

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)
) CRIMINAL ACTION
V.)
) NO. 14-10159
KHAIRULLOZHON MATANOV)

**MOTION FOR HEARING CONCERNING LEAKS TO PRESS AND
DISSEMINATION OF DOCUMENTS BY LAW ENFORCEMENT**

Defendant, Khairullozhon Matanov, by and through counsel, respectfully requests that this Court hold an evidentiary hearing regarding the Government's apparent leak of prejudicial non-public materials, including the FBI's "302" reports of interviews conducted by agents of the FBI and Joint Terrorism Task Force, and the transcript of Mr. Matanov's interview with the Braintree police. The leaks and ensuing media reports have jeopardized severely Mr. Matanov's right to a fair trial.

Specifically, the full transcript of Mr. Matanov's initial interview with the Braintree Police is now publicly available on the Internet.¹ Substantial parts of the FBI "302" reports of Mr. Matanov are quoted and cited in a December 2014 Boston Magazine article by Michele McPhee,² entitled "Inside the Mind of a Killer."³ It states

¹ Available at <http://ftpcontent2.worldnow.com/whdh/boston-marathon-bombing/pdf/140603-Matanov-Police-Transcript.pdf>, and <http://www.tumblr.com/search/matanov/>; also attached as Exhibit A. Bates stamping on the pages indicates this document is from discovery materials prepared by the prosecution.

² Ms. McPhee has previously received and published non-public information from federal agents' investigation of Dzhokhar Tsarnaev.

that the reports were “obtained exclusively by Boston magazine,” and direct quotations from the reports substantiate Ms. McPhee’s assertion that she received copies. These quotations include:

1. The out-of-context statement that “Matanov and Tamerlan [Tsarnaev] ‘did not have secrets.’”
2. “During this conversation they discussed the bombings in Boston... Matanov suggested that maybe something blew up in a kitchen near the finish line, to which Tamerlan responded: ‘Maybe, maybe not.’”
3. ““Tamerlan responded by asking whether Matanov thought the U.S. drones that dropped bombs in Pakistan and Afghanistan did not kill any children.’ ‘So what if a kid dies,’ Tamerlan said. ‘God will take care of him.’”
4. ““Tamerlan expressed glee over the bombings and called them the biggest thing since 9/11... Specifically, Tamerlan laughed at images of an old man running from the blast.”

To further prejudicial effect, the article also relies upon other information which appears to be from government sources. It contains inaccuracies, misconstrued quotations, and non-factual dramatizations of Tamerlan and Dzhokhar Tsarnaev’s interactions with Mr. Matanov.

³ See McPhee, Michele, “Inside the Mind of a Killer,” *Boston Magazine* (December 2014), available at www.bostonmagazine.com/news/article/2014/11/25/inside-mind-killer-tamerlan-tsarnaev-matanov/ and attached as Exhibit B.

This media coverage insinuates that the government has information showing that Mr. Matanov had some insider knowledge of the marathon bombing or the Waltham murders—a connection which the Indictment does not allege, and the facts do not support. At Mr. Matanov’s detention hearing, the prosecution admitted that Mr. Matanov posed no danger to the community. Surely they would not have done so if they believed Mr. Matanov to have knowledge of these crimes.

Federal regulation restricts the information and comments that Department of Justice personnel may make public. Specifically,

At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

28 C.F.R. § 50.2 (b) (2), *and see* U.S. Attorney’s Manual, chapter 1-7.500 (“At no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.”). Through partnerships such as the Joint Terrorism Task Force, “component[s] or personnel” of any federal, state, or local government agency with access to FBI records are also

bound by these regulations, as well as any restrictions contained in the applicable Memorandum of Understanding creating the partnership.⁴

Here, it appears that a government agent provided not just statements and information, but copies of actual “302” reports prepared by the agents who questioned Mr. Matanov. Various facts and statements from these reports would be inadmissible at trial under the Federal Rules of Evidence. Moreover, at the prosecution’s request, defense counsel signed protective orders restricting their use of the very information that has been leaked to the press. [DE 26, 87]. Both current and previous defense counsel have honored this protective order scrupulously; had defense counsel released these documents, we would be subject to sanctions. The government must be held to the same standard.

