personally conducted or attempted to conduct a terrorist operation that involved risk to life; or an individual knowledgeable about operational details of a pending terrorist operation.

[3] The Supreme Court held in *New York v. Quarles*, 467 U.S. 649 (1984), that if law enforcement officials engage in custodial interrogation of an individual that is "reasonable prompted by a concern for the public safety," any statements the individual provides in the course of such interrogation shall not be inadmissible in any criminal proceeding on the basis that the warnings described in *Miranda v. Arizona* 384 U.S. 436 (1966), were not provided. The court noted that this exception to the *Miranda* rule is a narrow one and that "in each case it will be circumscribed by the [public safety] exigency which justifies it." 467 U.S. at 657.

[4] The Supreme Court has strongly suggested that an arrestee's Fifth Amendment right against self-incrimination is not violated at the time a statement is taken without *Miranda* warnings, but instead may be violated only if and when the government introduces an unwarned statement in a criminal proceeding against the defendant. See *Chavez v. Martinez*, 538 U.S. 760, 769 (2003) (plurality op.); *id.* at 789 (Kennedy, J., concurring in part and dissenting in part); cf. also *id.* at 778-79 (Souter, J., concurring in the judgment); see also *United States v. Patane*, 542 U.S. 630, 641 (2004) (plurality opinion) ("[V]iolations [of the Fifth Amendment right against self-incrimination] occur, if at all, only upon the admission of unwarned statements into evidence at trial."); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) ("[A] violation [of the Fifth Amendment right against self-incrimination] occurs only at trial.")

SEALED DOCUMENT



FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/21/2013

DZHOKHAR TSARNAEV, date of birth July 22, 1993, was interviewed at Beth Israel Deaconess Medical Center, 330 Brookline Avenue, Boston, Massachusetts 02215. Immediately prior to the interview, Julie Dion, RN, informed the interviewing agents an interview of JAHAR would not pose a medical risk to him, she was not aware of any brain injury suffered by JAHAR, and that his only medications were an antibiotic and phenatyl, neither of which, at their current dose, would inhibit his mental faculties. After being informed of the identities of the interviewing agents, JAHAR confirmed he could hear and understand the interviewing agents, could respond to the interviewing agents, and was not experiencing overwhelming pain, and provided the following information:

On the day of the Boston Marathon, JAHAR and his older brother, TAMERLAN, drove from Cambridge to Boston in JAHAR's car around 2:30 p.m. JAHAR and his brother were the only individuals in the vehicle. Both JAHAR and his brother had a backpack containing an explosive device. JAHAR carried a brown backpack while his brother's backpack was black. After parking, they walked approximately five minutes to spots very close to the Marathon finish line. Each of them decided on their own where they would stop near the finish line and place the backpack containing the explosive device. JAHAR could not remember whether he or his brother was closer to the finish line. Just before detonating his device, JAHAR placed a call to his brother with the other device to try to synchronize the two detonations. After JAHAR put his backpack down, he walked away and detonated the device using a button. He used a trigger mechanism built according to the instructions in the Inspire Magazine articles.

JAHAR stated that there were no other attacks planned, there were no unaccounted devices, and the only individuals involved in the attack planning and execution were JAHAR and TAMERLAN.

It was TAMERLAN's idea to conduct the attack. Initially, JAHAR stated he heard about the plan the day of the attack, then indicated that his brother discussed the attack a day or two before the marathon, before finally stating TAMERLAN asked him to join the attack about a week ahead of the marathon.

Investigation on 04/21/2013 at Boston, Massachusetts, United States (In Person)File # [REDACTED]Date drafted 04/21/2013by Gregory T. Hughes, Matthew T Dowd

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DT-0008225

Continuation of FD-302 of 04/21/2013 Interview of DZHOKHAR TSARNAEV, On 04/21/2013 Page 2 of 7

TAMERLAN's wife had no idea about the attack. She generally works from 7 a.m.-10 p.m., and, as a result, she was not in the house very much. She did not know about the fireworks or anything else related to the attacks. She is an American with an American family and is an innocent woman.

JAHAR and his brother did not look for others to join them after the Monday attack. Since they knew it would take a few days, or less, before they got caught, they told no one about what had happened, in part because they did not think anyone in their right mind would agree to join them. Joining with them at that point they would have been inviting someone to either die or go to jail.

JAHAR stated no one had any knowledge of their plan before the attack, nor did they tell anyone after the attack had occurred. JAHAR and his brother did not include others in their plan before the attack because they could not trust anyone else.

Eventually, JAHAR acknowledged learning about his brother's plan to attack the marathon about a week ahead of time. TAMERLAN directed JAHAR to get a new phone as they would need to coordinate their attack. JAHAR's old phone had recently been deactivated because friends who were a part of his family plan had not been paying their bill.

JAHAR's brother had been careful not build the devices too far ahead of time so that he could keep the attack plan a secret from his wife. JAHAR stated he and his brother built just two devices and used the two devices at the marathon, but he provided different versions as to when the devices were assembled. In one version, they waited to assemble the two devices that Monday morning because it was not hard to assemble. In another version, TAMERLAN constructed the devices on his own.

JAHAR's brother did not talk about any additional devices similar to the two used at the marathon.

When asked about other attacks that JAHAR and his brother were preparing for, JAHAR relayed that he thought he was going to die on Monday, so there were no other attack plans. JAHAR wore his hat backwards without a hoodie because he thought he was going to die. JAHAR and his brother did not plan to die, they just thought it was something that might happen. They did not conduct the attack to glorify themselves but they thought they may die regardless.

JAHAR said that the next incident he and his brother had was the standoff with the police on Thursday. After the Asian individual got away on Thursday night, it became clear to JAHAR that the end was near.

DT-0008226

Continuation of FD-302 of 04/21/2013 Interview of DZHOKHAR TSARNAEV On 04/21/2013 Page 3 of 7

JAHAR and his brother knew there were cameras at the marathon and they knew they were going to get caught, so they decided to act on Thursday. They did not have anything planned; at that point it became improvisation for them.

JAHAR did not warn any of his friends to stay away from the Marathon because he didn't care if they got hurt. JAHAR only reached out to Baudy to see what people thought of the bombings. JAHAR used the iMessage feature of his phone to contact Baudy.

JAHAR's brother traveled home about one year ago to see family but didn't talk much about what he did while he was there. The brother's travel was not for training.

Previous to this trip, JAHAR's brother had not been home for a long time, and, as far as JAHAR knew, the trip was just a visit. After JAHAR's brother left, their father, growing tired of living in the United States, returned home. JAHAR's brother eventually returned to Massachusetts after six months, but a few months later, in September 2012, their mother, also tired of the United States, returned home as well. JAHAR's brother never talked about any people he may have met overseas.

JAHAR stated that he and his brother constructed two explosive devices in his brother's home at 410 Norfolk, Apartment 3, Cambridge, Massachusetts. The devices were easy to build, because instructions were available in a copy of Inspire magazine the two downloaded from the Internet. JAHAR and his brother used powder to build the bombs. The powder came from fireworks purchased about one year ago in New Hampshire. Both JAHAR and his brother traveled to New Hampshire to purchase the fireworks. JAHAR did not know why his brother purchased the fireworks, but indicated that they did not buy many fireworks during their trip to New Hampshire.

Initially, JAHAR stated he and his brother, TAMERLAN, disposed of the two devices they built by throwing them in a river. Later, however, JAHAR explained how he and his brother detonated them on Monday at the Boston Marathon. JAHAR was amused by the reports he and his brother planted four devices on the day of the Marathon when, in fact, the brothers constructed only the two bombs that exploded. No one else participated in the attacks - JAHAR and his brother built the two devices and planned the attack alone.

In addition to the pressure cooker devices, JAHAR and his brother also made mini-bombs to cause more damage to people, mostly police officers who served in the Army. They made the mini-bombs because they did not have any additional pressure cookers to make the larger devices. The mini-bombs had a fuse which would be lit to detonate the device. JAHAR and his brother

DT-0008227

Continuation of FD-302 of 04/21/2013 Interview of DZHOKHAR TSARNAEV On 04/21/2013 Page 4 of 7

looked up the instructions on how to make the device on the internet by searching for the word "bomb." JAHAR did not use his computer nor did he use a computer at school to look up the instructions for making the mini-bomb. JAHAR is not clear about whether his brother used his own computer for the research.

