

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 92-10369-RWZ

UNITED STATES OF AMERICA

v.

ALFRED W. TRENKLER

MEMORANDUM OF DECISION

December 28, 2000

ZOBEL, D.J.

Defendant, Alfred W. Trenkler, was convicted by a jury on November 29, 1993 of conspiracy and two substantive "explosives" counts under 18 U. S. C. § 844. Judgment entered on March 8, 1994 and was affirmed by the Court of Appeals on July 18, 1995. The matter is before me on defendant's Motion for a New Trial or, in the Alternative, for an Evidentiary Hearing, the fourth attack on the judgment.<sup>1</sup> Defendant again cites evidence he alleges is newly discovered. He asserts that records of Radio Shack show:

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<sup>1</sup> On December 22, 1995, defendant filed the first motion for a new trial under Fed. R. Crim. P. 33 on the ground of newly discovered evidence; namely, the testimony of a Dr. Robert Phillips, a psychiatrist who opined on the credibility of Thomas Shay, the co-defendant, and an alleged agreement for leniency of a government witness, David Lindholm.

In November 1996, defendant moved for a Judicial Inquiry into Possible Juror Misconduct and for a New Trial.

On January 5, 1999, defendant filed a motion under 28 U.S.C. § 2255 to vacate the judgment on the ground of ineffective assistance of his retained trial counsel because of counsel's failure to call Dr. Phillips.

All three motions were denied and the denial of the first two, affirmed on appeal. The third is still pending.

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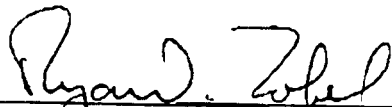
that the government fabricated a receipt from its store on Massachusetts Avenue in Boston for the sale to Thomas Shay of components of the bomb; that Mr. Shay, the co-defendant, would testify that Mr. Trenkler did not commit the offense of which he stands convicted; and that another witness, John J. Bowden, would offer testimony concerning the veracity of a trial witness, David Lindholm.

The motion for a new trial fails on the merits and an evidentiary hearing would not cure its essential weakness. Apart from the fact that the records of Tandy Corporation, the parent of Radio Shack, show the purchase defendant contests, the evidence he cites was available at the time of the trial. The allegedly exculpatory statements of Thomas Shay and John Bowden are unsupported by any affidavits and, in the case of Mr. Shay, directly contradict his sworn testimony at his change of plea hearing.

In the end, however, the motion fails because it is simply too late. Current Rule 33, as amended in 1999, provides that "[a] motion for a new trial based on newly discovered evidence may be made only within three years after the verdict or finding of guilty." Former Rule 33 granted a two-year period for filing a motion for a new trial and the time ran from the date of final judgment. Whichever version of the Rule governs, the motion, filed in August 2000, is untimely as it was filed more than three years after the verdict, November 1993, and more than two years after the date of the mandate from the Court of Appeals, July 1995.

The motion for a new trial is denied.

December 28, 2000  
DATE

  
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RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE