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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
vs.)
)
) No. 1:13-cr-10238-DPW-2
AZAMAT TAZHAYAKOV,)
)
Defendant.)
)

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

EXCERPT FROM DAY SEVEN OF JURY TRIAL
CONTINUED TESTIMONY OF ANDREW DWINELLS

John Joseph Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, MA 02210
Wednesday, July 9, 2014

Brenda K. Hancock, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
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I N D E X

Testimony of: Direct Cross Redirect Recross

ANDREW DWINELLS

(Continued from 7/8/14)

By Mr. Capin		20	
By Ms. Ferrone	4 (Cont'd)		25

E X H I B I T S

<u>No.</u>	<u>In Evd.</u>
151A.....	20
151R.....	20

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EXCERPT:

ANDREW DWINELLS, PREVIOUSLY DULY SWORN

CONTINUING CROSS-EXAMINATION

BY MS. FERRONE:

Q. Hello again, Mr. Dwinells.

A. Hi.

Q. From the time when you left the stand yesterday and taking the stand this morning, did you speak with anybody about the testimony in this case?

A. No.

Q. I think you and I left off about the move-in friend coming to find you in the common room on April 18th; is that correct?

A. Correct.

Q. And I'm going to refer to him as "Dias," because that's his name, but I will also sometimes refer to him as "move-in guy" or "move-in friend."

You had seen Dias in your dorm room before hanging out with Jahar?

A. Yes.

Q. In fact, Dias is someone that you would characterize as one of Jahar's closest friends?

A. Yes.

Q. And move-in friend, he hung out with Jahar a lot more than anybody else?

A. Yes.

1 Q. He'd come to your dorm room three or four times a week?

2 A. Yes.

3 Q. And is this the only person who you ever saw spend any
4 time with Jahar on a one-on-one basis?

5 A. I believe so, yes.

6 Q. Okay. So, it's fair to say that this individual, Dias, or
7 move-in friend, he spent more time with Jahar than anyone else?

8 A. Yes.

9 Q. And you know that Jahar and Dias smoked marijuana
10 together?

11 A. Yes.

12 Q. And you would see Jahar and Dias leave the room, and Jahar
13 would take some marijuana from the room with them when they
14 left?

15 A. Yes.

16 Q. They didn't smoke marijuana in the dorm room?

17 A. No.

18 Q. And you also have seen Jahar, your roommate, give bags of
19 marijuana to other friends in the past?

20 A. Yes.

21 Q. Okay. I want to return to the evening of Thursday,
22 April 18th.

23 So, move-in friend, Dias, he comes to the common room,
24 and he gets asked to be let in your dorm room?

25 A. Yes.

1 Q. And that's happened before, Dias has come and found you to
2 be let in the room?

3 A. Yes. He's left charging cables for his phone in the room
4 before, so I've let him in to grab them.

5 THE COURT: Mr. Dwinells, if you could speak up,
6 perhaps, or maybe move the microphone closer to you, it will be
7 easier to pick up your voice.

8 BY MS. FERRONE:

9 Q. And on this instance, on April 18th, you didn't think Dias
10 was being asked to be let into your room because Jahar had been
11 identified as the Boston Marathon bomber, did you?

12 A. No. I just figured he left something in the room again.

13 Q. And I believe you testified yesterday this was about
14 10:00 p.m. when Dias came and found you in the common room?

15 A. Yes, thereabouts.

16 Q. And you left the common room and went to your dorm room
17 with Dias?

18 A. Yes.

19 Q. And you stayed in the room with Dias?

20 A. Yes.

21 Q. And while you were in the room, Dias showed you a text
22 that he said was from Jahar?

23 A. Yes.

24 Q. And that text said, in sum and substance, "Hey, I'm
25 leaving. You can take whatever you want from my room." Is

1 that correct?