JAHAR and his brother did not test the items at any point prior to using them. They used the mini-bombs they made against police. If they had not been caught, they probably would have made more bombs and committed more attacks.

After the explosion, JAHAR and his brother returned to the brother's house and stayed there for the evening. JAHAR had the new T-Mobile iPhone with him the whole time. JAHAR initially indicated that he could not remember who he texted from his iPhone after the explosion. JAHAR later indicated that he sent iMessages to his friend, Baudy, who attends Boston University. JAHAR stated that neither he nor his brother told anyone about what they had done.

The text messages between JAHAR and Baudy were casual texts because JAHAR wanted to make it appear like it was a normal day. The messages asked how Baudy was doing, if he was safe, and knew what had happened. Given that the bombings were already on the news by then, Baudy had heard about them. Even though JAHAR's cell service was shut off because he had a family share plan with his college friends but had not paid the bill, JAHAR could still send and receive iMessages when wifi was available.

However, since he needed a cell phone to coordinate the Marathon attacks with his brother, on Sunday (April 14) JAHAR bought a T-Mobile, one-month, pre-paid cell phone plan to accompany his iPhone 5. He used this T-Mobile number to contact his brother to coordinate the bomb detonations. Only his brother had the telephone number and he only used that phone to communicate with his brother.

On Thursday (April 18) JAHAR and his brother were not going to Massachusetts Institute of Technology to plant a device. They were trying to go to New York, though JAHAR does not know why they were planning on New York because it was his brother's idea. The attack on the MIT police officer happened simply because the officer happened to be where JAHAR and his brother were located.

In the car the two of them had a handgun, some food, and a couple of mini-bombs. JAHAR made the mini-bombs with his brother, just as he had made the larger devices with his brother. The mini-bombs were easier to make than the larger devices. The bigger devices took a few days to make while the mini-bombs they had with them were all made on Thursday.

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The gun in their possession on Thursday belonged to both of them. JAHAR at first indicated that he was unsure of how they acquired the handgun but later indicated that they found it in a car in a junkyard.

JAHAR indicated that he was hoping to die as a shahid.

When asked about what triggered JAHAR and his brother to act on Monday, JAHAR initially stated he did not want to answer that question. He simply stated "what's done is done." He then asked again, "Are we not at war?" After repeating the question, JAHAR explained he and his brother were inspired by the promise of heaven and that JAHAR also found Anwar al-Aulaqi's teachings to be very persuasive. JAHAR acknowledged that the time had come when he was finally ready to act. He explained that not every Muslim is inspired, but those that are inspired are able to protect the Muslim people and the Muslim religion. Mujahideen are promised the highest levels, and when they die, they die with smiles on their faces.

When pressed again on who instructed or convinced JAHAR and his brother to act, JAHAR indicated it was online speakers like Aulaqi and magazines like Inspire that convinced them. JAHAR's brother was convinced by no one else other than those online articles, and he got the plans for the devices from Inspire. With God's help, JAHAR's brother was able to improve the instructions and designs provided by Inspire. No one else but JAHAR and Allah provided assistance.

JAHAR also repeatedly indicated that the reason he and his brother conducted the attack is because America is at war and is killing innocents in Afghanistan and other countries. The attack was their way of doing their part to protect their people. JAHAR explained that America needed to feel that same pain. Other than because the Marathon had a lot of people, they did not have a particular reason for selecting it as the target. JAHAR indicated that they really did not know what was going to happen after they conducted the attack.

JAHAR's brother intended to carry out the Marathon attacks with or without JAHAR, and he offered JAHAR to follow him on that day. JAHAR very much wanted to follow him.

JAHAR did not know who convinced his brother to act, and suggested only Allah knew the answer to that question. JAHAR indicated that given that his brother was happily married and had a beautiful daughter, his brother would have to have very strong beliefs to give that up.

JAHAR's brother showed JAHAR a couple of issues of Inspire Magazine to give JAHAR a different perspective and to show JAHAR the truth of what was

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occurring in Afghanistan and Iraq. Inspire Magazine is well known - even America is aware of Inspire.

JAHAR's brother had previously talked about the events taking place in Iraq and Afghanistan, and the discussions would make both JAHAR and his brother angry. They had been having these discussions for a long time - ever since America first invaded. JAHAR is from Chechnya and people are dying there too, just as they are in Iraq, Afghanistan, and Syria.

JAHAR does not know what changed with his brother to cause the Monday of the Marathon to be the day his brother decided to carry out the attack. JAHAR pointed out that his brother was happily married and has a beautiful daughter.

For the past two years, JAHAR has been attending UMass-Dartmouth where he was studying to possibly become a doctor. Eventually, if JAHAR did practice medicine, he wanted to practice in his home country, not the United States. While he lived on the UMass-Dartmouth campus during the school year, he lived in Cambridge during the summers. JAHAR has had a different roommate each year at UMass-Dartmouth.

JAHAR participated in different sports, including wrestling, soccer, and boxing. His favorite part of boxing was beating people up.

JAHAR has a lot of friends at school and elsewhere.

JAHAR repeatedly inquired about that status of his brother. When asked what he remembered about the last time he saw his brother, JAHAR indicated that he did not remember much about that night other than a gun fight with the police. During the gunfight, JAHAR drove at the police. That was the last time he saw him.

During the second session, when being asked about the type of detonator used in the device JAHAR detonated, JAHAR asked to speak to a lawyer on multiple occasions. JAHAR was told that he first needed to answer questions to ensure that the public safety was no longer in danger from other individuals, devices, or otherwise.

ADMINISTRATIVE: Timeline of Interview

[All times are approximate.]

19:22 - Interview begins

DT-0008230

FD-302a (Rev. 05-08-10)



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20:05 - Break

20:35 - Interview resumes

21:05 - Break

22:35 - Interview resumes

23:20 - Break

01:40 - Interview resumes

02:47 - Break

06:00 - Interview resumes

07:05 - Interview concludes

DT-0008231

SEALED DOCUMENT

(1)

4/20

Jolie Don, Ed - no issues w/ questioning
 Jhar on phenylol & and an
 antibiotic

Wrestler Soccer

Wanted to be a doctor at home

School umass Dartmouth
 been there 2 yrs
 living on campus

Roommate 1st yr
 2nd yr

Had a friend @ school, ^{for} all over
 went to parties @ school

Lived in Cambridge during the summer
 551 - 7th

Doesn't remember much

gun fight w/ Opa
 was driving @ the Cape - last he saw them

any other attacks planned → No

just @ 5:45 brother

just ~~the~~ no of my brother

(2)

who made the devices

me & brother

constructed a ~~device~~ ^{home}

4/10 Norfolk Apr 3

made 2 devices - threw them away

You said there were a lot

used to box - family's pants was beating people up

liked wrestling better

The devices were supposed to explode

it was easy

saw it in Inspire downloaded it

Had Dulaki - good guy

"we are all your friend"

used powder to build the bomb

powder came from fireworks

bought it a year ago in NH

both went

no other attacks planned

8:05 took break

8:35 started again

Jahan

③

~~you drive~~ drove to Boston on Monday around 2:30
came from Cambridge

① + brother

2 bags brown & black

⑤ had brown

brother had black

Parked 5 minutes away

walked to front line

doesn't remember who was closer to front line

① decided where to stop

① put the backpack down

walked away - (didn't say when)

only him & brother involved

no one else will get hurt

finger on button? & button

button was used to blow up backpack

that's how it was written up in magazine

9:05 took break

10:35 started

DT-0008080

John

4

phone call right before the explosion.

Called on iPhone

~~but~~ one wasn't intended to go off but
supposed to go off @ some time

had iPhone for long time. Had it whole time

can't remember who he talked

After marathon went home together

We told no one

② his brother's idea

Brother told him that day

Brother had them already. Only ^{bro} ~~the~~ knew when he made them

It was just a article

why? → America is @ war

Are you not killing innocents in Afghanistan?

This was their way of doing their part.

Why the marathon? No reason.

We really didn't know what was going to happen

⑤

Heard about the marathon & thought it
would be a good target

Why that day? ^{particular} No reason

Why the fireworks? Didn't know. Didn't ~~big~~ buy that
many fireworks.

