

## SUITTER AXLAND, PLLC

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January 23, 2012

***VIA E-MAIL***

PLAINTIFF'S  
EXHIBIT  
28

Ms. Kathryn L. Wyer, Esq.  
Assistant U.S. Attorney  
20 Massachusetts Avenue N.W.  
Washington, D.C. 20530

Mr. Jared C. Bennett  
Assistant United States Attorney  
185 South State Street, #300  
Salt Lake City, Utah 84111

Re: *Trentadue v. CIA, et. al.*  
Case No. 2:08-CV-788-CW  
Avoiding a *Motion to Compel*

Dear Ms Wyer and Mr. Bennett:

I am writing to you in hopes of avoiding a *Motion to Compel* in this case concerning the Regency Tower surveillance camera videotapes. In addition to the tapes from the Murrah Building surveillance cameras, an important subject of this *FOIA* lawsuit was also the videotapes taken on the morning of April 19, 1995, by the exterior surveillance cameras mounted on the Regency Tower Apartment Building.

As you recall, I made a specific request for the Regency Tower videotapes, and commenced this lawsuit to obtain them. On or about July 16, 2009, Mr. Hardy sent me “**video coverage for the Regency Tower (6 DVDs), responsive to your FOIA request [OKBOMB VIEOTAPES] noted above.**”<sup>1</sup> You may also recall my complaints to you about those tapes having been edited, which now appears to have been the case. I say this because of the testimony of FBI agent Jon Hersley.

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<sup>1</sup> A copy of Mr. Hardy’s letter is attached.

Kathryn L. Weyer, Esq.  
Jared C. Bennett, Esq.  
January 23, 2012  
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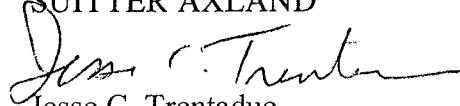
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Recently, I happened upon the testimony that Mr. Hersley gave on April 27, 1995, during the *Preliminary Hearing* for Timothy McVeigh. In that testimony, Mr. Hersley describes in detail a videotape from one of the Regency Tower exterior surveillance cameras taken at approximately 9:00 AM on the morning of April 19, 1995, including images of the Ryder Truck and "yellow Mercury" shown in that tape.

According to Mr. Hersley, this camera scanned the area in front of the Regency Towers and that while, for some unexplained reason, he had not watched the entire tape but was shown still photographs produced from the tape, these photographs showed the Ryder Truck moving in an "easterly direction" towards the Murrah Building at approximately 9:00 AM on April 19, 1995.<sup>2</sup>

The problem that I am having is that none of the images described by Mr. Hersley in his *Preliminary Hearing* testimony appear on the 6 DVDs which Mr. Hardy sent to me. I would very much appreciate it, therefore, if you could inquire of the FBI about the missing video footage and provide me with a copy as soon as possible.

Thank you.

SUITTER AXLAND  
  
Jesse C. Trentadue

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<sup>2</sup> I have also included a highlighted copy of the relevant portions of Mr. Hersley's testimony.

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

July 16, 2009

MR. JESSE C. TRENTADUE  
SUITE 200  
8 EAST BROADWAY  
SALT LAKE CITY, UT 84111

*Jesse C. Trentadue v. FBI*  
Civil Action Number: 2:08-cv-00788  
FOIA Request No.: 1120866-000  
Subject: OKBOMB/VIDEOTAPES

Dear Mr. Trentadue:

Enclosed please find video coverage for the Regency Tower (6 DVDs), responsive to your FOIA request noted above.

These videos represent our final release in this matter; and are being furnished to you without redactions. The duplication fee per DVD is \$15.00. After crediting you for your payment of \$91.40, there is an account balance of \$90.00; an account summary is enclosed. Upon receipt of this final release, please submit your check or money order in the amount of \$90.00, payable to the Federal Bureau of Investigation. To ensure proper credit of your payment, please include FOIA request number 1120866 with your payment and mail it directly to 170 Marcel Drive, Winchester, VA 22602-4843, within 45 days of the date of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David M. Hardy".

