

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

ALFRED W. TRENKLER,

Defendant

CRIMINAL NO. 92-10369-Z

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

The Defendant Alfred W. Trenkler replies to the Government's Opposition to Motion for a New Trial or, in the Alternative, for an Evidentiary Hearing, as follows:

EXAMINATION AND CROSS-EXAMINATION OF THOMAS A. SHAY

The contours and thrust of the proposed testimony of Thomas A. Shay at a new trial or at an evidentiary hearing were set forth in the Motion for a New Trial or, in the Alternative, for an Evidentiary Hearing: Mr. Shay stated in an interview with undersigned counsel that the testimony by the Radio Shack employee concerning the purchase of the items in question was false and biased and that Alfred W. Trenkler did not commit the crimes for which he was convicted.

This proffered testimony contrasts directly with Shay's prior out-of-court statements, not under oath, to a television reporter and in his plea agreement. The statements to the television reporter were the subject of a remand by the First

Circuit in United States v. Shay, 57 F.3rd 126 (1st Cir. 1995).

The Court ruled that evidence by an expert doctor that Shay suffered from a mental disorder which caused him to tell grandiose, self-incriminating lies might have been improperly excluded and that an evidentiary hearing should be held. The First Circuit noted, ibid. at 134, fn.7:

The district court acknowledged the importance of the statements to the government's case at a side bar conference on the fourteenth day of trial when it observed that without Shay Jr.'s statements, "the government would be sunk."

The government "would be sunk" in the instant case as well without Shay's statements. The best way to determine the value and credibility of the proffered Shay testimony, which contradicts his prior statements, is by way of examination and cross-examination under oath at a new trial or at an evidentiary hearing. Given the critical importance of Shay's statements and the proffered testimony, and the life sentence to the defendant, a hearing at least should be held.

EXAMINATION AND CROSS-EXAMINATION OF JOHN J. BOWDEN

As the testimony of the government witness David Lindholm was acknowledgedly crucial to the upholding of the conviction, the proposed testimony of John J. Bowden concerning the veracity of that testimony is also crucial. As Chief Judge Torruella stated in his dissent in the appeal of the conviction in this

case, United States v. Trenkler, 61 F.3rd 45, 69 (1st Cir. 1995),

"The majority relies most heavily on the testimony of David Lindholm, who testified that Trenkler confessed to building the Roslindale bomb. But Lindholm had some serious credibility problems which makes his testimony 'shaky' to say the least."

(emphasis added). Chief Judge Torruella continued:

Lindholm testified that he met Trenkler while Lindholm was serving a 97-month sentence for conspiracy to distribute marijuana and tax evasion. He further testified that he was in the marijuana business from approximately 1969 through 1988, and that he did not pay any income taxes during that time. Lindholm also testified that, in order to secure bank loans to purchase property during that period, he showed several banks false income tax returns. On the basis of Lindholm's shady past alone, the jury might have completely disregarded his testimony.

But Lindholm also had some less obvious credibility problems. The circumstances of his meeting Trenkler strike me as a little too coincidental. On December 17, 1992, after a year and a half incarceration in Texas, Lindholm is brought back to Boston concerning certain unspecified charges related to his conviction. He is then placed in the orientation unit at the Plymouth House of Correction where he meets Alfred Trenkler, who is being held in connection with the Roslindale bombing. The two subsequently discover that they have an extraordinary amount in common. First, they are both from the town of Milton, Massachusetts. Second, Trenkler attended Thayer Academy and Milton Academy, and Lindholm's father also attended Thayer Academy and Milton Academy. Third, they both lived for a time-overlapping by one

year-on White Lawn Avenue in Milton. Based on these commonalities, and Lindholm's generosity in sharing his knowledge of the criminal justice system with Trenkler, they form a friendship. Trenkler then, allegedly, confesses to Lindholm that he built the bomb.

In my view, a reasonable juror might question whether Lindholm was placed in the orientation unit by the government for the purpose of obtaining a confession from Trenkler. If so, that juror would likely wonder what Lindholm got in return. No surprisingly, Lindholm testified that he had no agreements with the government and that he did not receive any promises or inducements for his testimony. He did testify on cross-examination, however, that he knew, when he provided the information about Trenkler to the government, that the only way his 97-month sentence could be reduced was if he supplied new information to the government.