Bro didn't talk about other devices. No one else knowing of
the plan.

Bro traveled ~~to~~ ^{home} about a year ago to see family.
Bro didn't talk about what he did there.

Didn't know where Bro learned to build the devices.

Bro showed him Inspire to give ⑤ different perspective to
show him what was going on in Afghan & Iraq.

Even America talked about Inspire.

Brother talked about stuff going on in Iraq & Afghanistan before.
It was all an operation of course. Made ~~him~~ ^{him} angry.

Been talking about it since America invaded.

~~Did~~ Did ⑤ tell his bro or bro tell ⑤

Can't deny the truth. From Chechnya perspective there, too
Same as Iraq, Afghan, Syria.

(6)

Q Did something change to make Monday the day?

No idea - he was happily married, beautiful daughter

Wife had no clue. Her work schedule (7am - 10pm)

kept her out of the house

She didn't know about the fireworks or nothing. She is innocent. She is an American w/ an American family.

You're trying to have an innocent woman and it

Texts after bombing were just casual "hey what's up" to friends in Boston from BU. Making sure they were okay.

Asked if he heard what happened - friend was Brandon from BU - for it was in news so friend said yes.

① was pretty like nothing happened. It was Monday. I had school Tuesday so it was just a regular thing.

I bought a trouble phone one month pre-paid. So I had no other contact besides my bro on that phone. ^{a couple days before the attack}

Regular iPhone 5 was shut off b/c ① didn't pay the bill.

It was a shared plan & ① didn't pay the bill.

↑ w/ college friends

iPhone 5 was ^{his} so he could send msgs w/ wife

⑦

only reason ③ bought the iPhone etc he needed a phone - iPhone was shut off.

Didn't contact anyone by iPhone - still shut off.

Needed the phone to coordinate the attack on Monday.
Bro discussed the plan a few days before &
told ③ to get phone. 1 day plan.

Already had the phone but bought a new plan.

fast break @ 11:30 pm

1-1/2

Brother didn't go overseas for training. Just went to visit family. He hadn't gone overseas in a long time.
As far as ③ knew, it was just a visit.

③'s & Bro's parents were in Massachusetts.
Mom & Dad got tired of America and returned home.

Bro ~~left~~ left first. Dad left. Bro returned after 6 months.
Mom left last September.

Bro never talked about where he had been there.

⑧

weren't going to MIT to plant device, They were trying to go to Ally. Bro's idea - ⑧ didn't know.

In the car they had a gun, some food, couple of the mini bombs. Just like the devices ⑧ made them w/ his bro.

Mini bombs were easier to make. The bigger ones took a few days. They made the mini ones on Thursday.

They made the mini bombs to cause more damage to the people. Mostly cars who weren't on Ally.

Made the mini ones 'co they didn't have ~~the~~ home pressure cookers to make bigger ones. Didn't know who decided to leave.

How do you feel about Monday? - America is at war is it not. My people are dying.

America is killing people overseas, they need to feel the same pain. No one knew before & they didn't tell anyone after.

Didn't warn any of his friends to stay away from the marathon. Didn't care if they got hurt.

Only reached out to Dandy to see what people thought of the bombings. Imaged Bandy - didn't text.

⑧ texted Bandy first - Bandy did not initiate the text. Only brother had the new #.

DT-0008085

③

MIT police officer happened to be ~~there~~ where ever
 ③ & his brother happened to be.

The gun they had on Thursday was both theirs. Didn't
 remember ~~at~~ how long they had it - they found it in a
 car in a parkland.

John

The min. bombs ~~had~~ had a fuse & they used a lighter. They
 looked up ~~the~~ the instructions on the internet. They just
 searched "bomb". Didn't use ③ or his computer to look up
 the stuff.

They didn't test the bombs before Monday. They didn't know
 if they would work or not.

They used the bombs against ~~cars~~ cars. You pretty much have
 made more bombs & done more attacks until they got caught.

~~What if~~ Inshallah they would have died shahid.

paused @ 2:47 on

6:00 am

What changed in ③ & Tawaleene's life to bring them
 to Monday? Don't want to answer that. What's
 done is done. Aren't we at war?

(10)

You guys came at a bad time given his injuries.

What made J & S bro do Monday's attack - the promise of heaven. Answer at Aslali ~~bro~~ is pretty convincing.

At ~~the~~ I finally became ready. Not every Muslim is inspired. But we there are those that are, we are able to ~~protect~~ ^{or people} protect our religion. I don't know if you have any knowledge of the mujahideen, but we are promised the highest levels and when we die we die with smiles on our faces.

Yes my brother did offer me to follow along with him and I very much wanted to.

Who convinced your bro? You gotta talk to God in this one buddy. There's no one else that convinced him, the man had a wife & daughter. How much do you have to believe in something to give that up?

There is no one who inspired them - only online speakers like Aslali and Magzinov like Inspire. J's brother was inspired by no one other than those articles. They got the plans ~~from~~ ^{from} Aslali & Magzinov from Inspire.

~~He~~ J & S got the plans from Inspire but he figured out the rest on his own. As hard as that may be to believe he did it all by himself. ~~It~~ He had Allah by his side and things went well.

DT-0008087

(11)

I was aware of bro's plan ahead of Marathon. Not too far in advance because bro had to keep it a secret from his wife.

I thought he was going to die Monday. He wore his vest backwards, just a hoodie. Monday just happened. They didn't plan to die, just thought it was something that might happen.

They didn't do it to glorify themselves. They thought ~~that~~ they might die regardless.

Need battle? Had a standoff w/ cops. After the 25 min. kid got away, it became clear.

They knew there were cameras and they knew they were going to get caught. So they decided to act on Thursday. Nothing planned - just improvisation.

I don't look for others to join them after Monday. They knew it would take a couple of days before they got caught. Maybe only a day or two, they told ~~them~~ no one. Who a true gunman agrees to that.

At some point

They didn't include others in the plan b/c they couldn't trust anyone else.

^{second} ^{prison} ① learned about the plan about a week before.

They built 2 and used 2 devices. They put them together that Monday morning - it wasn't hard.

DT-0008088

SEALED DOCUMENT



FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/22/2013

DZHOKHAR TSARNAEV, also known as JAHAR, date of birth July 22, 1993, was interviewed at Beth Israel Deaconess Medical Center, 330 Brookline Avenue, Boston, Massachusetts 02215. Immediately prior to the interview, Taylor Wright, RN, informed the interviewing agents an interview of JAHAR would not pose a medical risk to him, she was not aware of any brain injury suffered by JAHAR, and that his only medications were an antibiotic and phenatyl, neither of which, at their current dose, would inhibit his mental faculties. After being informed of the identities of the interviewing agents, JAHAR confirmed he could hear and understand the interviewing agents, could respond to the interviewing agents, and was not experiencing overwhelming pain, and verbally provided the following information:

JAHAR and TAMERLAN wanted to target some event that would have the most impact on America. They both felt America had been killing innocent people ("innocents") for a long time. The articles they read in Inspire Magazine motivated them to act. JAHAR hoped their actions would motivate other Muslims to conduct attacks in the future.

Originally, they planned to detonate bombs at a July Fourth event in Boston and thought it would take longer to construct devices for such an attack.

However, since they were able to complete the bombs ahead of schedule, they decided not to wait until July to conduct an attack.

Only JAHAR and TAMERLAN were involved in the planning, procurement, construction, and detonation of the different devices. JAHAR explained how he and TAMERLAN constructed three devices consisting of a pressure cooker containing BB's and nails. Glue similar to super-glue was used in plastic bags to keep the BB's and nails from bunching at the bottom of the bag.

They used the powder from fireworks as the explosive and used a Christmas tree light with the top of the bulb removed as the igniter.

Two of the devices used detonators made from the remote control unit of a remote control car. It was JAHAR's idea to use the remote control assembly from a toy car, and TAMERLAN was able to improve upon it by modifying the control assembly so that it would fit in one's pocket. The third device used a pressure cooker with a fuse as the ignitor instead of a remote control detonator.

Investigation on 04/22/2013 at Boston, Massachusetts, United States (In Person)File # [REDACTED] Date drafted 04/22/2013by Gregory T. Hughes, Matthew T Dowd

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Each fully constructed device was contained entirely within the pressure cooker. The devices used in the marathon attack were placed in backpacks solely for concealment, and one did not have to rely on any components in the backpack to detonate the device.

JAHAR purchased the remote control car components in the two pressure cooker devices used at the marathon online about one month before the attack. It took a little bit of time to get used to adjusting the remote control's configuration, and both JAHAR and TAMERLAN tested the ignition system to ensure the Christmas light came on.

The powder came from \$200 worth of fireworks JAHAR and TAMERLAN purchased in New Hampshire. They received a two-for-one discount from the store because of the size of their purchase. The fireworks kits they purchased filled the back seat and trunk of JAHAR's car. TAMERLAN made a separate trip to purchase additional fireworks after the first purchase did not yield enough powder. The initial purchase included different types of fireworks while the second purchase was all the same kind.

TAMERLAN purchased the pressure cookers, and bought the other components for the pipe bombs from Home Depot.

JAHAR and TAMERLAN constructed the devices in TAMERLAN's apartment, located at 410 Norfolk Street, Cambridge, Massachusetts. TAMERLAN's wife, Khadima, worked long hours as a type of housekeeper or home aide, a job she obtained from JAHAR and TAMERLAN's mother after she left the U.S. to return home.

Given Khadima's long work hours, JAHAR and TAMERLAN were free to work in the Norfolk Street house without fear of discovery.

Working the powder from the fireworks was very time intensive. For a time, the two of them would crush fireworks nearly everyday, usually at the house, and it took them a couple of weeks to gather enough powder for the devices. JAHAR and TAMERLAN would hide the materials for the devices under JAHAR's bed. When Khadima was at home, the two would work on the fireworks in the van or JAHAR's car. JAHAR and TAMERLAN did not mix the powder from the fireworks with anything else.

Since he had a roommate and little privacy, JAHAR did not construct any explosive devices in his college dorm room. However, he did leave behind one firework that he claimed was just to have some fun with by lighting off at some point.

TAMERLAN did most of the work on the devices while JAHAR was at school.

JAHAR did not see TAMERLAN use any instructions as he constructed the devices. TAMERLAN was able to do it from memory as he is very smart.

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On Friday (April 12), JAHAR and TAMERLAN conducted site surveys of possible targets, including police stations in Cambridge and Boston. No one helped them identify or select possible locations to attack. Around 3pm or 4pm on Friday afternoon while driving around and exploring possible targets, the brothers learned that the Boston Marathon was scheduled for Monday.

On Saturday (April 13), TAMERLAN came to the decision to target the Boston Marathon.

On Sunday (April 14), JAHAR and TAMERLAN began constructing pipe bombs ("mini-bombs") at 410 Norfolk Street. The brothers filled the pipes with powder and BB's but did not drill the ends for the fuses on that day.

JAHAR worked on one pipe bomb while TAMERLAN made three or four of them. They put all the unfinished pipe bombs in a bag in JAHAR's closet.

The next morning, Monday (April 15), TAMERLAN finished assembling the two pressure cooker devices to be used for the marathon. The process took about two hours. JAHAR watched while TAMERLAN did the actual assembly.

TAMERLAN did not refer to any instructions or web sites while completing the assembly. It was all from memory. After finishing, TAMERLAN placed each device in a backpack.

TAMERLAN drove the two of them in JAHAR's Honda Civic from Cambridge to Boston that Monday afternoon. They transported the backpacks in the trunk of the car. They found street parking in a "permit parking" signed area near the marathon route. As they had done no site survey, they did not have a specific place in mind where they wanted to set off the bombs. As a result, they walked around for about fifteen to twenty minutes before TAMERLAN settled on their final spots. They had to move at least once when a police officer appeared to be interested in them. TAMERLAN did not have a definitive plan to detonate the bombs by the finish line - it just worked out that way.

After detonating his device, JAHAR took the detonator (the modified remote control car controller) with him as he left the scene. He made sure he threw it into a trash can he passed on his way back to his car so no one would be able to find it.

It took about fifteen minutes for JAHAR to get back to the car. He arrived first, and TAMERLAN, who had the car keys, arrived about five minutes later. On the way back to Cambridge, they stopped at a Whole Foods for JAHAR to buy some milk. They were observing the Muslim tradition of fasting on Mondays and Thursdays and needed milk to break the fast. They were almost home when TAMERLAN remembered that he needed a cardboard box to complete the assembly of the third pressure cooker device. JAHAR and TAMERLAN then drove the four minutes to Yayla's to get the cardboard box.

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The two then returned home to Norfolk Street and stayed there until they met Manatov for dinner.

At some point on Monday afternoon, TAMERLAN had a conversation with Manatov during which TAMERLAN invited him to dinner. Later that night, JAHAR and TAMERLAN met Manatov for dinner at a halal restaurant in Somerville. The dinner conversation touched on the marathon bombings, and they all agreed that it was a crazy day. Neither JAHAR nor TAMERLAN told or indicated to Manatov that they were involved in the bombing. Manatov had worked driving his taxi that day, but JAHAR did not know where in the Boston area he worked.

JAHAR stayed at the Norfolk Street residence Monday night, but he left for UMass Dartmouth late in the morning on Tuesday (April 16). Prior to leaving the house, he moved the bag with the unfinished pipe bombs from his closet to a better hiding spot under his bed. He told TAMERLAN he moved them before heading to school.

JAHAR stayed at UMass on Tuesday and Wednesday night. He did not attend any classes on those days, but he may have attended one class on Thursday.

JAHAR made many calls and sent many texts during this period, but they were to social contacts only. He was simply checking up on friends or making arrangements to grab lunch or dinner. None of the people he contacted were involved in or aware of what he and TAMERLAN had done. On Thursday night, he contacted some of these same people to give away his laptop and other items in his dorm room as he did not expect to survive.

When JAHAR saw news coverage containing their photographs at around 5pm or 6pm on Thursday (April 18), he knew "it was the end" and decided he wanted to "cause some damage" before they got caught. After seeing the news, JAHAR called to warn TAMERLAN, and he told JAHAR to leave school and come back to Cambridge. JAHAR thought Khadima and the baby were also home at this time. During a subsequent conversation, TAMERLAN told JAHAR to meet him at Yayla's. When JAHAR met up with TAMERLAN at Yayla's an hour or two later, the two came up with a quick plan to gather up the rest of the bombs and drive around. Both JAHAR and TAMERLAN then drove in separate cars to the 410 Norfolk address.

TAMERLAN waited downstairs while JAHAR entered the residence at around 8pm. The television was not on, and Khadima was in the kitchen cooking. The two exchanged a quick greeting, and JAHAR then retrieved a duffel bag loaded with the now-completed pipe bombs from under his bed before returning to his car. JAHAR did not know where or when TAMERLAN finished the pipe bombs.

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JAHAR did not know where TAMERLAN kept the third pressure cooker device nor where he kept his handgun. At the time of their meeting at Yayla's, TAMERLAN had already collected the now-completed third pressure cooker device and his handgun. JAHAR did not know where or when TAMERLAN finished the third device. When JAHAR returned to the vehicles with the duffel bag of pipe bombs, TAMERLAN had already transferred the pressure cooker and handgun from his to JAHAR's car. At some point, JAHAR retrieved his BB gun, as well.

After JAHAR came back down from the apartment, TAMERLAN went up to the residence to retrieve the title to his car. He had decided, since he expected to die that night, that he would give away his car to his friend, Viskhan Vakhobov. They planned to drive to Chelsea to drop off TAMERLAN's gray car, but Viskhan told TAMERLAN he could not meet at that time.

After leaving the residence, the two rode around Cambridge without any sort of plan. TAMERLAN drove. JAHAR kept his T-Mobile phone on, but, since, only TAMERLAN had the number, no one called him. TAMERLAN turned his phone off.

They decided that their first priority was to get a gun for JAHAR. As they drove around, they happened to wind up in the same area as a Massachusetts Institute of Technology (MIT) police officer, so they killed him to get his handgun. However, JAHAR was unable to get the handgun from the officer's holster, and when the area started to get crowded, the brothers moved on, driving toward Brighton or Watertown.