Defense counsel for Dzhokhar Tsarnaev repeatedly have addressed the same issue of government leaks. *See* [1:13-CR-10200-GAO, DE 280, 336, 438, 616, 676,

⁴ See, e.g., text of the Memorandum of Understanding between the Department of Justice and Boston Police Department, available at https://archive.org/stream/238313-boston/238313-boston_djvu.txt (“All information generated by the FBI or the JTTF will be controlled solely by the FBI and may not be removed from FBI space without the approval of the JTTF Supervisor. Dissemination, access or other use of JTTF records will be in accordance with Federal law, Executive Orders, and Department of Justice and FBI regulations and policy, including the dissemination and information sharing provisions of the FBI Intelligence Policy Manual. As FBI records, they may be disclosed only with FBI permission and only in conformance with the provisions of federal laws and regulations, including the Freedom of Information Act, 5 U.S.C. Section 552, and the Privacy Act of 1974, 5 U.S.C. Section 552a, as well as applicable civil and criminal discovery privileges. ... All electronic records and information, including, but not limited to, systems, databases and media, are also regulated by FBI policy.”)

680]. The U.S. Attorney's Office provided a Notice to all law enforcement personnel who have been involved in the Tsarnaev investigation "and related matters." *See* Notice, [1:13-CR-10200-GAO, DE 463-1]. Mr. Matanov's prosecution is related because it stems from his contact with law enforcement investigating the Tsarnaev brothers.

These egregious leaks have caused extreme prejudice to Mr. Matanov's right to a fair trial, particularly insofar as they connect Mr. Matanov with the marathon bombing and allege prior bad acts not contained in the Indictment in this case. Further, the release of this information has allowed the media to speak with the authority of Government sources, enhancing the prejudicial impact of the disclosures.

Through the Tsarnaev case, the U.S. Attorney's Office has received ample warning of similar leaks. Despite this, the Government has failed to take adequate measures to protect Mr. Matanov's Constitutional right to a fair trial by maintaining confidentiality. Accordingly, counsel requests an evidentiary hearing on this motion to determine the source and circumstances of the leaks and to fashion a remedy to prevent future improper disclosures. Should it be confirmed that the Government is the source of the leaks, counsel requests that this Court conduct a further hearing to impose sanctions and remedies for this conduct as appropriate.

DATED: December 4, 2014

Respectfully submitted,

KHAIRULLOZHON MATANOV,
by his attorney,

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CERTIFICATE OF SERVICE

I, Kristine M. Grimes, hereby certify that on December 4, 2014, I electronically filed the foregoing using the CM/ECF system, which will send this document to all attorneys of record, and paper copies will be sent to those indicated as non-registered participants on December 4, 2014.

/s/ Kristine M. Grimes

Kristine M. Grimes, Paralegal

FILE: [REDACTED]

BSCM:

DATE: 04/19/2013

Time:

Participants:

MH: Detective Matt Heslam
KM: Khairullozhon Matanov
AM: Ann Munson (Associate of Matanov)

Jb.

Reviewed by SA Boynton and corrections made.

Finalized by SA Williams, 3/27/2014

MH: Crazy set of events, huh?

KM: I can't believe it, I can't believe that happened with them, like they-they were nice people, like the way they talk.

MH: Yeah, um, yeah everybody is kind of in shock, everything that's going on the radio and everything else, so. Do you guys mind if I record it? Just so I don't miss anything and...

KM: Yeah, you can record it.

MH: Okay, awesome, I'm Matt Heslam, a detective with Braintree, so obviously, you guys came here to share information whatever you have with us, so we appreciate that, and uh, just fire away whatever, whatever you guys have, I mean

KM: [Overlapping] Um, I know...

MH: We'll probably pass it on to the feds and they'll take it from there I guess.

KM: So my name is Khairullozhon Matanov

MH: Sure. Do you want to write it down for me? What's your nationality?

KM: I am Uzbek.

MH: Okay

[REDACTED]

KM: So, and I know this guy uh Tamerlan Tsarnaev. Tamerlan Tsarnaev.

MH: Yeah, he's the older brother right?

KM: Yeah

MH: Okay

KM: The, the thing's, uh, two years, I think, I met him in the mosque, Cambridge mosque just to praying, I pray, and just like, you know. (phone rings) Do you mind if I just answer this?

MH: No. . . go right ahead. Do what you need to do.

KM: (Matanov speaks in foreign language. He later identifies caller as his mother.)

MH: Can you do me a favor? Can you just open up your purse for me real quick?

AM: Sure. What would you like in there?

MH: No go right ahead, I don't want to pry into your stuff..

