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Jury Trial of Dzhokhar ?Johar? Tsarnaev?Day 27

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Sunday, April 12th, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

EXCERPT
JURY TRIAL - DAY TWENTY-SEVEN

OPENING STATEMENT BY MS. CLARKE

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, March 4, 2015
10:41 a.m.

Marcia G. Patrisso, RMR, CRR Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

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PROCEEDINGS

* * *

MS. CLARKE: We meet in the most tragic of circumstances, tragedy in the lives of the victims of the bombings, lives that were lost and torn and shattered: the loss of a precious eight-year-old boy, whose smile captured all of our hearts; a young woman who—with an infectious laugh, who was always there for her friends and her family; a young graduate student whose passion for music was so clear, and she embraced Boston as her home away from home; and a very fine young police officer whose lifelong dream was to protect and serve.

The circumstances that bring us here today still are difficult to grasp. They're incomprehensible. They're inexcusable. You just heard about the devastation, the loss, and the unbearable grief, and we're going to see it, feel it, and agonize with every witness who comes to talk about what they saw, they felt, and they experienced and what happened to them and to those that they love.

For the next several weeks, we're all going to come face to face with unbearable grief, loss, and pain caused by a series of senseless, horribly misguided acts carried out by two brothers: 26-year-old Tamerlan Tsarnaev and his younger brother, 19-year-old Jahar.

The government and the defense will agree about many things that happened during the week of April 15th, 2013. On Marathon Monday, Tamerlan Tsarnaev walked down Boylston Street with a backpack on his back, carrying a pressure cooker bomb, and put it down in front of the Marathon Sports near the finish line of the marathon. Jahar Tsarnaev walked down Boylston Street with a backpack on his back carrying a pressure cooker bomb and placed it next to a tree in front of the Forum restaurant. The explosions extinguished three lives. They unalterably injured and devastated many others.

After their pictures were on television and on the Internet, Tamerlan and Jahar went on a path of devastation the night of April the 18th, leaving dead in their path a young MIT police officer and a community in fear and sheltering

in place. Tamerlan held an unsuspecting driver, Dun Meng, at gunpoint, demanded his money and compelled him, commanded him, to drive while Jahar followed behind.

The evening ended in a shootout. You've heard about it. Tamerlan walked straight into a barrage of gunfire, shooting at the police, throwing his gun, determined not to be taken alive. Jahar fled, abandoned a car, and was found hiding in a boat.

There's little that occurred the week of April the 15th—the bombings, the murder of Officer Collier, the carjacking, the shootout in Watertown—that we dispute. If the only question was whether or not that was Jahar Tsarnaev in the video that you will see walking down Boylston Street, or if that was Jahar Tsarnaev who dropped the backpack on the ground, or if that was Jahar Tsarnaev in the boat—captured in the boat, it would be very easy for you: It was him.

So you might say, why a trial?

Now, you've heard several instructions, and when we sat in this courtroom at the table—you may remember that—the judge talked to you about how this is a capital trial. The government has elected to seek the death penalty, and in a capital trial there are two phases—

MR. WEINREB: Objection, your Honor.

MS. CLARKE: —one in which—

THE COURT: Overruled. Go ahead.

MS. CLARKE: —one in which the jury makes a determination of guilt and one in which the jury makes the determination of the appropriate penalty.

The indictment in this case is not that simple. It's 30 counts. You heard the counts described. It's 74 pages long. There are complicated federal charges involved. And there will be much for you to analyze and decide.

But the essence of the charges are four sets of criminal acts: the bombings at the marathon that killed three people and injured many others, the murder of Officer Collier, the carjacking, and the shootout in Watertown.

We do not and will not at any point in this case sidestep—attempt to sidestep or sidestep Jahar's responsibility for his actions, but the indictment alleges, and the prosecutor talked with you about why, and we think the question of why is important, and this is where we disagree.

We have a different answer to this question: What took Jahar Tsarnaev from this (indicating), Jahar and his brother—what took Jahar Tsarnaev from this (indicating) to Jahar Tsarnaev and his brother with backpacks walking down Boylston? What took Jahar Tsarnaev from this to this (indicating)?

The government has told you their answer to the question of why, and we ask you to look further. Clearly, Tamerlan Tsarnaev became obsessed with violent Islamic extremism. He became increasingly religious in a radical way. He traveled to Russia in—for six months in 2012 and explored violent jihad with people over there. He became aggressively obsessed with talking about Islam because of his radical views and his insistence that people accept them and agree with them. He disrupted services at the mosques here in Boston where he once fit in. It was Tamerlan Tsarnaev who self-radicalized. It was Jahar who followed him.

The evidence will show that Tamerlan planned and orchestrated and enlisted his brother into these series of horrific acts. Tamerlan Tsarnaev did the Internet research on the electronic components, the transmitter and the receiver you'll hear more about, for the two bombs, and he bought them. Tamerlan Tsarnaev had the Russian-translated version of how to build a bomb on his computer. Tamerlan bought the BBs that were in the shrapnel that were in the pressure cooker and the pipe bombs. Tamerlan bought the pressure cookers. Tamerlan bought the fireworks that went into making the bombs. Tamerlan bought the ammunition. Tamerlan bought both of the backpacks. Rubber gloves with explosive residue on them were found in Tamerlan's car. Tamerlan led the way down Boylston Street. Tamerlan shot and killed Officer Collier. Tamerlan pointed the gun at Dun Meng, demanded his money, commanded him to drive away, telling him, "I just killed a police officer."