2 A. Thereabouts, yes.

3 Q. The text message didn't say, "I'm the Boston Marathon
4 bomber. Come to my room and take stuff," did it?

5 A. No, it did not.

6 Q. And when you saw that text message that Dias showed to
7 you, you didn't think, Wow, Jahar is admitting guilt to being
8 the Boston Marathon bomber, did you?

9 A. No.

10 Q. In fact, you thought it meant just what it said, Jahar was
11 leaving, and if Dias wanted, he can come and take whatever he
12 wanted from the room?

13 A. Yes.

14 Q. And as soon as Dias was in the room with you, he began
15 searching Jahar's belongings?

16 A. Yes.

17 Q. And you are not sure what he was really searching for?

18 A. No.

19 Q. But you saw him go through a black backpack on the dorm
20 room floor?

21 A. I saw him go through a black bag on the floor, yes.

22 Q. In fact, that was one of the first things you saw Dias do?

23 A. One of them, yes.

24 Q. And this was before anyone else arrived in the room?

25 A. Yes.

1 Q. And you and Dias were alone in the room?

2 A. Yes.

3 Q. And after Dias searched the black backpack, he continued
4 searching the room?

5 A. Yes.

6 Q. And the only time you saw Dias search through a black
7 backpack was when you and he were alone in the room?

8 A. The only time I saw it, yes.

9 Q. You didn't observe anyone else look in that black backpack
10 on the floor, did you?

11 A. No.

12 Q. And you didn't see Dias show that black backpack to
13 anybody else who later came to the room?

14 A. No.

15 Q. I believe you testified yesterday that Dias searched the
16 room for about ten more minutes before the other individuals
17 arrived; is that right?

18 A. Yes.

19 Q. And when these two individuals came to the room
20 approximately ten minutes later, they didn't join Dias in the
21 search of the dorm room, correct?

22 A. Correct.

23 Q. They didn't appear hurried, these two individuals?

24 A. No.

25 Q. They didn't appear excited?

1 A. No.

2 Q. They just both sat down, turned on the TV and watched a
3 movie?

4 A. Yes.

5 Q. Is it fair to say that these two individuals were just
6 kind of, like, there?

7 A. Yes.

8 Q. And one of the individuals picked up a pair of Beats
9 headphones?

10 A. He picked up a pair of headphones. I'm not sure if they
11 were Beats.

12 Q. Apologies. I'm using the brand name of the headphones.
13 Thank you. And this individual claimed they were his?

14 A. Yes.

15 Q. And you believed that this guy who picked up the
16 headphones was being sincere that these were actually his
17 headphones?

18 A. Yes.

19 Q. At some point Dias, move-in friend, move-in-day friend, he
20 seemed to relax, as if he found what he was looking for?

21 A. I don't remember.

22 Q. Okay. Do you believe that Dias relaxed and calmed down
23 after he found a plastic bag containing marijuana?

24 A. No.

25 Q. Okay. You recall meeting with the FBI, right?

1 A. Yes.

2 Q. And do you recall telling Agent Walker of the FBI that
3 Dias's frenetic behavior appeared to abate following his
4 discovery of the plastic bag of marijuana? Do you recall
5 telling Agent Walker that?

6 A. Not right now I don't.

7 Q. So, would Agent Walker be a liar if he took the stand and
8 said --

9 MR. CAPIN: Objection.

10 THE COURT: Oh, yes, sustained. That kind of
11 argumentation is just improper, and I want to be clear, and I
12 have been clear with counsel, that I am not going to permit
13 argumentation. This case is going to be dialed down in the way
14 in which it is presented. It is going to be presented
15 dispassionately, and that kind of comment is inappropriate
16 under these circumstances; under any circumstances, frankly.

17 So, the jury will disregard it. The question is
18 whether or not he disagrees with the rendition that is ascribed
19 to Agent Walker. That is all.

20 MS. FERRONE: My apologies, your Honor.

21 BY MS. FERRONE:

22 Q. So, the three individuals left your dorm room about 30
23 minutes after you and Dias first got there?

24 A. Yes.

25 Q. That's kind of a long period of time, would you agree?

1 A. Yes.

2 Q. Would you say that they didn't seem in a hurry to get in
3 and out of the dorm room?

4 A. They didn't seem like in a hurry to leave.

5 Q. And when they left the room, you left the room with them
6 as well?

7 A. Yes.

8 Q. And you locked the door behind you?

9 A. Yes.

10 Q. And you returned to the common room?

11 A. Yes.

12 Q. And was the individual, Steven Pouliott, still in the
13 common room, who you had been studying with earlier?

14 A. Yes.

15 Q. Did you have a conversation with Steven Pouliott about
16 what happened in the room?

17 A. Yes.

18 Q. Did you tell Steven Pouliott that three individuals came
19 and appeared to be acting suspiciously?

20 A. Yes.

21 Q. So, when you spoke with the FBI, do you recall telling
22 them that you had a conversation with Steven Pouliott about
23 what occurred in the room?

24 A. I believe I did, but --

25 Q. If I showed you a summary of what your conversation was

1 with the FBI, would that maybe refresh your recollection?

2 MR. CAPIN: Objection.

3 THE COURT: Sustained. References to some document
4 that is not going to become in evidence and is brought to the
5 jury's attention in a backdoor is inappropriate.

6 So, you can say, "If I showed you something, would
7 that help you out?" Now, of course, the jury already knows
8 what the "something" is, or at least you have told them what
9 you say the "something" is, and the jury will disregard that.

10 MS. FERRONE: Okay. I'll withdraw that.

11 BY MS. FERRONE:

12 Q. After you got back to the common room, you sent a text to
13 Jahar?

14 A. Yes.

15 Q. And it said something like, "Hey, your friend said you
16 left"?

17 A. Yes.

18 Q. Did Jahar respond to that text?

19 A. No, he did not.

20 Q. On April 19th there came a time when you saw on the news
21 that Jahar was the suspect in the Boston Marathon bombing?

22 A. Yes.

23 Q. And you saw Jahar's picture on the news?

24 A. Yes.

25 Q. And is it fair to say that your reaction was disbelief?

1 A. Yes.

2 Q. You thought, "That can't be Jahar"?

3 A. Yes.

4 Q. You never suspected that it was your roommate that blew up
5 the bombs at the Boston Marathon?

6 A. No.

7 Q. And that's because there were no signs or other
8 observations by you that would have led you to believe that
9 Jahar was the bomber?

10 A. Yes.

11 MS. FERRONE: May I have a moment, your Honor?

12 THE COURT: You may.

13 (Counsel conferred off the record)