AM: Its fine, there's nothing. Bless your heart, my, uh father was a policeman. And I, uh, and, I came in to verify that I know him and, you know, he's been a very very (UI)...I have to call him Mike 'cause I can't pronounce his name.

MH: Did you have any dealings with the brothers?

AM: No.

MH: Just him.

AM: No, no, I just know him (UI).

KM: Sorry

MH: No, no, don't be sorry.

KM: My mom, is like, she is like worried that um... So I know him since that time and we, we used to play sometimes soccer.

MH: Okay

KM: Like, and, I have their, like you know, the phone number and they call sometimes, like they come to the, we come actually we go to the Wellsley, there's a field and we just play like anywhere, and like where we find like empty, like the soccer field, ya know, like we play like every-everywhere.

MH: Okay

KM: So then like I heard today in the morning that like it was him and actually, I didn't see that it was theirs- the photos last night, I didn't see them and then like they said like he got shot and he's dead and like I can't imagine that he did it, that kind of stuff and if anything, I can help, like to do, like I, I am open to that.

MH: Okay

KM: But only thing I know that I used to call them and just like for the soccer reason, like you guys, you guys gonna, you guys gonna come to the, like play with us today? (UI) We spoke in Russian language that's all.

MH: Okay. Do you have his um phone number? The older or the younger brother?

KM: Yes

AM: And you called the younger brother this morning, as well? Because-

KM: Yes, yes it says it was blocked or something happened with it.

MH: Did it go straight to his voicemail?

AM: No.

KM: No, there is no voicemail. It said like blocked, something kind of. Do you want me to get the phone number?

MH: Yeah, whose is this? The younger brother's?

KM: Um, one second - older, older one uh, 857-928-4685. 7-928-4634.

MH: And that's the older brother's?

KM: Yeah

MH: Okay

AM: Is that the one you called this morning?

KM: No, younger's the one I called today. Younger brother's number is not working anyways. 857-247-5112

MH: Okay, um, anything happen in their lives in the last year or so that, you know, you saw a change?

KM: [Overlapping] No, they were like so, so nice people. Like, I don't know, like uh, that's the only thing I know, like, they, we talked about football that's all about it, they like you know, I don't know they shared about family life, what's going on, like, he told me about his life, he was a boxer, he, he won like the like championship in the New England a couple of times I think.

MH: Older brother again?

KM: Yeah

MH: Okay

KM: And like uh the only thing I know about the younger is he, he used to study, uh somewhere. That's why I don't see him too many time, ya know, couple times I just saw him and like I took his phone number if you just want to play if you're around soccer that's only like I know. I don't know what I can say else.

MH: No I mean unless you know something that happened personally, personally in their lives that would make them kind of go downhill and, and do something like this maybe something happened to their Mother or their Father or family member or anything?

KM: Their, their father and mother were also nice people they I think they left this country.

MH: Okay, have you ever met them?

KM: Yeah

MH: Yeah

KM: I met the uh his father.

MH: And they left and went back to Russia or?

KM: I don't know, Russia or Kyrgyzstan or somewhere like there.

MH: Okay, did they, do you know if they left willingly or if um the government had anything to do with it or...?

KM: No, I think they like just wanted to like go there, see their relatives there, down there.

MH: Um, alright, do you know if um the younger brother has a girlfriend or anything or somewhere?

KM: No as I told like, I don't know the younger brother too much.

MH: Okay

KM: But, I know that the older brother has a wife and a very sweetheart daughter. And I don't think they live together, but I, I'm not sure where they live right now.

MH: Okay, um, all right, anything else?

KM: Uh, that's only I know, you know, like I was just like you know like if someone sees me, like anyways, like like and I have a call them so they will like definitely probably they will say like, hey you call them, what you, like, what you doing like this and that questions.

MH: Have you sought out the FBI yet? To talk to them?

KM: No we did not go there.

AM: We just talked about this, this morning, because I was riding in, I usually go in to the T and then um of course Braintree was all blocked off, so we thought we'd go to Quincy. We went to Quincy and that's when they said oh you know no one's getting in on the T at all, and I said my boss demands I'm in work and, which we did. He drove me to work and...[UI}

KM: I didn't know until I pick her up and then like we came to Braintree, that was blocked, and I said like what's going on. And we went to the the Quincy Adams. There was a couple guys they said, like, they were from Chechnya, and I got like wow from Chechnya, I know people from Chechnya.

MH: Okay

KM: Then like then, we start listening to the radio, radio say like the name was correct, it their names.

MH: Uh hum

KM: Um I, I didn't see any bad things from them. They were always nice people to me, like, you know like, and they didn't complain to me that they have an issue with something, ya know.

MH: Okay, yeah, seems to be what everybody's saying, so I mean, you know, they've interviewed other friends of his and the younger brother and they said they didn't see any red flags, um, they don't know what happened, they said his father left about a year ago and went back to you know to Russia or so...

KM: Yeah

MH: Maybe it had something to do with that, I mean, nobody really knows at this point until they find him so...

AM: Uh hum

MH: Um, is there any way the older brother has ever told you anywhere he wanted to go, any, anything like that?

KM: He wanted to go to?

MH: Um, like, if you ever talked to him and he said, hey I've always wanted to go to this place or you know...

KM: No, he, he, he went like, I think like, to the, to see his like friends probably.

MH: Okay

KM: But I don't know like, he was planning to go somewhere abroad or in America.

MH: Is there, is there any specific religious place that uh the older brother or the younger brother went together or somewhere

where they shared a memory perhaps with like a lost relative or anything else, anywhere they would go in a time that, ya know.

KM: The only thing I know them, like, just you know the mosque, ya know, every Friday we, we as a Muslim, today's a Friday we go like, at like, at noontime to pray, over there I met the person, like, ya know, he looks like a little bit like my, my region of like people, ya know, and we start talking where I come from, this and that. That was two years ago.

MH: Uh hum

KM: And he, he, he like we, like, exchanged the contacts, like this and that. We, we went to play soccer and like even like he showed me like how to box a little bit, you know, like, if you want to become the boxer, I, I, can take you, like you, I know some coach that can train, like, train you to the boxing. And, there was, like, event we went together to the box, last year or this year, I don't remember a lot. He took me there was a something gold something happening. And he went there and he said like, everybody knows me here because, I, I became champion, so I'm [UI]

MH: [Overlapping] Golden Gloves? Is that right?

KM: Yeah, I think, ya know, in Lowell somewhere.

MH: Okay

KM: Yeah so he, that's all that I know, that's like, you know.

AM: Was that a gym that you went to, where it training in Lowell maybe?

KM: No, that's like, place...

AM: [Overlapping] Like a championship?

KM: You know, the like big, a lot of people in it, like you know like they were watching and he shows, he show he's (UI), he said like I, I, I, I, fight with them a couple times, and I won that.

MH: So this mosque in Cambridge, um, do you have an address of it or what street it's on, or a um?

KM: It's just a regular mosque, like.

MH: How many mosques are there in Cambridge?

KM: Just one

MH: Just one?

KM: As, as I know, like, like where I went.

MH: Okay. Can you just describe it for me just in case there's more than one?

KM: As, anyone else is, I'm not sure there was, they were talking there is like another mosque in Somerville or Cambridge

MH: Uh hum

KM: So I'm not sure which, which that belongs. I have never been.

MH: Does he go every Friday at noon?

KM: Uh he used to go but when I worked in Somerville, I used to just take a train to the Somerville, from Somerville and like you know like go to the to to the mosque and I saw them there but I didn't like participate with him in the mosque since like 2011, I think, like, since I start driving taxi, so I don't know.

MH: Do you, what's uh, can I grab your phone number before we depart here?

KM: 857

MH: uh hum

KM: 266 1103

MH: And what's your current address?

KM: Uh 223

MH: Uh hum

KM: Common Street

MH: Uh hum

KM: In Quincy, Apartment first, like apartment first in Quincy.

MH: Apartment number 1 in Quincy, 021...

KM: 69

MH: 69, ok.

KM: And should I contact the FBI?

MH: I uh...

KM: I don't think it's like really big as I know, like, as my, like, information because like, I've studied the law, that's not gonna have anything cause I just saw him, like, ya know.

MH: It's what?

KM: I, I, have studied the law, I am a law, like, I didn't really graduate, but I almost am done there back home.

MH: Okay

KM: As I know, it's not gonna give anything, like, but at least...

MH: Yeah, I mean, they're looking for any information, it, it might be redundant, they might already have these phone numbers, um, I imagine that they do

KM: They know everything probably.