We do not know how much weight the jury gave Lindholm's testimony, but we do know that, at least on paper—for we did not observe his demeanor at trial—Lindholm had some significant credibility problems.

Ibid. at 69-70
(emphasis added)

The shakiness of and significant credibility problems with Lindholm's testimony would be exponentially increased with Bowden's testimony.

In United States v. Rodriguez, 738 F.2d 13 (1st Cir. 1984), relied upon by the Government at p.25 of its Opposition, an evidentiary hearing was held. In that case, the district court judge found after an evidentiary hearing that the newly discovered evidence was "impeaching evidence of bad caliber

which could not have any effect on the outcome of the case."

The First Circuit held:

Impeachment evidence is presumptively immaterial. 3 C. Wright, Federal Practice and Procedure, Sec. 557 (1982). In addition to its immateriality, the trial judge found that the testimony was not credible.

The proposed testimony of Bowden is not mere low-level impeachment of credibility. It goes directly to the question of whether Lindholm's testimony as to guilt might have been deliberately false. The First Circuit stated in United States v. Natanel, 938 F.2d 302, (1st Cir. 1991), "In particular, if satisfied that the testimony at trial was deliberately false, it is only necessary that the district court find that 'without the false testimony the jury might have reached a different conclusion.'" (case cited, emphasis in original). If the proffered Bowden testimony is true and the Lindholm testimony was deliberately false, the jury might certainly have reached a different conclusion.

The best way to determine the value and credibility of the proposed Bowden testimony is by way of examination and cross-examination under oath at a new trial or at an evidentiary hearing.

The testimony of John J. Bowden was not known to Trenkler or available to him with due diligence prior to trial. Bowden

is an inmate at U.S.P. Allenwood and was unknown to Trenkler until approximately 1998.

THE NEW EVIDENCE WAS UNKNOWN OR UNAVAILABLE, IS MATERIAL, AND IF ACCEPTED AS TRUE IS LIKELY TO RESULT IN AN ACQUITTAL UPON RETRIAL. IN THE CONTEXT OF THE LIFE SENTENCE IN THIS CASE, DUE PROCESS CALLS FOR A NEW TRIAL OR AT LEAST AN EVIDENTIARY HEARING.

The evidence proposed by Trenkler in his Motion for New Trial or, in the Alternative, for an Evidentiary Hearing, is material and was unknown or unavailable at the time of trial, despite due diligence. If accepted by a fact finder as true, it is likely to result in an acquittal upon retrial.

The evidence of the witness Shay goes to the question of guilt or innocence itself, and the evidence of the witness Bowden may be strong enough and would be important enough to overcome the presumption of immateriality. Assertions of credibility should await examination and cross-examination under oath.

The evidence concerning the Radio Shack sales receipt and the proffered testimony of the Radio Shack attorney are material. An evidentiary hearing, at least, should be held.

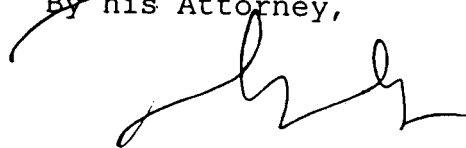
If the evidence presented is accepted to be true, there is clearly a "reasonable probability" "sufficient to undermine confidence in the outcome." United States v. Sepulveda, 15 F.3d 1216, 1220 (1st Cir. 1993), quoting United States v. Bagley, 473 U.S. 667, 682 (1985). Given the materiality and significance of

the new evidence and in the context of the severity of the life sentence imposed, the application of time bars in the instant case would be unconstitutional and due process calls for a new trial or at least an evidentiary hearing.

CONCLUSION

Therefore, for the foregoing reasons and authorities, and those expressed in the Motion, a new trial should be granted or at least an evidentiary hearing should be held.

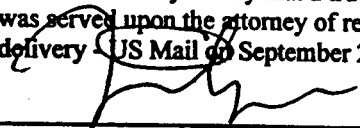
By his Attorney,



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Dated: September 26, 2000

CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above document(s) was served upon the attorney of record for each other party by hand-delivery ~~US Mail~~ on September 26, 2000.



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