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosures

cc: Kathryn L. Wyer (w/o encl.)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
OKLAHOMA

UNITED STATES OF AMERICA, )

)

Plaintiff,) )

)

vs. ) Case No. M-95-98-H

)

TIMOTHY JAMES McVEIGH, )

)

Defendant.)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS HAD ON APRIL  
27, 1995

PRELIMINARY HEARING

MAGISTRATE RONALD HOWLAND, PRESIDING

A P P E A R A N C E S

Merrick Garland, Arlene Joplin, United States Attorneys Office,  
210 West Park Avenue, Oklahoma City, OK 73102

COUNSEL FOR THE PLAINTIFF

JOHN COYLE, SUSAN OTTO, KEVIN McNALLY, Federal Public  
Defender, Old Post Office Building, Oklahoma City, OK 73102

COUNSEL FOR THE DEFENDANT

THE COURT: The Court would like to advise  
you that there is a little bird family that is in this area.

which we all agree is narrowly focused. The only issue at this time is probable cause. We are not going to determine whether the Defendant is guilty or innocent; simply probable cause and reasonable basis.

MR. GARLAND: May I state for the record that I have heard no objection to the Defendant proceeding with these counsel.

THE COURT: Basically it is the Court's decision. The Court believes that the representation will be both professional and competent.

MR. GARLAND: The United States would call Special Agent Jon Hersley.

THE COURT: Mr. Hersley, step forward, face the Clerk, raise your right hand and be sworn.

DIRECT EXAMINATION

BY MR. GARLAND:

Q. State your full name and spell your last name.

A. Jon Hersley, H-E-R-S-L-E-Y.

Q. What is your occupation?

A. I'm an FBI agent.

Q. How long have you been an FBI agent?

A. About 20 years.

Q. Where were you assigned?

A. To the Oklahoma City office of the FBI.

Q. Have you had responsibilities in connection with the investigation of the explosion of the Murrah Building?

A. Yes.

Q. In the course of that investigation, have you spoken with other investigating agents and experts?

A. Yes, I have.

Q. Tell us what happened on April 19, 1995 at the Murrah Building.

A. A bomb exploded at that building, severely damaging the building and causing numerous deaths and injuries.

Q. Approximately what time did the explosion occur?

A. Approximately 9:03 a.m.

Q. Approximately how many people were killed, as far as you know at this time?

A. Approximately 100. I believe it is 101 as of now.

Q. What categories are the people who were killed?

A. That includes numerous Federal employees; I believe there were 15 children that were killed at this point whose bodies have been found, and there were also several Federal law enforcement officers that were killed in the bombing.

Q. Are there any people still missing?

A. Yes.

Q. How many?

A. Between 100 and 150 is what I have heard.

CROSS-EXAMINATION

BY MR. COYLE:

Q. Good afternoon, Agent Hersley.

A. Good afternoon.

Q. Would you tell me, please, sir, if prior to the time that you came to court to testify today if you reviewed any papers or documents to refresh your recollection in preparing your testimony here before the Court?

A. No.

Q. So you haven't read any official documents in connection with this case to prepare for your testimony?

A. Not to prepare for my testimony, I have not.

Q. Did you discuss any of the documents or anything other than the exhibits that have been introduced into evidence in court today with any of the Assistant United States Attorneys involved in the case prior to your testimony?

A. I don't believe so.

Q. Can you tell me, please, sir, the agents that you have spoken with to obtain the information that you have testified to in a hearsay fashion before the Court today?

A. Primarily Rick Hahn.

Q. Rick?

A. Rick Hahn --

Q. Okay.

A. -- from the FBI; numerous agents during the course of the investigation, as it is ongoing. I also spoke with another individual that is a bomb tech for the FBI.

Q. What is his name?

A. I spoke with an individual from the Medical Examiner's office. I spoke with agents in Junction City, Kansas and other agents throughout the Country.