MH: But they might not know the boxing aspect of it, um, they, they might, they might not know who knows, I mean or they might want to ask you different questions that I'm not thinking of that you know, they're obviously taking over this investigation, they probably know a lot more than I do, they probably know what questions they want to ask and so I mean I can get a field agent, I can make contact and I can probably have someone here relatively soon if you'd like to speak with someone from the FBI, they might have more questions than I have and it might, it might help their case, I, I don't know

KM: If, if like, it helps, like, yeah, I can do it, but I gotta go like uh before like 12:30 because I have to go to the prayer.

MH: Okay let me um let me make a couple phone calls and I can see what I can do

KM: Yeah

MH: Ok, I'll be right back. I'll shut this, that way no one walks in on you

AM: Alright, thank you. You feel better?

KM: I feel better already.

AM: Yeah, no, he's he's a nice guy I, I, know someone who works with him and uh I think you're smart to do this, this way that's good and you know it's only because you want to try to help, and that's good

KM: Yeah

AM: Yeah, so you're fine.

KM: Hopefully

AM: No, definitely I think you're okay. Where is the 857 phone number from?

KM: I think this is like from Boston

AM: Is it?

KM: Yeah, I'm not sure, like, this is like, I when I took the phone, that was 2 years ago probably, and since that I haven't...

AM: [Overlapping] Uh hum

KM: I, I wasn't like really into, stuff like that, kind of, phone numbers, I just have the, the Cape Cod one.

AM: Yup. 508 yeah

KM: 508

AM: Yeah, I have one somebody...

MH: I'm gonna have you guys sit in the lobby, I'm just gonna make a couple calls, ok?

AM: Okay, sure.

MH: If you want to come back out with me.

(All exit the interview room. The following conversations are overheard while they are walking to the lobby.)

KM: What'd they say?

MH: I, I gotta call the FBI right now.

AM: (UI)

MH: Yeah, see what they want to do. Did you go to school with him?

KM: No

MH: No? What school did you go to?

KM: (UI)

Boston



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Inside the Mind of a Killer

On the night of the Boston Marathon attacks, Tamerlan Tsarnaev watched his handiwork on television—and laughed.

By Michele McPhee | Boston Magazine | December 2014



PHOTO BY REGINA MOGILEVSKAYA

It was the evening of April 15, 2013, and Tamerlan Tsarnaev was a happy man. At a messy, third-floor apartment on Norfolk Street in Cambridge, the 26-year-old was in his living room alongside his brother, Dzhokhar, 19, watching the news on TV. Nearly every channel was running nonstop coverage of the chaos and carnage on Boylston Street: the smoke, the screaming, the severed limbs scattered in the street. Blood was everywhere. In the apartment, a laptop streaming CNN also played the endless chaos and heroic rescue efforts. Spectators used their belts, shirts, and shoelaces as tourniquets to tie off the mangled

limbs of strangers; doctors who ran the marathon sprinted to operating rooms; former New England Patriots offensive lineman Joe Andruzzi carried an injured woman to safety.

Then came a knock at the door.

"Open!" Tamerlan shouted.

In walked Khairullozhon Matanov. Tamerlan had been expecting him.

Matanov, a 23-year-old cab driver from Quincy, was a fellow Russian-speaking immigrant with a scrawny frame and floppy black hair. The two had met years earlier at a mosque on Prospect Street in Cambridge, part of the Islamic Society of Boston, and became friends. They attended Friday prayers together and went to the mosque on holidays such as Id al-Fitr, the highest of Muslim holy days. Tamerlan, a New England Golden Gloves champion, gave Matanov boxing lessons, and they played weekly pickup soccer games together in Cohasset. Matanov had even met the Tsarnaev family matriarch, Zubeidat Tsarnaeva, who cooked chicken and salad for him at their home. One time, the two friends climbed Mount Monadnock in New Hampshire, where Tamerlan talked about the *mujahideen*.

All of these details—and many more—are contained in FBI proffer reports obtained exclusively by *Boston* magazine. The proffer reports are an FBI agent's written account of multiple interviews with Matanov, whom the feds have charged with obstruction of justice in connection with the Boston Marathon investigation. Agents first interviewed Matanov in May 2013 and arrested him 12 months later. According to one of the reports, Matanov and Tamerlan "did not have secrets."

On the night of the bombings, Matanov allegedly told the FBI, he was rattled. But he repeatedly insisted that he had no idea the Tsarnaev brothers were behind the bombings. It was mere coincidence, he claimed, that at 3:31 p.m., some 40 minutes after the explosions, Matanov called Tamerlan, who said he was in a store buying milk. "During this conversation they discussed the bombings in Boston," the FBI report states. "Matanov suggested that maybe something blew up in a kitchen near the finish line, to which Tamerlan responded: 'Maybe, maybe not.'" The two made plans for dinner.

It was sundown by the time Matanov walked into the Norfolk Street apartment. The Tamerlan that greeted him that day looked more like the old Tam. Gone was the beard he'd grown after returning from a six-month trip to Russia in July 2012. Instead, his face was freshly shaved. Wearing sweatpants and boxing shoes, he more closely resembled the handsome party boy who once frequented Boston nightclubs and smoked pot with his friends. Neither Tamerlan's wife, Karima, née Katherine Russell, nor their toddler daughter, Zahara, were home.

After greeting the brothers, the FBI report says, Matanov commented that the bombings were very bad and voiced his concerns that the public might direct its outrage at Muslims. He plopped down on the couch next to Dzhokhar, who was stroking the family cat. Matanov also expressed sympathy for eight-year-old Martin Richard, who died in the second blast. According to the report, "Tamerlan responded by asking whether Matanov thought the U.S. drones that dropped bombs in Pakistan and Afghanistan did not kill any children."

"So what if a kid dies," Tamerlan said. "God will take care of him."

As Tamerlan watched the coverage on TV, he smiled. There was one image that every newscast replayed over and over again:

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78-year-old marathoner Jim Iffrig being hurled to the ground after the first bomb exploded, his bright orange tank top juxtaposed against the gray billowing smoke behind him. He lay prone on the ground, stunned, just yards away from the finish line. Half a dozen Boston Police officers sprang toward Iffrig and stood around him in a protective huddle as chaos erupted behind them. A blue-and-yellow-clad volunteer helped him to his feet.

There was something about that old man on the ground...Tamerlan loved it. When he saw the shot of Iffrig falling as the smoke rose in the background, Tamerlan laughed. Matanov told the FBI that "Tamerlan expressed glee over the bombings and called them the biggest thing since 9/11.... Specifically, Tamerlan laughed at images of an old man running from the blast."

The image of Iffrig crumpled on the ground became emblematic of the pandemonium and bloodshed near the finish line of the Boston Marathon. A child was dead, along with two young women. In all, the bombs injured more than 260 people; 16 of them lost one or more limbs. And at that time no one knew why.

Except for Tamerlan and Dzhokhar Tsarnaev.

Inside the apartment, Tamerlan disappeared into his brother's room, and Matanov tried to engage Dzhokhar in conversation about what had happened. Matanov said that the bombings were going to be a big problem for Muslims because innocent people were killed. For the first time that night, according to the FBI report of Matanov's account, Dzhokhar responded; he said that for some people the bombings were a good thing, for others they were a bad thing.

Dzhokhar was always a quiet kid, Matanov told the FBI, but that night his demeanor was particularly aloof. Maybe he was concentrating on the tweet he transmitted from his account @J_Tsar at 5:04 p.m. that day: "Ain't no love in the heart of the city. stay safe people." Dzhokhar also marked another tweet, from an account called "Death," at @GMCoderGoddi. It read, "The ultimate sacrifice is within you, The battle within is defined by the word jihad."

When they were finally ready for dinner, Matanov told the FBI, he and the Tsarnaev brothers climbed into his cab and went for kebabs at a storefront eatery in Somerville called Man-O-Salwas, a little less than a mile away.

The FBI first interviewed Matanov on May 31, 2013, nine days after his former roommate Ibragim Todashev was shot dead by an FBI agent in an Orlando apartment. Agents were interviewing Todashev, 27, regarding his role in an unsolved triple homicide in Waltham, and Todashev had, according to Florida authorities, begun to write a confession. The victims were three young men found with their throats slashed, their heads nearly decapitated and marijuana sprinkled over their mutilated bodies—a grisly bloodbath that fell on September 11, 2011, the 10-year anniversary of the 9/11 terror attacks. At least one of the victims, Brendan Mess, knew Tamerlan, who was also a suspect. The motive, Todashev had begun to explain, was robbery.

"I wanna [sic] tell the story about the robbery me and Tam did in Waltham," Todashev wrote on a legal pad. But before he could finish the confession, according to a Florida state attorney's report, Todashev, who had a long history of criminal violence, flipped over a table and lunged at a Massachusetts state trooper with a metal pole. Aaron McFarlane, an FBI agent assigned to the Boston field office, shot Todashev seven times. The FBI later cleared McFarlane of any wrongdoing.

The horrendous unsolved murders in Waltham have been used by Dzhokhar's defense team—in conjunction with Todashev's

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unfinished confession to argue that the older Tsarnaev brother was a menacing, dangerous man who acted as a “corrupting influence” on their client. In a court motion filed last fall, Dzhokhar’s defense attorneys referred to an “identified witness [who] would be prepared to testify” for prosecutors that their client was well aware that his big brother had committed the Waltham atrocities—and that Dzhokhar was afraid of him.

In January, Dzhokhar is expected to go on trial in federal court, charged with using and conspiring to use weapons of mass destruction. U.S. Attorney General Eric Holder has said that prosecutors will seek the death penalty. But whether Dzhokhar lives or dies may hinge on his defense attorneys’ ability to convince a jury that the younger Tsarnaev was, in some way, under the sway of his older brother.

Of course, dead men tell no tales. Todashev couldn’t finish his confession from the morgue—and Tamerlan was pronounced dead at 1:35 a.m. on April 19, 2013, after a wild firefight with police in Watertown.

In response to Dzhokhar’s defense team, the government denies that their alleged “identified witness” exists, saying only that there is a third party who claimed that someone might say Dzhokhar was aware of Tamerlan’s involvement in the Waltham murders. The government recently claimed it has no evidence linking Tamerlan to the Waltham murders, so there is nothing to produce in court—a stance that contradicts many earlier statements tying Tamerlan and Todashev to the crimes. In fact, the same FBI interviews of Matanov that detail the brothers’ reactions to watching TV news coverage of the bombings on April 15 also refer to questions Matanov was asked concerning the Waltham murders and the movements of his roommate, Todashev.

Matanov told conflicting stories at first, but eventually confirmed that Todashev was at their shared home on September 11, 2011, the night of the murders. He told agents that he came home from driving his cab to find his roommate in the shower. Hours later, Todashev packed up his belongings, save for a pair of boxing gloves, and drove with another Russian-speaking immigrant to Florida.

After initially interviewing Matanov in May 2013, agents have testified, the FBI followed Matanov sporadically for a year—during which time, according to the *Patriot Ledger*, investigators deployed a noisy, low-flying plane to track him. They arrested him on May 30.

Despite Matanov’s claims that he expressed sympathy for the child who died in the bombings, the federal indictment paints him as far more cold-hearted. It claims that after Matanov had dinner with the Tsarnaevs on April 15, he returned to his Quincy apartment and told his roommate—who is now a government witness—that the bombings were justified if they were “done in the name of Islam.”

In the days following their dinner together, Matanov stayed in cell-phone contact with Tamerlan and even made one more visit to Tamerlan’s apartment in Cambridge during the week leading up to the Watertown shootout. Matanov also tried six times—in vain—to call Dzhokhar. His last attempt was made at 7:17 a.m. on April 19, when, according to the indictment, the suspect “was still evading law enforcement.”

After Dzhokhar’s capture, Matanov desperately tried to erase the memory on his own computer, according to the indictment, and deleted photos that showed him alongside Todashev and the Tsarnaev brothers during happier times: going to the beach in Quincy, celebrating Id al-Fitr at the mosque. In one of the pictures, Matanov posed alongside Tamerlan in front of a black flag imprinted with a sword and the *shahada* phrase—often described as “the black flag of jihad”—taken, according to one of the

Federal prosecutors accuse Matanov of deleting files from his computer and of lying to investigators about his interactions with the Tsarnaev brothers in the days after the bombings. Today, Matanov is being held without bail at the Plymouth County Correctional Facility—in notorious gangster James “Whitey” Bulger’s old cell. Federal prosecutors have argued that Matanov is a flight risk: a man who speaks seven languages, has no family here, has changed jobs and residences several times, and has made multiple money transfers to parties overseas using various aliases.

Matanov’s attorneys, Edward Hayden and Paul Glickman, insist that their client is innocent of any crimes, including any involvement in the Waltham murders, pointing out that he has voluntarily cooperated with investigators. “It’s not a federal crime to be friends with someone,” Hayden says.

On April 19, hours before Dzhokhar was captured, Matanov gave a voluntary interview to the Braintree police. When asked how he met the brothers and what he thought about them, Matanov said what any neighbor or casual acquaintance might say: “They were like so, so nice people.”

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