After killing the MIT officer, they carjacked a Mercedes SUV and forced the car's Asian driver to ride with them. The Asian individual drove his car while TAMERLAN sat in the back seat. JAHAR followed in his own car. TAMERLAN turned his phone back on so he and JAHAR, who had kept his phone on, could communicate while in separate vehicles. JAHAR did not know if Khadima ever tried to or successfully reached out for TAMERLAN.

The two cars made their way to Watertown, and TAMERLAN decided to leave JAHAR's car parked on Dexter Street. They parked JAHAR's car and moved the bags with the bombs to the Mercedes. JAHAR noted he had a few Chechnyan friends in Watertown (and other places), but none of them were involved.

It was TAMERLAN's decision to go to Dexter Street. They did not stop at any particular location on Dexter Street; they were simply looking for a quiet street on which to leave JAHAR's car.

The three of them drove around for a while longer as JAHAR and TAMERLAN were trying to figure out what to do. They drove the Asian individual to different ATMs to withdraw money out of the his bank account. They had him withdraw around \$700 in total. They planned to use the money to pay for

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gas as an idea developed to drive to New York City to bomb Times Square.

Both JAHAR and TAMERLAN had been to New York City a few times, but neither had spent much time there. They did not contact anyone in New York nor did they plan to meet anyone in New York.

During their wanderings, they returned briefly to JAHAR's car parked on Dexter Street in Watertown to retrieve their favorite Muslim music compact disc. Ultimately, the Asian individual (who "was pretty fast") escaped from the brothers during a stop at a gas station. Once the Asian driver escaped, the brothers abandoned their loose plan to drive to New York.

After JAHAR escaped from police in Watertown, he hid behind a garage underneath some chairs. While he was hiding, he smashed both of his phones to prevent the police from finding his location through his phones. Before sunrise, when he began hearing aircraft above him, JAHAR moved into a covered boat near the garage by which he was hiding. During the day on Friday, JAHAR heard police cars drive by the area where he was hiding, but no one searched the boat.

JAHAR did not know from where TAMERLAN obtained his handgun but thought he bought it a few months ago.

JAHAR loved both of his parents, but he loved his mother more.

JAHAR recognized an unlabeled photograph of Dias Kadyrbayev as his friend from school. He described him as a "dumbass." JAHAR had a conversation with DIAS about religion, how people make bombs, jihad, and the ways of the world. JAHAR stated that the conversation was not related to the attacks he and TAMERLAN conducted because it was meant as a broader discussion of religion.

JAHAR recognized an unlabeled photograph of Saya Murzalina as Dias' mother.

JAHAR recognized an unlabeled photograph of Bayan Kumiskali as Dias' girlfriend.

JAHAR recognized an unlabeled photograph of Azamet Tazhayakov as his friend from school.

JAHAR recognized an unlabeled photograph of Robel Phillipos as his friend from school.

JAHAR recognized an unlabeled photograph of Timor Muglante as Timor from Kazakhstan.

JAHAR recognized an unlabeled photograph of Ibragim Todashev as Ibrahim

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from Chechnya. Ibrahim moved to Florida about two years ago.

JAHAR recognized unlabeled photographs of Stephen and Steven Silva.

JAHAR recognized an unlabeled photograph of Hawa Umarova.

JAHAR recognized an unlabeled photograph of Magamed Imakaev.

JAHAR recognized an unlabeled photograph of Maret Tsarneava as his aunt.

JAHAR recognized an unlabeled photograph of Israpil Vakhobov, a Chechnyan and long time friend.

JAHAR recognized an unlabeled photograph of Viskhan Vakhobav, Israpil's brother.

JAHAR recognized an unlabeled photograph of Troy Crossby as Troy, a rapper friend living in Chelsea.

JAHAR recognized an unlabeled photograph of Aindi Alvi Tsarni, his cousin who lives in Washington, DC.

JAHAR recognized an unlabeled photograph of Khairullozkhon Manatov, a friend of his and his brother's and a taxi driver who lives in Quincy. JAHAR met Manatov at the Islamic Society of Boston in Cambridge. They met before TAMERLAN went overseas. Manatov is not married, and JAHAR sometimes plays outdoor soccer with him on Sundays in Newton.

JAHAR did not recognize an unlabeled photograph of Ali Khan Datsaev.

TAMERLAN traveled to Russia in 2012 to see extended family and study Islam. His wife and daughter stayed in the US during the trip. Although it was a long time to be apart, JAHAR did not know why TAMERLAN's wife and daughter did not travel with him. During his trip, TAMERLAN traveled to Chechnya, maybe Grozni, Dagestan, Kyrgyzstan, and Kazakhstan. TAMERLAN's Islamic studies on the trip were not through a particular school and took place in Chechnya.

TAMERLAN visited with family while traveling, including with the ex-husband of JAHAR and TAMERLAN's sister. The ex-husband, Ramzan (phonetic), traveled for a time with TAMERLAN during his trip. Ramzan had remained close with TAMERLAN and JAHAR. TAMERLAN would sometimes communicate with Ramzan via Skype but Ramzan never sent money to TAMERLAN and TAMERLAN never sent any money to Ramzan.

RAMZAN was a "cool guy." He lived near JAHAR and TAMERLAN's mother. JAHAR and TAMERLAN's mother was also close to RAMZAN. JAHAR had been planning to

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travel to Russia this summer to see his mother and other family. He expected to meet up with RAMZAN during his planned trip.

JAHAR did not know who else TAMERLAN traveled or visited with during his trip because they each have their own set of friends. JAHAR's relations with his brother were generally good. TAMERLAN was usually right about things, and JAHAR looked up to him.

TAMERLAN spoke to JAHAR about his trip, telling him that it was a good trip. TAMERLAN told JAHAR that the authorities watch out for terrorists and will kill you if you are a dedicated Muslim.

JAHAR believed TAMERLAN returned from his trip a better Muslim. He encouraged others to do a better job practicing their faith (e.g. praying five times a day, etc.) TAMERLAN also went into greater detail with JAHAR regarding the responsibilities of Muslims to defend their religion. JAHAR emphasized he was the only one with whom TAMERLAN had these types of conversations.

JAHAR has a Twitter account the tweets of which appears under the username @j_tsar. JAHAR recognized a printout of a posting he made in August 2012 regarding the marathon. It did not mean anything as JAHAR had not decided to target the marathon until shortly before the attack.

JAHAR did not recognize the name Barry Maimone, Dillon Mess, or anyone named Zubat.

ADMINISTRATIVE: Timeline of Interview

[All times are approximate.]

17:35 - Interview begins

18:35 - Break

19:55 - Interview resumes

21:18 - Break

21:45 - Interview resumes

22:30 - Break

22:45 - Interview resumes

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23:20 - Break

01:25 - Interview resumes

02:15 - Break

02:32 - Interview resumes

02:45 - Break

04:37 - Interview resumes

05:20 - Break

06:50 - Interview resumes

08:05 - Break

08:24 - Interview resumes

09:00 - Interview concludes

DT-0008240

SEALED DOCUMENT

4/21

①

5:35 pm

device - pressure cooker

BB's

black powder from fireworks

steering wheel on the remote

christmas tree light igniter

(practised before you get good)

Tamerlan manipulated the remote

removed the powder from the fireworks

@ the apartment 410 Norfolk

Honda

Honda

van

Karima (Kathryn) would use the black Honda more than the van. They would use the van.

Mom works housekeeping.

they would crush up the fireworks every day mostly at the house.

Had the stuff under the bed

took a couple of weeks to gather enough powder

brother bought the pressure cookers

He ~~the~~ ^{bro} ordered the remote control cars online

took a little bit to get used to adjusting the remote control - tested to see if the light went on

Never did ~~any~~ ^{build} any devices at the dorm room
left behind one framework.

Thursday

~~He got the SUV~~

① Saw his face was on tv knew it was the end so he wanted to ~~to~~ cause some damage

Mercedes

SUV w/ Asian kid. Drove ~~around~~ around for

a while trying to figure out what to do.

② → went back to ①'s car to get a music cd.

① → tried to get ~~it~~ out of ~~the~~ Asian's bank account → \$700

Needed ~~it~~ to pay for gas to get to NY - was

going to bomb Times Square

Had different bombs on Thursday than ~~Friday~~ ^{monday}
~~Source~~. Needed to set these off w/ a
 fuse & lighter.

