

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
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ALFRED W. TRENKLER)

CRIMINAL NO.:
92-10369-Z

DEFENDANT'S MOTION TO SUPPRESS
STATEMENTS ALLEGEDLY MADE TO
WILLIAM DAVID LINDHOLM ON OR ABOUT
DECEMBER 17, 18, 19, 20, 1992
AND REQUEST FOR EVIDENTIARY HEARING

Now comes defendant, Alfred W. Trenkler, and moves this Court to suppress certain statements allegedly made to William David Lindholm on or about December 17-20, 1992.

In support of this motion, as more particularly set forth below, defendant alleges that certain statements were obtained in violation of his Sixth Amendment right to counsel. See Massiah v. United States, 377 U.S. 201 (1964); United States v. Henry, 447 U.S. 264 (1980); Kuhlman v. Wilson, 477 U.S. 436 (1986). Therefore, defendant requests an evidentiary hearing on this issue.

1. On Thursday, October 14, 1993, (eleven days before trial) defendant's counsel received a seven (7) page report written by Special Agent, Jeff S. Kerr, detailing an interview he conducted with one William David Lindholm on January 13, 1993.

2. A review of this report raises a serious question as to whether the government obtained allegedly incriminating statements by knowingly circumventing Alfred Trenkler's right to have counsel present during any confrontation between him and a government agent. See Massiah v. United States, 377 U.S. 201 (1964), and its progeny.

3. Specifically, we note that Alfred Trenkler was arrested and taken into custody by the United States Marshalls' office on December 16, 1992.

4. We further note, for background purposes only, that on December 17, 1992, Thomas A. Shay, Jr., was also in the custody of the United States Marshalls' Office for the underlying indictment in this case.

5. The above-referenced report states that "on December 17, 1992" Mr. Lindholm was "haded into the United States Attorney's Office from the Northhampton Jail Facility", for an interview purportedly unrelated to this case (pp. 1-2). However, no details regarding this other case, or Mr. Lindholm's role therein (e.g. cooperating agent), are provided.

6. The report further states that on Sunday, December 20th Mr. Lindholm "... told Trenkler that he had been in lock up with Mr. Shay for a few hours on December 17, 1992..." (p. 6).

7. The report also states that "[t]he interview [with Agent Kerr] was arranged subsequent to IRS Special Agent Ray Capece's contact with the United States Attorney's Office and the

information which Agent Capace relayed to that office detailing how ... Lindholm, had engaged in conversation with Alfred Trenkler over a three day period while both men were temporarily held in the Orientation Unit of the Plymouth County Sheriff's Department" (p. 1). However, the report does not indicate Lindholm's relationship with Agent Capace or the circumstances under which Lindholm passed this information to Agent Capece.

8. On or before December 17, 1992, Lindholm was "incarcerated at the Middleton Jail, Essex County Sheriff's Facility" (p. 1). Upon information and belief, Shay, Jr. was also incarcerated at this facility.

9. The report states that "due to the length" of this "unrelated interview" on Thursday, December 17, 1992, which concluded "**between 3:00 and 4:00 p.m.**", Lindholm "missed the transport van to Middleton and had to be sent to the Plymouth County Sheriff's Department for housing over the weekend" (p. 2). However, the report does not explain why, if he missed his transport van on Thursday, Mr. Lindholm was not transported back to Middleton on Friday, or why he had to spend the entire weekend in Plymouth County's Orientation Unit when he was already processed and serving a sentence in Essex County's facility.

10. Moreover, the report also relates that on Friday, December 18, 1992, although "everyone but six or seven men were transferred to general population", Lindholm, Trenkler, and only "two other" (unnamed) men, remained in the Orientation Unit for the entire weekend (p. 2).

12. The report also relates how, over the next two days, Mr. Lindholm and Alfred Trenkler "began to bond" (p. 3).

13. Finally, on Sunday, December 20th, the last day of the weekend, Trenkler allegedly made incriminating statements to Mr. Lindholm (p. 6).

Given these skeletal facts, we submit that an evidentiary hearing is necessary to determine whether Lindholm was acting as a government informant, whether Lindholm initiated a discussion of the charges Trenkler was incarcerated for, and whether the government "deliberately elicited" allegedly incriminating statements from Trenkler without the assistance of counsel as prohibited by Massiah and its progeny.

WHEREFORE, defendant respectfully requests this Court to conduct a suppression hearing on this matter, and to prohibit the government from mentioning or introducing this evidence at defendant's trial until this Court rules on the same.

Respectfully submitted
For the Defendant
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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 mail on October 18, 1993.

Scott P. Lopez