

DZHOKHAR TSARNAEV'S SEARCH MOTION: THE REDDISH-BROWN POWDER AND THE PIZZA PAPERS

In addition to his motion challenging his confession, Dzhokhar Tsarnaev also submitted at least one more motion to suppress on Wednesday (there's a third motion to suppress the search of his laptop; that appears to be sealed document 284 in the docket), challenging the scope of and in one case the legality of the searches done on the Tsarnaev's residences.

I'll leave it to the lawyers to argue about the merits of the challenge. I'm primarily interested in what they show about the development of the investigation. They appear to show an evolution in FBI's understanding of where and whether the explosives used in the attack were made.

The motion describes the following searches of the two residences associated with Dzhokhar Tsarnaev:

April 15, 2013: The attack

April 19, 2013: After IDing Tamerlan via fingerprints, FBI obtained a warrant for 410 Norfolk Street in Cambridge; that search lasted from 1 AM on April 20 until 1PM on April 20; this warrant included "Property, records, or other information related to the ordering, purchasing, manufacturing, storage, and transportation of firearms;"

Overnight April 20 to 21: FBI's High Value Interrogation Team conducts first interrogation of Tsarnaev

3AM to 9AM April 22: FBI conducts search of Tsarnaev's UMASS dorm room based on

warrant issued at midnight that day

May 5: FBI conducts a second search on 410 Norfolk apartment, based off warrant issued on May 3; this search appears based on evidence obtained from surveillance video of people – including potentially a female – purchasing pressure cookers at Macys, but also included further search for low-explosive powder residue; no residue was found

June 27: On invitation from UMASS cops, FBI observes Dzhokhar's dorm room again; UMASS cops obtain sample of reddish-brown powder; this is the search Dzhokhar claims was illegal

July 26: FBI searches Dzhokhar's dorm room based on warrant issued July 24, claiming to have observed reddish-brown powder on previous April 21 warranted search; this warrant includes explosives and BBs

It appears that the FBI did initial broad-brush searches on both Norfolk and the dorm room after they caught the brothers (though I am intrigued that it took FBI 2 days to get to the dorm room, which is significant given issues of who tried to tamper evidence there). Then on May 5, FBI went back Norfolk Street to try to tie the purchase of pressure cookers to the Tsarnaevs, and obtain more evidence that the pressure cooker bombs were made at the Cambridge apartment. They didn't, apparently, find any residue to support the latter claim.

Then, it appears UMASS invited the FBI into the dorm room for one more looksie before they crated up Dzhokhar's stuff on June 27. Presumably acting on FBI's instructions, UMASS cops swabbed the reddish-brown powder, and presumably sent it out for testing. Again presumably, once that test came back, the FBI invented the story that they had observed the

reddish-brown powder on their original search so as to legally obtain a sample of it.

At least, that's the scenario laid out in Dzhokhar's challenge to its collection.

The application for the second search warrant for Mr. Tsarnaev's dorm room and for his personal property, taken from his dorm room, recites facts gleaned from the investigation of the Boston Marathon bombings, a search of Mr. Tsarnaev's laptop computer (the subject of a separate motion to suppress), another search of material found in a backpack located in a landfill, and the observations made by FBI agents during the June 27 warrantless entry. Some of this information was available well before the June 27 entry, yet the FBI had not sought a second warrant.

It appears that the warrant was aimed in large part at seizing the "reddish-brown powder" observed on the window sill of the room. The warrant application's claim that this was seen during the April search by agents, who inexplicably failed to seize it, strains credulity. Reports regarding the April 21 search do not mention the powder. Photographs taken of the pyrotechnic found on the window sill do not show it. And the Evidence Recovery Team casebook twice states that the room was reviewed by a chemist "for potential areas for swabbing. None were located."

As a reminder, two of Dzhokhar's buddies, Dias Kadyrbayev and Azamat Tazkayakov, along with an unnamed co-conspirator allegedly removed the laptop and other materials from the dorm room on April 18; it took the FBI 6 days of searching a landfill to find those things on April 25. So whatever was in them (including the computer the search of which Dzhokhar is also challenging) was not available before the April

21 search.

The FBI looksie visit on June 27 was likely nothing more than UMASS trying to give the FBI one more pass at the room before they cleared it; while they did search for clothes (which is how they were trying to tie the pressure cooker purchase in), it's not clear they were in search of anything in particular. (Though on the subsequent search they may have been looking for DNA of still unidentified people.)

But that reddish-brown powder seems to have sparked their interest.

I raise all this, in part, because of a recent report that the pressure cooker bombs couldn't have been based solely on the Inspire magazine instructions (and I had heard similar things almost immediately after the bombing).

ABC News has learned that many within the FBI, law enforcement and counter-terrorism strongly disagree they could have become good enough to make the improvised explosive devices (IEDs) from online how-to's and suspect an expert taught or instructed Tamerlan on the craft of bombmaking while he was overseas in 2012.

[snip]

But an analysis of the bombs done by FBI technicians at the Terrorist Explosive Device Analytical Center (TEDAC) in Quantico, Virginia in late April 2013 found that the bombs in Boston had a much more sophisticated design than that in [Inspire], including differences in the initiators, power source and switch/trigger, which utilized a toy car remote control. Inspire never contained instructions for that type of switch/trigger used to remotely set off the IEDs but had directions for a different type using a motorcycle remote starter.

"While the RC concept is similar, TEDAC assesses INSPIRE would not provide an individual with the appropriate details to translate these instructions for use with RC toy car components. Such construction would likely require previous knowledge of, or additional research into, RC toy car circuitry," a TEDAC analysis document said.

That is, the understanding they had of how and where the bombs were made – based in part on Dzhokhar's confession – seems to have evolved after the initial searches. The FBI appears not to have found evidence backing their public claims that the bombs were made in Cambridge. And now we find something – which admittedly could just as easily be pot residue as bomb residue – that focuses on the explosives found in the dorm room.

One more detail, that I only raise because of my continued obsession with the role of Gerry's Italian Kitchen in this attack. The suppression motion also notes that the April searches included evidence relating to pizza.

Among the items seized from the Norfolk Street apartment was a paystub for Tamerlan from a 2010 job at a pizza restaurant. Agents seized a pizza box from Mr. Tsarnaev's dorm room.

These were from the initial April searches. But particularly the seizure of Tamerlan's paystub suggest they were interested in his ties to pizza joints in the area.