Had a pressure cooker w/ fuse

had a gun - a Ruger

⑦ had a BB gun - lost it that night
 mini explosives - these were on impulse
 ↳ ⑦ threw one that ~~didn't~~ explode

² had phones w/ him but destroyed them so
 they couldn't be tracked.

tried to get a gun since they only had the ruger
 so they found the M19 cup and killed him to get
 his gun. But ⑦ couldn't get the gun out.

Brother had been to NY but neither spent

much time there.

~~Has~~ ^{Has} Chechen friends in Watutorn & other
 towns, but they were ^{not} involved.

(4)

(1) was going to Russia this summer to relax.

Bro traveled to Russia to see family. Dad went back while he was there.

Bro's wife & daughter stayed back. (5) didn't know why they stayed back.

Bro went to Chechnya, maybe Grozni, maybe Dagestan, Kyrgistan, Kazakhstan.

Bro ~~was~~ ^{was} studying Islam there. Last time he talked to

6:35 pm

(5)

7:58 resume

took the surge device w/ him and
~~tossed~~ tossed it in a trash can so it wouldn't be
noticed.

Short walk back to the car. Parking spot
on the street. ^{permit parking} Green Honda Civic.

Met back @ the car. (J) got there first.

Went home & chilled.

~~Drove~~ Drove to marathon w/ backpacks in the trunk.

only (J) & brother sound the fireworks themselves.

Originally plan was to target July 4th but

they happen to finish by then. ~~Decide the~~

Decided Sunday before to target marathon

⑥

was walking & a police officer was watching them. Didn't intend to target the finish line. Bro decided on the spot.

10-15 min total walking around finding a spot to leave the backpacks.

Wanted to target some event that would have the most impact on America.

Ben feeling that America had been killing innocents for a long time.

Insipid articles motivated them to act.

They thought it would take a much longer time to complete the devices.

we got the remote controls a month before the marathon.

Ordered the remote control cars online about a month before the marathon.

(7)

bought ^a 200 worth of fireworks in NH one time. Got a 2 for 1 deal on the purchase.

Didn't mix ~~the~~ the powder w/ anything. Only source of powder was the one purchase of fireworks from NH.

Tried to get a hand gun from the MIT cap but couldn't get it out.

Then drove around to Brighton or Waterbury.

They didn't stop by any addresses. Didn't know anyone on Dexter St.

Just driving around in J's black Honda. Bro takes the Asian kid's Mercedes. Loaded all the stuff ^(bombs) from the Honda to the Mercedes. & ~~the~~ realized they forgot the CD & had to go back to get it.

(8)

Met out w/ Monfau on Monday night
@ a halal restaurant

I was still @ school on Thursday when
he saw L's picture in the news. Drove home
brother had already left the house - ~~they met~~
~~up the stairs~~. I picked up the stuff and
caught up with his brother.

Bro called Vishkan to give away his
car.

9:18 break

9:45 resume

I didn't know where the gun Ryan
came from. Bro got it for a few
months.

(9)

Bro kept in touch w/ their sister's
husband w/ skype. Named Ramzan

Bro had his own friends. (J) didn't know
them

They didn't send him \$ he didn't send
them \$.

Bro told him it was a good time. They
watch out for terrorists. If you are a
dedicated Muslim they will kill you.

Bro was studying Islam. Didn't know anyone
he traveled with.

Bro returned from Dag. a better Muslim
would share his knowledge of Islam (prayer
5 times). w/ (J) he would ~~also~~ ^{share} more - opinions
about Islamic duty to fight, only did that
w/ (J)

(10)

Bo bought more fireworks on his own
a second time, different stuff. Test the
two purchases.

Names: Dillon Moss

① loves both his parents

② was explaining w/ Dias about how
people make bombs, the ways of the
world

10:30 pause

10:45 resume
photo's

11:20 pause

(11)

1:25 am resume

Backpacks were just concealment. The devices ~~were~~ could have been detonated outside of the backpacks.

① saw the photos before bro. ① called ~~bro~~ bro who told ① come home grab the little bombs which were hidden under ~~the~~ ^{①'s} bed.

Bro bought the components for the mini bombs

① Home Depot. Bro kept the ~~the~~ 3rd pressure cooker bomb and the pistol somewhere unknown to

①. ① had moved the ^{mini} items from his closet to under the bed.

① & bro worked on making mini bombs on Sunday. They weren't complete - they didn't have the fuses. They only had a short window of time only about 30 minutes before Kathy came home. After filling them, ① put them in his closet.

(12)

~~Bro~~ (S) & Bro assembled the ~~the~~ devices on Monday morning in about 2 hours. Bro put them in the backpacks. (I) pretty much watched.

I stayed @ Norfolk on Monday night & left for UMASS on Tuesday morning (late). (I) didn't go to school on Tues or Wed. He went to one class on Thurs before heading north to Cambridge.

2:15 am pause

2:32 am

Described how to construct a pressure cooker bomb.

2:45 am

(13)

4:37 am

ij-tsar twitter posting ~~it~~ The
posting re. the marathon last August doesn't
mean anything. ① ^{decided to} hadn't ~~forgot~~ the
marathon until a few weeks ago.

① did not recognize Barry Min

① had no clue who was in contact with
bro on Thursday

① ~~didn't know~~ but didn't think
bro's wife ~~didn't~~ contacted bro on Thursday

People use skype ^{all the} ~~the~~ time to call overseas.
Bro was in contact via skype w/ Ramzan.
He was a cool guy - he was near Ben's mother.
He traveled w/ Ramzan probably during his
o/s trip. travel to Chechnya, & other places.

(14)

①'s relationship w/ brother was good. He was usually right. ① looked up to him.

Bro was strict muslim e.g. no shorts.

Bro first talked to ① about the attack about a month ago. ① was surprised.

~~①~~

① did not recognize the name Zubad.

① & Bro met @ Yala on Thursday. After they met, drove their own cars back to house to pick up the non bombs. Bro already had the 3rd pressure cooker bomb & the gun.

Then they dropped off Bro's car & drove around Cambridge w/out a real plan. Bro drove.

① needed a gun so they went to after the hit cop.

(75)

Bombs were ~~there~~ assembled in the house.

① just watched while Bro put it together.

Bro practiced ~~after~~ w/ remote control car to make the detonator work. ① was e school.

① acknowledged playing around w/ cars. That equipment gets put in the device.

On Monday, ① had the trigger device in his pocket. ~~Bro~~ Bro trimmed down the remote so it could fit in his pocket. Bro did work while ① was in school.

~~Bro~~ Bro did most of work while ① was in school but ① did see Bro work on the remote and the Christmas lights, ~~see~~ ① saw Bro working on the Christmas weeks & taking the car apart a few weeks before the attack.

(16)

①'s name was Elmo.

passes 5:20 am

resume 6:50 am

Thursday night - ① See's pictures around 5/6 pm
 gets to house between 7 & 8. ^{after meetin Bro @ yala.} Kadima & baby
 at the house. ^{Grabs} Mini-bombs in a duffel and
 leaves. Just a quick hi to Kadima. She was in
 the kitchen - no one was watching the news. News
 wasn't on.

3) Think
 Bro was @ home w/ Kadima when ① first
 called. ~~the~~ ① starts north - on way ① & Bro
 talk on phone again - Bro tells ① "Come to yala real
 quick." Met @ yala to discuss what to do next.

(17)

Quick plan was to gather the rest of the bombs
and stare around.

Tamman was going to give away his
gray car. They were going to drive to Chelsea
to drop off ~~the~~ Tamman's car but Kshikan couldn't
meet at that time. Jump into (J)'s ~~the~~ son
Honda - Bros driving. Goes to MIT to get
gun. Can't get the gun. (J)'s driving.

(J)'s Timobile phone is on but only Bro B was #.
Bro S phone off.

Get the Asian kid's ^{Mercedes} car. Bro ~~the~~ rides
back seat of Mercedes. (J) follows in his car.

Planes on to stay in touch.

No calls w/ anyone.

on Friday Bro & (J) cased sites around Boston,
cased briefly Cambridge PD and some other police
stations.

