

MCVEIGH ATTORNEY GLOATS; FEDS BEGIN DAMAGE CONTROL PROSECUTION TAKES A HIT WHEN EVIDENCE RELIABILITY WEAKENS

Rocky Mountain News

Rocky Mountain News (Denver, CO)

February 2, 1997 | Flynn, Kevin; Kilzer, Lou

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It was a good week for Timothy McVeigh and a bad week for the prosecutors trying to convict him of the worst terrorist attack on American soil.

The government's eyewitness and physical evidence took body blows.

McVeigh's attorney crowed that prosecutors were "re-arranging deck chairs on the Titanic."

The feds tried damage control.

Almost two more months of pre-trial combat remain between prosecutors and defense lawyers before McVeigh's March 31 trial begins in Denver U.S. District Court.

They will brawl about the veracity of the witnesses who say they saw - or think they saw - McVeigh in Oklahoma City on the morning of April 19, 1995, when a 4,800-pound bomb shredded the federal building, killing 168 people.

They will argue about others who say they saw McVeigh - or a man who looked like him - at the Kansas body shop where the bomb truck was rented.

They will rail at each other about the integrity of physical and chemical evidence against McVeigh.

U.S. District Judge Richard Matsch will have to rule on what evidence to let in and what to throw out.

In the end, the verdict on Tim McVeigh will go where it's been headed for the 12 months since the trial was moved to Denver - to a dozen Colorado citizens making up a jury of McVeigh's peers.

Many questions remain, but it's clear that last week's developments were the biggest setback for prosecutors in the 21 months since McVeigh was pulled over by an unassuming Oklahoma state trooper because his car's license tag was missing.

It was ``the worst week on record for the government in this case," Denver defense attorney Scott Robinson said.

Larry Pozner, another prominent Denver attorney, said:

``It sounds to me that the FBI and the United States attorney general's office are in damage control going into trial. That's not where you want to be."

FBI agents, Attorney General Janet Reno and a crack team of federal prosecutors had seemed to be building an almost invincible case of eyewitness testimony and physical evidence against McVeigh.

Last week's events might have changed that perception.

First, prosecutors had to acknowledge in court documents that a crucial witness who identified McVeigh as the man who rented the bomb truck had a faulty memory.

So faulty was his memory, in fact, that he misidentified a man who came to the Kansas Ryder truck agency the day after the bomb truck was rented as the mysterious ``John Doe 2" who allegedly came in with McVeigh.

Nevertheless, the government stood its ground, saying it may still call that witness to link McVeigh to the truck.

Next came the sensational revelations that some workers in the FBI crime lab in Washington claim that evidence processed in the lab, including some involving the Oklahoma bomb, may have been mishandled or contaminated.

A key piece of evidence against McVeigh is the clothing he was wearing when he was pulled over near Perry, Okla., 90 minutes after the bombing. The FBI said it found traces of PETN, an explosive often found in detonating cords, on the garments.

But some lab workers have told Justice Department investigators that the clothing may have been contaminated. The garments were apparently shipped to the lab in a brown paper sack instead of in sealed plastic evidence bags.

Several other instances of possible evidence contamination surfaced as a rebellion over procedures and integrity in the once-prestigious crime lab broke into full public view.

Frederic Whitehurst, once the FBI's most respected bomb expert, began charging in 1995 that evidence was sloppily handled in the lab and that supervisors sometimes pressured agents to doctor their findings to buttress prosecutions.

Whitehurst last year extended his allegations to include Oklahoma bomb evidence, and last week's disclosures added evidence that several lab colleagues support his claims.

"In general, we have confidence in the lab," Deputy Attorney General Jamie Gorelick said. She said the problems cited in the secret, draft inspector general report affect a limited number of units within the lab and a limited number of (evidence) examinations and cases."

Will last week's assaults on the integrity of some Oklahoma evidence torpedo the government's case?

Not necessarily. The government has an arsenal of circumstantial evidence and witness testimony that could incriminate McVeigh including phone records and his history of ill will toward the government.

Furthermore, the government will call expert witnesses from outside the FBI to assert that much of the explosives evidence is reliable.

Still, last week's developments gave Stephen Jones, the Oklahoman defending McVeigh, a treasure trove of contentions to toss in front of the jury.

The eyewitnesses are bad, Jones will tell jurors. The evidence is tainted. The accomplices who most Americans believe must have been involved in such a monstrous plot are nowhere to be found.

Jones had predicted for months that problems would develop for the government's eyewitnesses and its forensic evidence.

He hopes that weakening in government evidence, coupled with a believable alternative theory about who bombed the Alfred P. Murrah Building and why, will persuade 12 men and women to acquit McVeigh, or at least spare his life.

After all, allegations of police misconduct helped doom the California prosecution's case against O.J. Simpson.

Some Denver defense attorneys have said McVeigh's jury will be loath to allow the murders of 168 people, 19 of them children, to go unpunished.

So while last week was a very good one for McVeigh, he appears to be a long way from walking out of Matsch's courtroom a free man.

But he seems closer to it than at any time since his arrest.