

War on Terror

FBI analysis raises new questions in bungled terror case

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WASHINGTON – A new FBI analysis of evidence in a bungled Detroit terrorism trial undercuts the recent indictment of the former prosecutor in the case, creating fresh conflict in a legal drama that has embarrassed the Bush administration.

The 13-page report by FBI Agent Paul George concludes that satellite photos of a Jordanian hospital closely match hand-drawn sketches found in 2001 inside the apartment of four Detroit men who the government claimed had surveyed the site as part of a terrorist plot.

The new analysis conflicts with the Justice Department's argument that photographic evidence did not match the sketches.

George testified at the 2003 Detroit terrorism trial and produced the new analysis around the time he was called to testify late last year before a grand jury that eventually indicted the prosecutor for wrongdoing in the case, officials said. The agent's report was obtained by The Associated Press.

Convictions of three of the four Detroit men – arrested shortly after the Sept. 11 attacks – were tossed out in 2004 after the Justice Department told the court its own prosecutors withheld photos from defense lawyers that could have helped prove the defendants innocence.

Last month, former Assistant U.S. Attorney Richard G. Convertino and a State Department investigator were indicted on charges they conspired at the trial to withhold the pictures because they would have shown that the drawings were not surveillance sketches of the hospital, as Convertino and trial witnesses had portrayed.

“The object of the conspiracy was to present false evidence at trial and to conceal inconsistent and potentially damaging evidence,” the indictment alleges.

In an earlier court filing, Justice went further, claiming the photos disproved the sketches: “It is difficult if not impossible to compare the day-planner sketches with the photos and see a correlation.”

Department officials said they were aware of George's report, but remained confident they could prove the ex-prosecutor and the State Department official lied about the existence of the photos, which were e-mailed to Convertino before the trial and were not turned over to defense lawyers. Convertino said he never saw the e-mail or photos.

“The pending prosecution is not about the guilt or innocence of the defendants,” Justice spokesman Bryan Sierra said. “This is about lies perpetrated by a federal prosecutor and a federal agent, as alleged in the indictment. It's about perjury and the integrity and fairness of the judicial system.”

Justice officials also acknowledge they don't possess one of the two sets of photos they accuse Convertino of withholding. Aerial photos believed to have been taken by helicopter before the trial are missing, but prosecutors do have a set of ground photos of the Jordanian hospital they say were e-mailed to Convertino before the trial.

Convertino alleges he is being prosecuted solely because he sued then-Attorney General John Ashcroft in 2004, alleging mismanagement of the war on terror.

Convertino is due in court Friday. His lawyer said Thursday the new FBI analysis “disproves the indictment's preposterous allegations” and vindicates the original terrorism convictions.

“The government now agrees, after three years of inquiry and millions of dollars, that the evidence in the original case proves the terrorist convictions originally rendered by the jury,” attorney Bill Sullivan said

The criminal charges against Convertino are based on the principle that prosecutors must turn over to defendants all evidence that could help them prove their innocence.

Legal experts said the emergence of George's analysis could help Convertino's lawyer create reasonable doubt. Defense lawyers could argue that if photos matched the sketches – instead of disproved them – Convertino would have had no motive to hide them and no obligation to turn them over, experts said.

“We don't know yet what other evidence Justice might have, so we have to wait and see but this new information seriously weakens the allegations as initially reported,” New York University School of Law professor Stephen Gillers said.

Gillers said the fact that an FBI agent would create an analysis that could undercut Convertino's indictment “signals disagreement about the wisdom of this prosecution within the enforcement agency.”

The FBI analysis is the latest twist in a case that once was hailed by the administration as a major success in the war on terror but has become a lingering embarrassment.

Three of the four defendants were convicted on various charges, but the Justice Department reversed course after the trial and took the rare step of persuading a judge to throw out their convictions, alleging misconduct by Convertino.

A lawyer for one of the defendants, Karim Koubriti, said he was surprised to learn about George's new analysis but remains focused on defending his client against new federal fraud charges.

“Mr. Koubriti has maintained his innocence from the beginning and he continues to maintain his innocence. And we are going to work to prove that regardless of the outcome of the Convertino case,” federal public defender James Gerometta said.

George, who was one of Convertino's witnesses at the 2003 trial, conducted his analysis late last year as Justice was pursuing the criminal charges against Convertino and threatening at least one fellow FBI agent with prosecution.

The agent overlaid satellite photos of the Jordanian hospital obtained from the Google satellite photo service with the defendants' original sketches. He identified numerous matching points.

“Close up showing Parking reference on sketch,” George wrote on a page showing a satellite photo with the parking lot and how it matched the sketch. George noted the defendants had written in Arabic on the sketch, “Behind (Back) Parking, Private Non-Direct.”

George wrote that two darkened lines on the sketch closely resembled two roads on the satellite photos and that X's marked on the sketches “may indicate highway exits” shown on the satellite images.

He also said slight variations between the roads on the sketches and the roads shown on the satellite images could be explained. “Exaggerated turns in sketch may indicate sharp drop in road grade,” George wrote.