You'll hear evidence about computers and the electronic devices, phones, hard drives that were seized in this case, and it will show that Tamerlan spent much of his time on the Internet in death and destruction and images of carnage in the Middle East. Make no mistake, Jahar Tsarnaev's computer had many of the materials that the prosecutor told you about: *Inspire Magazine*, "Join the Caravan," a number of extremist materials that you'll hear about. But there will not be any evidence that Jahar downloaded those materials as if he were searching the Internet to find them.

The earliest traces of any extremist materials go back to a thumb drive, a jump drive. You know what I'm talking about? You stick in the computer and you transfer files. The earliest traces of the extremist materials traced back to this thumb drive that has never been found, but forensics can tell you about it. The last traces of attachment—when you stick it into the computer and pull it out, the attachment into the computer—were into Tamerlan's laptop, Jahar's laptop, and a desktop computer that was at the Norfolk Street apartment where Tamerlan and his wife and daughter lived, where the family had lived. The last known attachment was, then, the day that Tamerlan left for Russia for six months in 2012.

So as you hear the computer evidence, please ask: What's the source of the document? Where else was it? Who else had it? Where did it come from? Can I know by the fact that it's on there who put it there and why?

An analysis of the computer evidence will, at baseline, show that both Tamerlan and Jahar's computers had this library of extremist materials, but the evidence will also show you that, while Tamerlan Tsarnaev was looking and immersed in death and destruction and carnage in the Middle East, Jahar spent most of his time on the Internet doing things that teenagers do: Facebook, cars, girls. The evidence will also help point you in the direction of understanding the flow of the materials: who got what first, who got the most, and who had the most.

The evidence will not establish, and we will not argue, that Tamerlan put a gun to Jahar's head or that he forced him to join in the plan, but you will hear evidence of the kind of influence that this older brother had.

MR. WEINREB: Objection, your Honor.

MS. CLARKE: During the period of time—

THE COURT: Very limited evidence, if that, but go ahead.

MS. CLARKE: Thank you, your Honor.

During the period of time when Tamerlan was becoming more radical and traveling to Russia and identifying with violent jihad, the evidence will show you what was happening with Jahar. His parents: his dad, Anzor; his mother, Zubeidat—

THE COURT: I think this is—yeah, I think the family history is not appropriate, as I previously indicated.

MS. CLARKE: His parents left and moved back to Russia. He was a student at UMass Dartmouth, but things were not going very well. His grades were plummeting; he wasn't going to class; and he was in danger of failing out of school. And Jahar, in one of those tough times of adolescence, as we all know, became much more vulnerable—

MR. WEINREB: Objection, your Honor.

MS. CLARKE: —to the influence—

THE COURT: No, go ahead.

MS. CLARKE: —of someone that he loved and respected very much: his older brother.

You'll see from the evidence that Tamerlan had a special kind of influence dictated by his age, their culture, and Tamerlan's sheer force of personality. They committed the acts in April of 2013 that led to death and destruction, and they are inexcusable and for which Jahar must be held responsible. But he came to his role by a very different path than suggested to you by the prosecution: a path born of his brother, created by his brother, and paid by his brother. And unfortunately and tragically, Jahar was drawn into his brother's passion and plan, and that led him to Boylston Street.

The government talked to you about writings that were in the boat where Jahar was found hiding and where he had found a pencil, and those writings are very important to read in their entirety. And you'll see them. You'll get to read them. But essentially what Jahar wrote was, first, he expressed that he was jealous of his brother who had achieved martyrdom and his wish that he would as well. He wrote that he perhaps guessed that he was alive so that he could shed some light on their motives, and he wrote words that he had read and heard—read and heard—that the United States was responsible for the suffering of Muslims around the world.

We ask you to carefully evaluate the testimony—and there will be testimony about these writings, not just the writings themselves—but about the writings inside the boat, where they came from, and how deeply rooted they may or may not be.

And at the end of this first phase of the case, we think that you will have the evidence that you need to make the decisions about the 30 counts, about the four sorts of—essence of the criminal charges. We think that you will have the evidence that you need to weigh and analyze and make the decision in the first phase. But there will be ques-

tions that we cannot answer now. There will be questions that we ask you to carry over to the second phase, as the judge has explained.

When we talked to you in voir dire around this table centered in the courtroom, the government, the defense, the Court was here. Most of you acknowledged that you knew something about this case. And most of you said—or many of you said that you had seen images of devastation, and many of you knew about certain events—

MR. WEINREB: Objection, your Honor.

MS. CLARKE: —and people whose lives—

THE COURT: Go ahead.

MS. CLARKE: —were changed.

But none of you would be sitting here today, right now, had you not convincingly and with conviction told us that you can remain open through this phase, that you can hold your questions throughout the trial, and that you can remain open—your hearts and minds open to thinking about the evidence all the way.

Witnesses—many witnesses are about to start to be called, some who work in forensics, some police officers who risked their lives, a number of first responders who cared for victims, a number of victims who were injured, and survivors, eyewitnesses, people that lost loved ones. We're all going to see and listen to their testimony with heavy hearts.

Holding your assurances to us that you can hold your minds open to not only listening to the who, what, where, and when, but to the how and why, those assurances are going to be tested and going to be very difficult promises to keep.

Holding the questions that you have that can't be answered in this phase, holding them open—your hearts and minds open until the second phase will not be an easy task, but that's what you promised when you swore your oath as jurors. That's what the judge expects. That's what our system of justice expects. It's going to be a lot to ask of you to hold your minds and hearts open, but that is what we ask.

Thank you.

CERTIFICATE

I, Marcia G. Patrisso, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso

MARCIA G. PATRISSO, RMR, CRR

Official Court Reporter

Date: 3/4/15

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