(18)

3 pm / 4 pm drove around Boston looking
at a few places. No one helped them
check the locations.

8:05 pm

8:24 pm

① gets to car ~~car~~
15 minutes after the blast. 5 minutes later Bro
drove. Went to Whole ~~Food~~ Kinds to buy milk

Almost home, Bro decides to stop @ Yala
to pick up a cardboard box for the 3rd pressure
cooker. Stayed home until Monahan came over.

~~Monahan~~

① ~~Monahan~~ met Monahan first. at DB
on prospect. met him way before Bro went
a/s. Cab driver lives in Quincy. Not named
① plays outdoor soccer in Newton on Sunday
afternoons with him.

(19)

~~Agree to~~ Mmmmm goes to 1500 on
Fridays. Good friends w/ Bro.

Dexter St: Took the Civic to Dexter Street
and had to go back to the car a few
times. Bro decided that was the street
to ditch the Honda.

Monday night dinner w/ Mmmmm. Discussed the
news about the bombing - all agreed that's crazy.

9:00 am

SEALED DOCUMENT

40 Norfolk

Cambridge

410

DT-0008092

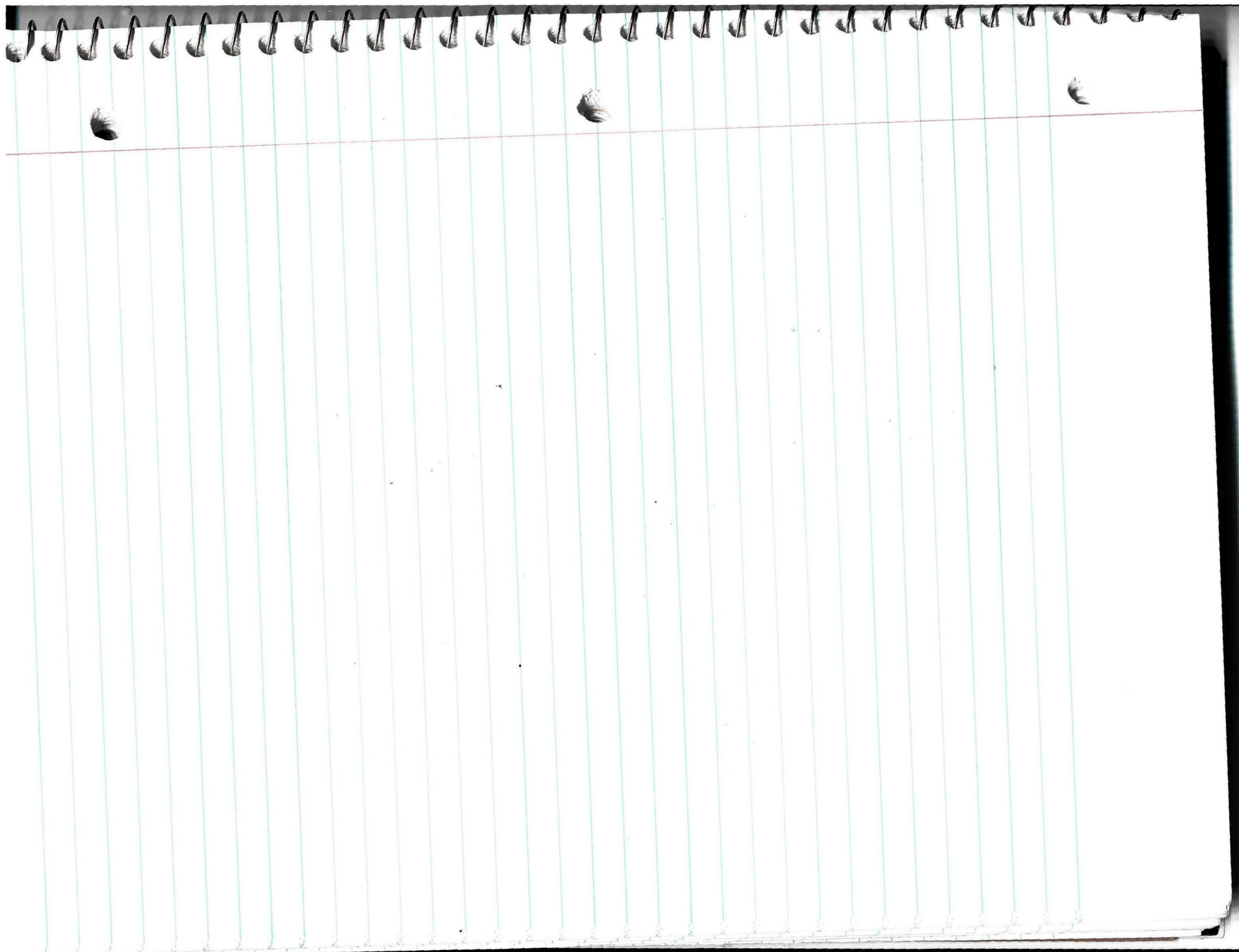
he threw them away
r/ly

We mad
you gus 2

were 4 lol said there

is it me or do
you hear some noise

you ever see
inspire
you gas are
willing sub
up re 9x whr my friend
people



DT-0008096

DT-0008097

Can I drink
water?

Mr. A
Mr. I

can we do this

after

to
be
a
copy
of
the
original

I am tired,
leave me alone
I want h

h

lawyer
~~please~~
let me
rest

human
rights
lawyer
human
rights

~~lawyer~~

lawyer
am exhausted

you
gonna let
want it.

No one
will

get
hurt

said
me

you were
sleep.

listen buddy
I know my rights
No one is at risk
No surprises and is always
and always was

Ick

What don't you
understand

Hopefully no one will get

hurt, no bombs relax

I want to sleep, and a

lawyer

NO

lawyer plz

I don't have to answer
that now man, let me
sleep.

lawyer

No one will die

lawyer

Then wait

Keep your pants

You already said that

No one is in trouble.
I got nothing else for you.
guys relay I'm telling you.
Mans promise. shake on it.

listen fellas, let

No one else is involved

~~ag~~

did you guys ask the
cops that were fighting us?
what happened

g

What cas?

Where is my
bro?

There were only 1.

There were no other 2
America lying.

7

DT-0008112

I answered your question

Do you have my bro?

I had no gun
a bb, what ?//? I had

I need to throw HP

I don't remember

The all was a check up

Home

None

Bro

Living time

Just me and him
She was at work

He had them
Only he knew that day

we told no one

my (bro) and I



It was just
an article.
America is at war is it not?
Where are your troops?
are you not killing innocent
people in Afghan, Iraq,

We really didn't know
what was gonna happen
I heard about the marathon
though it would be
we didn't buy much

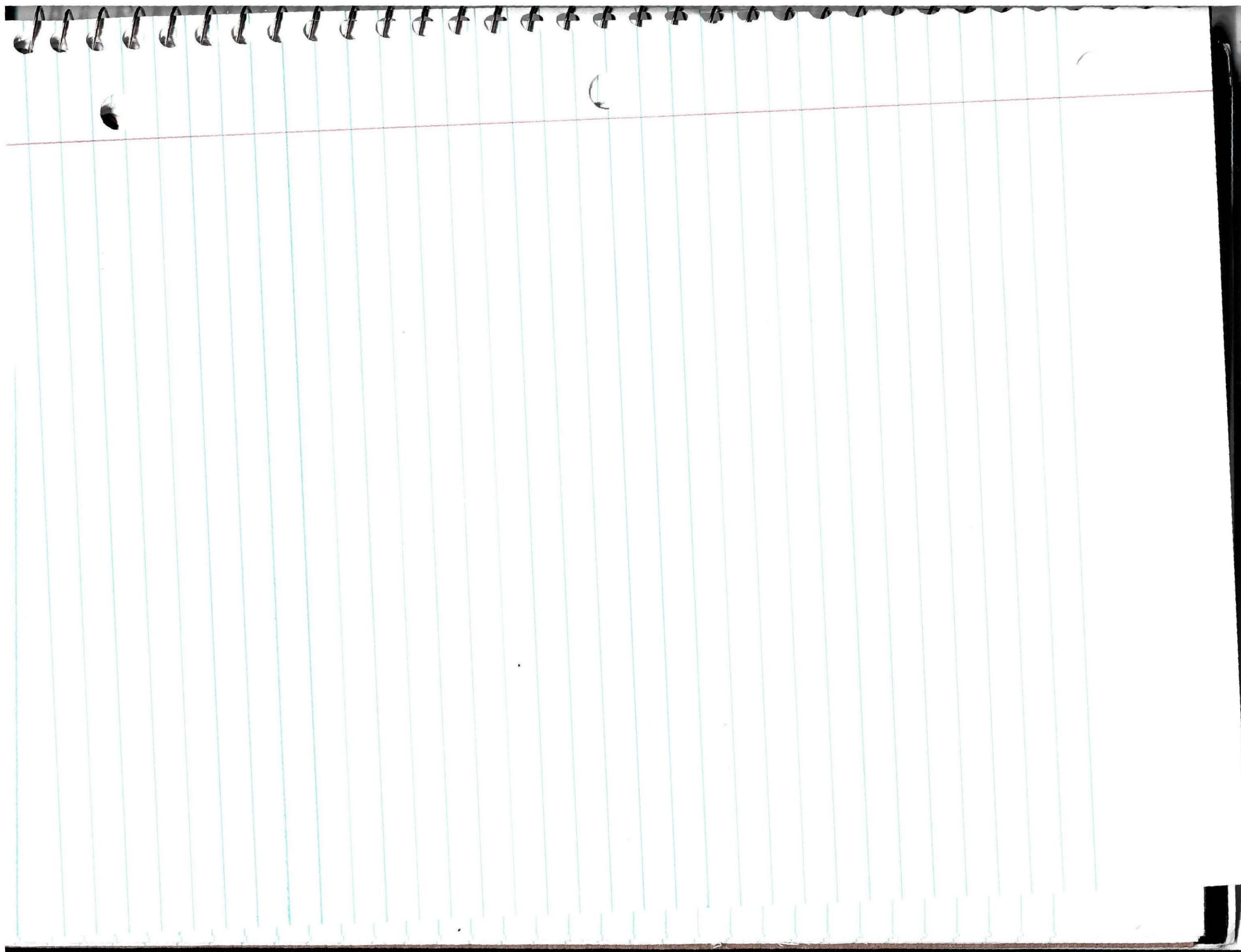
like a year go
6 month

It must just an
~~Islamic~~ learning for me
to know the different ways

It was for me to know
what was going on in
Iraq, again
Different perspective

Even America talked about it

DT-0008123



DT-0008124

DT-0008125

DT-0008126

~~the was~~ "Well, it was an
opinion of course, innocent people
dying, since America invaded

Can't deny the truth
I'm from chechnya man, people
die there too same as
Afghanistan, Iraq, Syria

No idea.

He was happily married,
beautiful daughter
she had no clue, her work
schedule is ~~isn't~~ kind out,
she works everyday from 7am to
10pm

yes,

She didn't know about
the fireworks or nothing

she is innocent, she's an
American with an American
family. Sh

Oh please, you're trying to
have an innocent woman
arrested

Just casual texts like
what's up man? You ok?
Friends that live in ~~boston~~
My friend goes to BU. just making
sure he was safe

I asked yo man u hear
what happened?

He said, at this point it was
on the news so he said yea

A friend that goes to BU ~~U~~.
Buddy Buddy, friend of mine

Then I think I was telling
like nothing happened

I was just texting, it was
monday, I had school tuesday
so it was just a regular thing
I bought a ~~trio~~trio 1 month
prepaid, so I really had no other
contact besides my bro on that
my regular iPhone 5 was shut
off because we didn't, with my college
friends

Family plan,

line couple days before

iPhone 5 has iMessage so
you can send messages with wifi

to other iPhones, so I was
just texting

6

DT-0008134

Only reason I opened the
other account because my
iphone 5 d

I just needed a phone

My iPhone 5 is still
not because

my phone didn't work so he
said get one

It was my old phone, I just
bought a new

+ 5 red

showed me same day

Put the 5

No training

He just went to visit

All we know is family

No idea,

As far as I know
it was a visit

He hasn't
time

been in a long

My parents were here
I think; and then
my dad went and he
came back 6 months later
My dad and mom live in
Russia, I was here, my
sisters were here, and.

my mom was here,
then my dad went, Bro
came back, then Mom
left last September
Got tired of America, They
wanted to be in their home
land.
Bro went, Dad

BRO came, Mom

is my brother alive

I know you said he is
are you lying

Is he alive? - one person
can tell you that

Thats the one question
I had
till you answer my
question , answer again
I don't remember
look at me Im hurt

Is he alive,
show me the news!
What's today?
Where is he?
No, we didn't

were trying for Ny
Idk, A gun,
Some food, couple of
those mini, Both
Boo, what do you think

NO one IDK
Same yea I guess
At the house
more damage, ~~the~~
The people / mostly cops who
served in army

we didn't so
i don't know

Does it matter? who
No we just had em there

IDK, +ime I guess,
I had an important test
on wednesday, joking.
~~is~~ America is at war
is it not? I did what
is necessary, my people are
dying why dont you ask him

That is what America
is doing, you know that
true, No one knew
~~None of my friends died~~
Don't care, I message
I asked him if he was
ok,

○ My my bro

He happened to be there
where ever we were
could be, hand, ours

I don't know, we found
it in a junkyard, in a car

a lighter,

we just did, internet
computer,

Bomb, any

I mean ye I got a computer

IDK, we didn't

I mean, we did
use them against the
cops, ifa possibly,

No probably not we knew
we would get caught
can we continue later

InshaAllah

I don't wanna answer
that, does it matter

What's done is done, we
are at war are we not
I'm telling you, are you
not in Afghanistan

whats that noise, she
made it stop can you tell
her please. what do you

mean

you guys came at a bad
time

whats up with my feet

The promise of
heaven, because
you are killing our
people, well, anwar al
Awlaki is pretty convincing
Why now? because maybe I
finally became ready. Clearly
not every muslim is inspired

But because there are those
that are, we are able to protect
our people and our religion.
I don't know whether you have
any knowledge on the mujahideen
but we are promised the highest
levels, and when we die we
die with smiles on our faces

Yes my brother died after
me to follow along with him
and I very much wanted to.
You gotta take to God
on this one buddy.
There's no one else that
convinced him. The man had
a wife and daughter can you imagine

How much you have to believe
in something to give that up.

What is that amazing sound

Don't waste your time there
is no one. Beside online
speakers like Awlaki and magazines
like Inspire, That's the
truth man.

Man, I'm telling you, this is the truth, my brother was inspired by those articles nothing more, no one else, They got those devices on inspire, He got the idea but ended up figuring out something more

No One. else, ~~the~~ as hard
as that may be for you to
believe, he did it all by himself
It's just that when you have
Allah by your side.

Not sure what I said but
I guess all I can tell you
is that I was involved
prop to Monday. I knew
what our plan was. A first
we weren't gonna do it but
it just happened. People have
doubts ya know

Not long at all plus we
could afford a lot of time
because we had to keep ^{it}
a secret. From brothers wife

We thought we were gonna
die man. I wore my hat
backwards, without hoodie

Monday just happened

It's not like that sorry.

It's just that if any thing
to die wasn't like our plan
it was just something so
be expected. We did it, and
got away, it's not for glory
or

We knew we were going
die regardless, we had
a standoff with cops.
after the asian kid got
away, then it was clear
honestly, we didn't know
can we continue later

We knew there were
 cameras, and we were gonna
 get caught, so we decided
 to act on Thursday. Nothing
 planned just improvisation

No, that's not at

No one

all the case, after
 Monday we knew it was
 gonna take a couple days
 take

maybe not a couple maybe
a day or some thing, we told
no one, I mean who in
their right mind agree to
that, yea I guess it just
that at that point your sorry
inviting someone to either die
or go to jail

Because ~~it~~ was. we just
didn't, it's dangerous you
never know who you can
trust
We had enough materials
so whatever I mean he
could of made 1 or 2 with me

Why did you guys say
you found 2 more? No
it was stated that 2 have
been deauthorized, funny stuff
We made 2, used 2
like a week, we put it
together Monday, Not hard

can I sleep?

can you not
my right arm? handcuff

where is my bro
Are you sure