Q. Now, can you tell us, please, sir, what your role has been in the investigation?

A. Yes, I have been assisting in the investigation in regard to Mr. McVeigh. I have also been participating in the ongoing investigation in an attempt to further identify and locate other individuals who may have been involved in the bombing on April 19th, 1995.

Q. In your assistance in the investigation, what has been your primary role? Have you been a keeper of evidence, a maker of calls, what has been your primary role?

A. I have done both of those things, as well as numerous other things. If you refer to a keeping of the original evidence, I have not been involved in actually handling the original evidence. I have been involved in tracking and keeping up with copies of that evidence insofar as further-leading investigation material is concerned. Also in coordinating the efforts of other FBI offices in the ongoing

results of the interviews are being logged into a computer.

That is being done by other personnel at that location and other locations.

Q. So your job is to just take a look and keep track of all [REDACTED] of the evidence and then you assign other FBI agents out to do [REDACTED] other tasks or to make calls?

A. There are other agents that are assigned to the same types of duties that I am there in regard to other potential [REDACTED] individuals that were involved in the bombing. I also [REDACTED] coordinate with those individuals insofar as information that [REDACTED] is received regarding Mr. McVeigh, in an effort to identify [REDACTED] some of the other subjects that were involved in the bombing [REDACTED] here in Oklahoma City.

That's our primary focus right now is to try to determine [REDACTED] the identity and the location of the other subjects so that we [REDACTED] can prohibit another bomb from going off.

Q. You told us in your direct examination by Mr. Garland that you had consulted with explosive experts; is that correct?

A. Yes.

Q. Can you tell me who those were?

A. Rick Hahn, and I believe the other individuals -- one of the other individuals is Bill Jockney.

Q. Who is Rick Hahn?

A. He is an FBI bomb expert that has been qualified to

A. Primarily the information that I have is that people saw the Ryder Truck shortly before the explosion. I don't know of anybody by name myself that actually saw the explosion and lived through it.

Q. Okay, so --

A. There are people inside the building that made it through obviously and would have seen the explosion or parts of it.

Q. Well, I don't think my question to you is theoretical. Are you aware of a witness that you know their name and might be available and alive to testify in court? That's a better question that saw the Ryder Truck explode.

A. Not that I can recall right now.

Q. That would be someone pretty important and you're privy to that kind of information, correct?

A. Yes.

Q. Now, is there any pictorial or visual recording of the vehicle parked over the crater, the site what you say is the site of the explosion?

A. I don't believe there is a picture actually where that crater is. There are other pictures of the Ryder Truck on that street.

Q. And where is the Ryder Truck located at the time of the pictures?

A. Heading east on Fifth Street towards that location.

Q. It's shown heading east?

A. Yes.

Q. And can you see the tag on the pictures?

A. No.

Q. So you say there is film available that shows the -- a

Ryder Truck in an easterly direction that is traveling in an  
easterly direction on Fifth Street?

A. Yes.

Q. Is it past the street that we know as Harvey?

A. I am not -- I have not studied that film in detail. It's  
in that general vicinity right in there. It may be the video  
that I saw. I believe it is just before -- well, I am not  
sure. I better not say that.

Q. Well, Harvey Street --

A. I don't know.

Q. Harvey Street is the street that is immediately west of the  
Murrah Building?

A. That is correct.

Q. Are the photographs that you saw or is it still photo or  
film?

A. What I saw was the still photos.

Q. Is it a still photo that has been removed from a film?

A. Yes.

Q. Were those still photos that you saw, do those appear to

you to be east of the street that we know as Harvey?

A. I was not focusing on that picture to determine whether or not -- whether it was east or west of Harvey. It was in that general location. I can say that.

Q. So it was a closeup more of the truck than its location?

A. It wasn't a closeup photo, it was taken from a camera off one of the buildings in the vicinity.

Q. Did you make a determination of what building it came off of?

A. No, I did not myself.

Q. Okay, did anyone?

A. I believe one of the other agents was able to determine that it came from one -- one of the films came from the Regency Tower Apartments.

Q. Can you tell in the photograph who is driving the truck?

A. No.

Q. And is the truck parked or is it moving?

A. As I mentioned, I saw the still photographs of the picture or the footage was frozen at this time when a still photograph was made, but I believe the truck due to the continuation of the still photographs that the truck was moving in an easterly direction.

Q. That is also a one-way street there from west to east, am I correct, sir?

A. That is correct.

Q. What was the size of the truck that you saw in the photographs?

A. I could not tell myself exactly what the size was from the photograph that I saw, but I would estimate it from what I saw to be approximately 20 feet.

Q. Was there a time indicated on the picture of the film that you saw?

A. Yeah.

Q. Okay, can you tell us, please, sir, what that time was?

A. It was in the proximity of 9:00 a.m. As I mentioned, I did not study the photographs in great detail, and I don't know the exact time on the photographs, but it was in the proximity of 9:00 a.m.

Q. Can you tell us when you viewed those photographs, please, sir?

A. I believe within the last two to three days.

Q. I believe you told me earlier that the license tag is not visible on the photographs; is that correct, sir?

A. Not visible on the photographs that I have seen, that is correct.

Q. Are you aware of any other photographs in which the license tag might be visible?

A. No, except for the recovery, and I am not aware of that

being on the bumper. I would presume there are photographs taken there.

Q. Well, I understand that it has been photographed by the FBI and the way that we see it.

MR. COYLE: May I approach?

THE COURT: Yes.

BY MR. COYLE:

A. Yes.

Q. As we see it as Government Exhibit No. 1. But aside from Government Exhibit No. 1, are you aware of any other photographs aside from those photographs taken of it by the FBI subsequent to its retrieval after the time of the explosion.

Are you aware of any photographs of a license tag prior to the time of the explosion in front of the Murrah Building?

A. No.

Q. Are you aware of any photographs that were taken at any time prior to the explosion at the Murrah Building of the accused Timothy McVeigh in or about the truck that you have described as a Ryder rental?

A. No.

Q. And I include in that, so we don't have a semantical difficulty of any sort -- any sort of photographs, film footage, surveillance cameras, any other film of any type that you are aware of, Agent, that shows the accused Timothy McVeigh

anywhere in the vicinity of the Murrah Building on April 19, 1995 at or before 9:00 a.m.

A. No.

Q. 9:03 a.m. -- at or before 9:03 a.m.

A. That is correct.

Q. "No" is your answer?

A. Yes.

Q. I believe you told us in a previous answer that there is no visual or pictorial record of the vehicle parked over the bomb -- over the site where you say it exploded in front of the Murrah Building?

A. Not that I have seen. I have not viewed all of the film of that location on that morning, so I can't speak to that entirely, but I have not seen it.

Q. Have you been advised that that photograph exists. Have you been told about that in your capacity as an agent working there at the command post?

. No.

Q. That would be something as an agent working on the case and particularly you told us at the outset that your responsibilities were in regard to Mr. McVeigh; am I correct?

A. Yes, and his activities.

Q. And that would be something -- the movement of the Ryder Truck and its location is something particularly important to

which the government would be concerned in regard to Mr.

McVeigh; am I correct?

A. Yes, you are correct as there are many other things that the government is concerned about and different agents are assigned different responsibilities as this is a fast moving investigation possibly involving more subjects that may have been involved in the bombing. So other agents have been assigned responsibilities in regard to any films or pictures that may be retrieved for viewing purposes.

Q. Well, how did you see the ones that you have testified about here earlier? Did you happen to see them laying on a desk and look at them or did someone bring them to your attention? How did you see those?

A. One of the agents that have been tasked with those responsibilities showed me those photographs.

Q. Now, I assume -- who are those agents that are tasked with the responsibility of reviewing photographs and film footage?

MR. GARLAND: Objection, Your Honor, this is now purely speculative.

THE COURT: Overruled.