14 BY MS. FERRONE:

15 Q. Mr. Dwinells, do you recall watching a documentary about
16 9/11 with Jahar in or around September 2013?

17 MR. CAPIN: Objection. Beyond the scope, your Honor.

18 THE COURT: I am going to permit it.

19 A. I didn't watch it with him, but it was on the TV, yes.

20 BY MS. FERRONE:

21 Q. And do you recall a conversation about 9/11 being a
22 conspiracy that was carried out by the Government?

23 A. Yes.

24 Q. And after this conversation you didn't think Jahar was an
25 extremist, did you?

1 A. No.

2 Q. A terrorist?

3 A. No.

4 Q. And you never had any reason to question Jahar's loyalty
5 to the United States?

6 A. No.

7 Q. Do you recall being interviewed, I think I mentioned this
8 earlier, by the police on Friday, April 19th of 2013?

9 A. Yes.

10 Q. And you were questioned at a police office?

11 A. Yes.

12 Q. You weren't brought in in handcuffs, were you?

13 A. No.

14 MR. CAPIN: Objection, your Honor.

15 THE COURT: Sustained.

16 If that is the line, I am closing it off.

17 BY MS. FERRONE:

18 Q. And there was an FBI Agent at that meeting?

19 A. Later on, yes.

20 Q. And the police asked if they could make an audio recording
21 of your interview?

22 MR. CAPIN: Objection, your Honor.

23 THE COURT: No. I will permit that.

24 You may answer. Did they ask you to do an audio
25 recording?

1 THE WITNESS: Yes.

2 BY MS. FERRONE:

3 Q. So, just so I'm clear, the police did an audio recording
4 of your interview? They recorded it?

5 A. Yes.

6 Q. Do you also recall signing a Consent to Search your dorm
7 room on April 19?

8 A. Yes.

9 Q. If I showed you that document, would you be able to
10 identify it?

11 A. Yes.

12 MS. FERRONE: Your Honor, may I approach?

13 THE COURT: I think it is peripheral.

14 MS. FERRONE: I'm sorry?

15 THE COURT: It is peripheral. We do not need to have
16 additional documentation in here. The witness has indicated he
17 signed a Consent Form.

18 BY MS. FERRONE:

19 Q. Do you recall what that Consent Form said in it?

20 A. No.

21 Q. If I showed it to you, would you --

22 MR. CAPIN: Objection, your Honor.

23 THE COURT: Really, let's focus on this case and the
24 issues in this case. I will permit him to say that he signed a
25 Consent Form.

1 MS. FERRONE: Okay. But I have some follow-up on
2 that, your Honor, and I don't want to --

3 THE COURT: I will hear the follow-up.

4 BY MS. FERRONE:

5 Q. And that form asked you to give your consent to search the
6 dorm room, knowing that if any incriminating evidence is found
7 it could be used against you in court or another proceeding?

8 MR. CAPIN: Objection.

9 THE COURT: I am going to sustain it. It really is a
10 little far afield.

11 BY MS. FERRONE:

12 Q. And you signed that document, though, right?

13 A. Yes.

14 Q. And you gave the police consent to search your dorm room?

15 A. Yes.

16 Q. By the way, the prosecutor showed you, I think, two
17 pictures yesterday of some wires and some wire cutters. Do you
18 recall that?

19 A. Yes.

20 Q. And they were part of your engineering kit?

21 A. Yes.

22 Q. And you testified, I believe, that they were "in plain
23 view." Those were the words you used?

24 A. Yes.

25 Q. Those were seized by the FBI when they searched your dorm

1 room, correct?

2 A. Correct.

3 Q. And, in fact, you actually went with the FBI to your dorm
4 room on April 19th?

5 A. Yes.

6 Q. Do you recall being accompanied by FBI Agent John Walker?

7 A. Yes.

8 Q. And do you recall observing at that time on April 19th
9 that there was a black backpack on the floor on Jahar's --
10 withdrawn.

11 And do you recall observing that a black backpack on
12 Jahar's floor was in the dorm room on April 19th, when you went
13 with the FBI?

14 A. I don't remember.

15 Q. Okay. And I think you told us yesterday that you didn't
16 recall that there was a white polo cap on Jahar's bed?

17 A. I believe I said that, yes.

18 Q. After Dias and the other boys left the dorm room on
19 April 18th, did you touch anything on Jahar's side of the room?

20 A. No, I did not.

21 Q. And you met again with the FBI and Agent Walker on
22 May 2nd, 2013. Does that sound right?

23 A. Yes.

24 Q. Do you recall that one of the Assistant United States
25 Attorneys sitting at this table, Stephanie Siegmann, was

1 present at that meeting?

2 A. Yes.

3 Q. Mr. Dwinells, I just have a few more questions.

4 Were you ever arrested for allowing Dias into your
5 room?

6 A. No.

7 MR. CAPIN: Objection.

8 THE COURT: Overruled.

9 BY MS. FERRONE:

10 Q. Were you ever arrested for allowing a few items to be
11 taken from your dorm room?

12 A. No.

13 Q. Were you ever arrested for not telling anyone that a few
14 items were taken from your dorm room?

15 A. No.

16 Q. You were never arrested at all?

17 A. No.

18 MS. FERRONE: May I have one moment, your Honor?

19 THE COURT: You may.

20 (Counsel conferred off the record)

21 MS. FERRONE: Nothing further.

22 Thank you, Mr. Dwinells.

23 THE COURT: I wonder if this is a point to clarify the
24 exhibit numbers, because reference was made to 151.

25 MR. CAPIN: If I can confer with counsel?

1 THE COURT: Yes.

2 They will be chatting for a moment. But what is going
3 on, ladies and gentlemen, is that I think that the documents
4 that were shown to you yesterday had the wrong exhibit numbers
5 when they were referenced, so I want to clarify the numbers so
6 you know and I know what it was that you were exposed to.

7 (Counsel conferred off the record)

8 MR. CAPIN: Shall I clarify on the record now, your
9 Honor?

10 THE COURT: Yes, please.

11 MR. CAPIN: Two exhibits, your Honor, were introduced
12 yesterday through Mr. Dwinells. 151A is a picture of wire
13 cutters and wires.

14 THE COURT: That is its current number, but it was
15 introduced as 151T, was it not?

16 MR. CAPIN: I think, in fact -- if I could have a
17 moment.

18 (Counsel conferred off the record)

19 MR. CAPIN: It was, in fact, introduced as 151B.

20 THE COURT: All right. So, what the jury heard as
21 "151B" and what the record shows as 151B yesterday is 151A.

22 MR. CAPIN: One more moment, your Honor, if we may.

23 (Counsel conferred off the record)

24 MR. CAPIN: The other, your Honor, was referred to as
25 "151T," but should have been 151R, and that's a photograph of

1 the white hat.

2 THE COURT: So the record is clear, I hope, what was
3 referenced yesterday as "151T" is, in fact, 151R, and what was
4 referenced yesterday as "151B" is actually 151A.

5 (Exhibit No. 151A received into evidence)

6 (Exhibit No. 151R received into evidence)

7 Now, ladies and gentlemen, that may sound like
8 obsessive-compulsive disorder of being applied to the record in
9 the case, but it illustrates something that I have emphasized
10 all along. We want to be clear as to what you have been
11 exposed to in this case so that the case can be evaluated in
12 terms of the evidence that actually was introduced here, and so
13 sometimes we take a little bit of time to clarify what the
14 record is, even on what seemingly is a modest issue, and that
15 is why I took a bit of time this morning, because we identified
16 some variance yesterday.

17 So, you may proceed, Mr. Capin.

18 REDIRECT EXAMINATION

19 BY MR. CAPIN:

20 Q. Mr. Dwinells, Ms. Ferrone, attorney for Mr. Tazayakov,
21 referred to "move-in-day friend" as "Dias." Did you ever know
22 his name to be Dias?

23 A. No.

24 Q. I'll call him "Dias," just since we are doing that today,
25 so the record is clear.

1 Ms. Ferrone asked you a number of questions about
2 whether you suspected Jahar was the bomber or was being looked
3 at as the bomber or was being investigated as the bomber, and
4 whether you knew that at the time, and I think you said that
5 you had no idea, correct?

6 A. Correct.

7 Q. What would you have done if you thought he was the bomber?

8 MS. FERRONE: Objection.

9 THE COURT: Sustained.

10 BY MR. CAPIN:

11 Q. Ms. Ferrone asked you questions about whether the only
12 time you saw Dias look in the backpack was, in fact, before the
13 other two guys showed up in the room. Do you remember those
14 questions?

15 A. Can you repeat the question?

16 Q. So, Ms. Ferrone asked you questions about when you saw
17 Dias look in the backpack on the evening of April 18th. Do you
18 remember that?

19 A. Yes.

20 Q. And I think you said in response to her question that he
21 suggested that you only saw him look in the backpack before the
22 two other friends showed up. Do you remember those questions?

23 A. Yes.

24 Q. Now, is it fair to say you have been interviewed a number
25 of times about the events of April 18th?

1 A. Yes.

2 Q. And, in fact, did you testify in this very building before
3 a grand jury in May of last year about what happened on April
4 18th?

