

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 92-10369-Z
)	
ALFRED W. TRENKLER,)	
)	
Defendant.)	

DEFENDANT ALFRED W. TRENKLER'S MOTION FOR A NEW TRIAL
OR, IN THE ALTERNATIVE, FOR AN EVIDENTIARY HEARING

Pursuant to Fed. R. Crim. P. 33, the Defendant Alfred W. Trenkler ["Trenkler"], who is currently serving a sentence of life imprisonment, hereby moves this Court to set aside the verdict returned in the above-entitled action on November 29, 1993 (and the judgment entered thereon on March 8, 1994) and to grant a new trial on the grounds of newly discovered evidence. In the alternative, the Defendant requests an evidentiary hearing relating to certain newly discovered evidence. As reasons therefor, the Defendant asserts the following:

1) In late October and November 1993, Trenkler was tried by a jury for conspiracy under 18 U.S.C. §371, receipt of explosive material under 18 U.S.C. §844(d), and attempted malicious destruction of property by means of explosive under 18 U.S.C. §844(i) arising out of an explosion in Roslindale, Massachusetts, on October 28, 1991, which killed a Boston Police officer and seriously injured a second Boston Police

creator of the Roslindale bomb, but nonetheless found the error harmless beyond a reasonable doubt. In so doing the First Circuit relied upon certain evidence that it found supported a finding that Trenkler had built the Roslindale bomb.

5) The First Circuit "principally" relied upon Lindholm's testimony in finding the erroneous admission of the computer-generated evidence nonetheless to be harmless beyond a reasonable doubt. Specifically, the First Circuit found that Lindholm, a convicted felon, "convincingly testified that Trenkler actually admitted building the Roslindale bomb." **Exhibit B**, First Circuit Court of Appeals Opinion in United States v. Trenkler, at p.39.

6) Although Lindholm testified that he had no agreements with the Government and that he did not receive any promises or inducements for his testimony, he testified that he knew that the only way his ninety-seven month sentence could be reduced was if he supplied new information to the Government. **Exhibit A**, Trial Transcript, pp. 1171, 1175.

7) New and material evidence relating to Lindholm's testimony came to light almost two years after the trial of this action when an article appeared in The Boston Globe on August 1, 1995, indicating that "Lindholm was reportedly released from federal prison 37 months into an 8-year sentence and testified against convicted bomb builder Alfred Trenkler in the Roslindale bombing case in which a Boston police officer

was killed." **Exhibit C**, Article from The Boston Globe. Moreover the Schuylkill Federal Prison in Minersville, Pennsylvania, confirmed that William David Lindholm had been incarcerated on September 9, 1991, for a ninety-seven month sentence, and was released on September 30, 1994, approximately five years before his scheduled release date. Because the release date of Lindholm occurred almost two years after Trenkler's trial, Trenkler could not have discovered the evidence in the exercise of due diligence.

8) When Trenkler learned of Lindholm's release from prison approximately five years early, he filed a Motion to Remand with the First Circuit on August 8, 1995.¹ **Exhibit D**, Motion to Remand.

9) On August 25, 1995, the First Circuit denied the Motion to Remand, but in so doing asserted the following:

Defendant's Motion raises issues of concern, which could merit a hearing. However, the proper forum for such a hearing is before the district court upon motion of a new trial.

Exhibit E, First Circuit's Order on Motion to Remand.

10) In further support of its determination that the computer-derived evidence although erroneously admitted was

¹ At the time, Trenkler's Petition for Rehearing and Suggestion for Rehearing En Banc was pending before the First Circuit.

harmless beyond a reasonable doubt, the First Circuit found support in "the ample evidence the Government adduced establishing Trenkler's relationship with Shay Jr." Exhibit B, First Circuit Opinion of United States v. Trenkler, at p. 39.

11) Whether Trenkler conspired with Shay Jr. in receiving explosives in interstate commerce resulting in death and in the attempted malicious destruction of property resulting in death was a central contested issue in the case against Trenkler. The Government used out-of-court statements of Shay Jr. to prove Trenkler's involvement in the two-person conspiracy. In fact, the Government argued at Trenkler's trial that Shay Jr.'s statements were key to establishing the conspiracy for which Trenkler had been charged. Exhibit A, Trial Transcript, pp. 758-59, 761.

12) In asserting that Shay Jr.'s out-of-court statements should be admitted at Trenkler's trial, the Government argued that Shay Jr.'s out-of-court statements were reliable. Over the Defendant's objections, this Court, after extensive colloquy, made reference to the introduction of Shay Jr.'s own statements against Shay Jr. at his trial some months earlier and admitted through three witnesses and a portion of a videotaped interview with Channel 56 Reporter Karen Marinella ten out-of-court statements by Shay Jr. as statements against penal interest and state of mind. Exhibit A, Trial Transcript, pp. 748-93, 795-828, 845-849, 855-858, 866-868, 871-875, 879-880, 883-887, 1540.

13) Because this Court precluded Shay Jr. from introducing at his trial expert psychiatric testimony that his own statements were the unreliable product of a recognized mental disorder called "pseudologia fantastica," Trenkler's trial counsel believed it would be futile to seek to introduce the same or similar testimony as to Shay Jr.'s statements at Trenkler's trial.

14) On June 22, 1995, almost two years after Trenkler's trial, the First Circuit in United States v. Shay, Jr., No. 93-2141, held that it was a "clear error in judgment" for this Court to exclude the testimony of Shay Jr.'s expert that Shay Jr.'s statements were the unreliable product of a recognized mental disorder. **Exhibit F**, First Circuit Court of Appeals opinion in United States v. Shay, Jr.

15) The Lindholm and Shay Jr. evidence at issue is not merely cumulative or impeaching in character, but is material and of such character that if received at the trial it would probably have resulted in an acquittal.

16) The recent evidence of Lindholm's early release from prison indicates, notwithstanding Lindholm's testimony to the contrary, that indeed an agreement existed between him and the Government. Given that the Majority of the First Circuit placed great significance on Lindholm's testimony against Trenkler and the out-of-court statements of Shay Jr. in reaching its decision that erroneously admitted evidence was harmless beyond a reasonable doubt, the Defendant is entitled to a new trial.

17) In the alternative, the Defendant requests that an evidentiary hearing be held to determine the following issues:

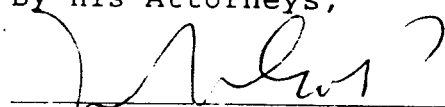
- a. Why William David Lindholm was released on December 30, 1994, approximately four (4) years before his scheduled release date from federal prison?
- b. Whether the early release of Lindholm was related to testimony he gave against Alfred Trenkler on November 10, 1993, in the trial of this action?
- c. Whether there was an agreement, explicit or implicit, between the Government and Lindholm or whether there were any promises or inducements from the Government?
- d. Whether Shay Jr.'s statements were inherently unreliable given the proposed testimony of Dr. Robert Phillips at Shay Jr.'s such that they should not have been admitted against Trenkler at trial.

WHEREFORE, the Defendant Alfred W. Trenkler respectfully requests that this Court grant his Motion for a New Trial or, in the Alternative, for an Evidentiary Hearing.

The Defendant Alfred W. Trenkler submits the Affidavits of Michael Z. Burnett and Terry P. Segal, Esquire, as well as a memorandum of law in support hereof.

DEFENDANT ALFRED W. TRENKLER

By his Attorneys,



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DATED: December 22, 1995
T:581

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by hand/mail on 12/22/95