BY MR. COYLE:

A. The agent that showed me the photographs was Walt Lamar.

Q. Is he a local agent here?

A. Yes, he is.

Q. Is he known to you as a photographic expert?

A. No, he is not. He is not known to me as that.

Q. And is he the one that you inquired of as to whether or not there were any photographs of the accused, Mr. Timothy McVeigh in possession of the government at or about the Ryder Truck?

You asked him that question I assume; did you not?

A. I did not inquire of Agent Lamar about these photographs.

He brought it to my attention because there is a possibility of

a particular car being involved in one of those photographs

that he was showing me. We are continuing investigation to try

to determine the actual identity of that car.

Q. What did that car look like in the photograph?

MR. GARLAND: Objection, Your Honor, we were going in the area of discovery now.

THE COURT: Sustained.

BY MR. COYLE:

Q. In the photograph concerning the other vehicle or anything in any of the surveillance photographs that you have seen exclude the Ryder Truck, not only around the Ryder Truck? Have you seen Mr. McVeigh in any of the other photographs period in or about the area of the Murrah Building?

A. No.

Q. Now, you told us that there were witnesses that saw the vehicle at or near the scene of the explosion. I am talking

where this witness testifies -- or provides the information was speeding away from. We are not able to determine yet if that is in fact the yellow Mercury.

Q. Can you clearly tell in the photographs that you have seen or have you been advised that you can clearly tell in the film the time of the explosion?

A. I'm not sure I understand your question.

Q. Well, I don't know how to -- can you tell in the film or the photographs when the explosion occurs?

A. The film that I viewed was before the explosion. I did not view the entire film. The pictures that were shown to me were before the explosion.

Q. The pictures that you saw of that particular parking lot -- now I'm talking about the parking lot across the street from the Murrah Building --

A. Right.

Q. -- in a northerly direction, that parking lot, there is film of that parking lot prior to the time of the explosion?

A. Yes.

Q. Correct?

A. Yes.

Q. Is it time-stamped so that you can tell a particular time of day on the 19th of April that that camera is viewing, scanning that parking lot?

A. Yes.

Q. Can you tell me where that particular camera was located?

A. I believe that particular camera was located on the apartment building there that we have been speaking of.

Q. So those were some more pictures from the Regency?

A. Yes, those are the pictures from the Regency.

Q. So the camera from the Regency -- is this the camera at the very top of the Regency Tower?

A. I don't know the exact location of the camera, but it kind of scans that whole area there, is what has been represented to me. It scans in front of the Tower building and also over towards the parking lot.

Q. Any other witnesses who saw Mr. McVeigh, or someone resembling him or resembling the composite photograph on April 19th at or about the location of the Murrah Building?

A. There were other witnesses that were being talked to yesterday that we had just learned the identity of that advised that they had seen an individual that they believed resembled the composite. Those individuals -- arrangements were being made to talk to them as well, but I'm not aware of the results of those interviews.

Q. Well, if they saw them yesterday, they have seen a lot more than the composite, haven't they?

A. I haven't spoken with those individuals. I don't believe

they have been interviewed by any agents, so I can't really address that; what they have seen and what they haven't.

Q. So you don't know that they have seen the picture of Mr. McVeigh on every cover of every newspaper, magazine, and television set in America, do you?

A. I don't know what they have seen.

Q. Is that something that the FBI has been very careful in asking them going over with them?

. Yes.

Q. And you have discussed that with the agents and the importance an significance of the suggestiveness of the fact that his picture has been broadcast like that throughout our land; have you not?

A. I have not been the one to discuss that, but I know that is being discussed. I have spoken with a couple of the other agents about that, but another agent has been assigned to oversee that portion of the investigation.

Q. Who is that agent?

A. It would fall under the purview Rich Baker.

Q. Who are the two agents you discussed it with?

A. Two agents that are in here on a temporarily basis from San Antonio assisting us in the investigation, John Oza, and the second agent's name is Mike. I don't recall his last name at the current time.