

United States District Court  
District of Massachusetts

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United States of America,  
Plaintiff

v.

Alfred W. Trenkler,  
Defendant

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Criminal No.: 92-10369-Z

DEFENDANT'S MOTION FOR AUTHORITY TO CALL ASSISTANT UNITED STATES ATTORNEY PAUL KELLY AS A DEFENSE WITNESS AT TRIAL

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Now comes defendant and respectfully requests authority to call Paul Kelly as a trial witness. In support of this motion, defendant states:

1. During a portion of the pre-indictment period (March-June, 1992), Thomas Shay, Jr. was held at Charles Street Jail. Thomas Shay, Jr., is a co-defendant in this case, and a person whose inculpatory statements the prosecution will attempt to introduce into evidence in this case. While at Charles Street Jail and while represented by counsel, Thomas Shay, Jr. made several collect calls to Mr. Kelly.

2. During at least two of those collect telephone calls, Mr. Shay told Mr. Kelly that Shay Sr. was responsible for the Roslindale bombing that killed Officer Hurley.

3. Attached hereto (Exhibit A) is Mr. Kelly's April 20, 1992, letter to Shay Jr.'s then attorney, William C. McPhee, Esq., in which Mr. Kelly relates the substance of two of Shay Jr.'s collect

phone calls in which Shay Jr., contrary to other statements he made to Mr. Kelly and other government investigators inculcating himself in the bombing, claims his father was responsible for the bombing. It also seems likely that during this time frame (March-June, 1992) Shay Jr. made several other collect calls to Mr. Kelly for which no written memoranda exist.

4. In early October, 1992, Shay Jr. executed a proffer agreement with Mr. Kelly in which Mr. Kelly indicated that if Shay Jr. was truthful he could expect a sentence in the range of three years.

5. On November 10, 1992, Mr. Kelly wrote a memorandum where he stated "...I advised Shay (1) we had been unable to corroborate any aspects of his 'story'..."

6. In his November 10th memorandum, Mr. Kelly, inter alia, stated,

Shay stated that out of fear of being charged and spending the rest of his life in prison, he had lied to me and agents in several significant respects. Those aspects of his 'story' which he admitted were untrue are as follows:...

...Shay then told us a new 'story' which he claimed was truthful - obviously we have a high degree of skepticism. his new story may be summarized as:...

7. On November 12, 1992, Mr. Kelly wrote (Exhibit B) Shay's then lawyer and stated,

I am writing at this time to formally advise you what I have been saying for the past several weeks. To date, ATF has been unable to corroborate any aspects of the proffer provided to us by your client, Thomas A. Shay. It seems that the only independent evidence tending to confirm Shay's story is that which federal investigators had uncovered prior to Shay's recent proffer.

Given the foregoing, absent any new evidence being brought to my attention that substantially corroborates significant aspects of Shay's proffer, I am unable to conclude that he has been 'entirely truthful and cooperative' concerning the offense under investigation or his role therein.

8. On December 15, 1992, according to Mr. Kelly's memorandum of January 5, 1993, Shay Jr., in the company of his attorney, told Mr. Kelly that the bomb was attached to his father's car several days before the explosion "while the Buick was parked in the vicinity of the Waltham Tavern in the South End of Boston."

9. According to the transcript of the October 17, 1992, Channel 56 interview of Thomas Shay, Jr. by Karen Marinella, Shay said:

...U.S. Attorney Paul V. Kelly said, it doesn't matter how much money this task force will take to find the package, it could go from \$1,000 to \$1,000,000, doesn't matter as long as they convict Al Trenkler...

...[H]e knows that Al Trenkler is the dangerous one so he offered me, in April, 20 years and he offered me ten - five and down to three years here to go to a white-collared prison with - out of 6,000 inmates, a federal prison, 3,500 are appellants so it's a very, you know, three years, I can do standing on my head...

...My father knew that was a bomb. How did he know? Nobody knows. My father denies that he ever had any threats. Paul Kelly talked to him the other day, and Paul Kelly said, 'Tom Shay, you know, did you get some threats, I don't believe you.' He said, 'I think you're a liar because I think you got threats or something in that sense...'

...From my knowledge, my father picked it up three times and threw it, but then Paul Kelly said my father changed his story. He picked it up carefully, placed it, placed it again and placed it again, and here come these officers, and they go to lift it up with a - a file. lift it up and it blows up on them.

10. Based upon the foregoing and possibly other telephone conversations between Thomas Shay Jr. and Mr. Kelly, Mr. Kelly is an important defense witness.

11. More specifically, Mr. Kelly is an important witness relating, inter alia, to the following matters:

a. Shay Jr.'s prior inconsistent statements made to him in at least two telephone conversations;

b. His opinions, as expressed in the November 10th memorandum (defendant requests permission to submit the entire November 10th memorandum to the Court under seal) and November 12th letter (Exhibit B) as to the credibility of Thomas Shay, Jr. See Federal Rule of Evidence 608(a);

c. The fact that after executing a three-year sentence proffer agreement in October, Shay Jr. implicated Alfred Trenkler, and the government concluded his proffer testimony could not be corroborated.

Wherefore, defendant respectfully requests:

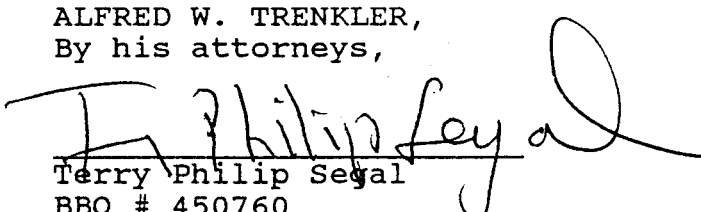
1. This Court permit defendant to call Paul Kelly as a witness.

2. This Court conduct an evidentiary hearing to determine the substance of any telephone conversations between Paul Kelly and Thomas Shay Jr., and determine whether Mr. Kelly made the statements attributed to him by Shay, Jr. in the Channel 56 interview.

3. This Court permit defendant to submit, under seal, the November 10th memorandum and the January 5, 1993, memorandum referred to in this motion.

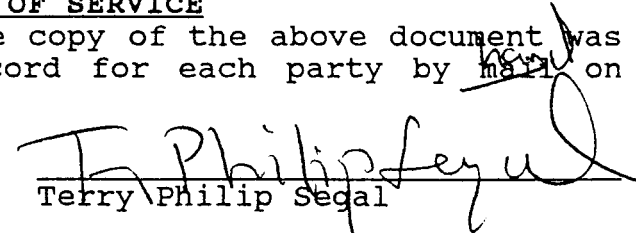
4. This Court grant such other relief as is meet and just.

Respectfully Submitted,  
For the defendant,  
ALFRED W. TRENKLER,  
By his attorneys,

  
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by <sup>mail</sup> on September 15, 1993.

  
Terry Philip Segal