5 A. Yes.

6 Q. And this is about two weeks after the actual events in
7 question, correct?

8 A. I believe so.

9 Q. I am going to ask you if you remember being asked the
10 following question:

11 "And at that point where was the last place he had
12 searched?"

13 Do you remember being asked that question?

14 A. I believe so.

15 Q. And am I correct in noting that your response was, "The
16 last place he searched was, I believe, in the backpack again"?

17 Do you remember that?

18 A. I think so.

19 Q. So, is your memory today that after finding the marijuana
20 in the drawer Dias continued his search for several minutes?

21 A. Yes.

22 Q. And he continued to search in that -- and the search area
23 was limited to that dorm room, right?

24 A. Yes.

25 Q. What are the dimensions of that dorm room? How big is it,

1 approximately?

2 A. Maybe 15 feet by 12.

3 Q. So, 15 by 12. And so, after finding the marijuana Dias
4 continued to search in half of that room, half of that 15-by-12
5 room for another seven or so minutes; is that right?

6 A. Yes.

7 Q. Now, Ms. Ferrone asked you some questions about your
8 reaction when you learned that Jahar was the bombing suspect.
9 Do you remember those questions?

10 A. Yes.

11 Q. And I think she said that your reaction was something
12 like, "That can't be Jahar"?

13 A. Yes.

14 Q. But when you said or thought that can't be Dzakhar, did
15 you mean Dzakhar cannot be under investigation for the bombing?

16 MS. FERRONE: Objection.

17 THE COURT: Overruled.

18 You may answer.

19 A. It was just --

20 BY MR. CAPIN:

21 Q. I will ask a different one. Maybe it was confusing.

22 Was your expression of disbelief an expression of
23 shock that your roommate was under investigation?

24 A. Yes.

25 Q. But did you, in fact, believe that, in fact, the FBI was

1 looking for him as the bomber?

2 A. Yes.

3 Q. And, finally, Ms. Ferrone asked you a series of questions
4 concerning whether you had been arrested for, I think she said,
5 "Letting these guys take things out of the dorm room." Do you
6 remember those questions?

7 A. Yes.

8 Q. Did you have any information or belief that they had
9 removed a computer from the dorm room that night?

10 A. No.

11 Q. Did you have any information or belief that they had
12 removed a backpack from the room that night?

13 A. No.

14 Q. Did you have any information or belief that they removed
15 fireworks from the room that night?

16 A. No.

17 Q. How about a jar of Vaseline?

18 A. No.

19 Q. How about Jahar's thumb drive?

20 A. What?

21 Q. Did you have any belief or information that they had
22 removed Jahar's thumb drive from the room that night?

23 A. No.

24 MR. CAPIN: I have nothing further, your Honor.

25 THE COURT: Ms. Ferrone.

1 MS. FERRONE: Just a few follow-up questions.

2 RE CROSS-EXAMINATION

3 BY MS. FERRONE:

4 Q. Mr. Dwinells, you would agree with me that April 19th,
5 when you spoke to the FBI, is the day after April 18th, when
6 the guys came to the room, right?

7 A. Yes.

8 Q. And on May 2nd, when you testified in the grand jury, you
9 met with Ms. Siegmann first, correct?

10 A. I believe so, yes.

11 Q. Mr. Capin just asked you a couple of questions about
12 taking things from the room?

13 A. Yes.

14 Q. "They" didn't take anything from the room. It was Dias,
15 correct?

16 A. I don't know. I didn't see anything get removed from the
17 room, so --

18 Q. But you saw one gentleman take Beats headphones?

19 A. Yes.

20 MS. FERRONE: I have nothing further. Thank you.

21 THE COURT: All right.

22 You may step down. Thank you, Mr. Dwinells.

23 (Witness stepped down.)

24 (End of requested excerpt)

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C E R T I F I C A T E

I, Brenda K. Hancock, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *United States v. Tazhayakov*, No. 1:13-cr-10238-DPW-2.

Date: July 9, 2014

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter