



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 vs.) Criminal No.:
) 92-10369-Z
ALFRED W. TRENKLER)

DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE
404(b) EVIDENCE AT TRIAL

Now comes defendant, Alfred W. Trenkler, and moves *in limine*, to exclude any and all reference to the alleged 404(b) evidence summarized in the government's letter dated October 17, 1993 attached hereto as Exhibit A.

In support of this motion, defendant states, as more particularly set forth in his memorandum attached hereto, that this evidence has no "special relevance" and the danger of unfair prejudice substantially outweighs any probative value.

WHEREFORE, defendant respectfully requests this Court to grant this motion and order that any and all reference to this evidence at trial is prohibited.

Respectfully submitted,
For the Defendant,
ALFRED W. TRENKLER,
By his attorneys,

Terry Philip Segal
BBO # 450760
Scott P. Lopez
BBO # 549556
Segal & Feinberg
210 Commercial Street
Boston, MA 02109
(617) 720-4444

Dated: October 22, 1993

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 hand on October 22, 1993.

Scott P. Lopez



U.S. Department of Justice

United States Attorney

District of Massachusetts



1107 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

October 17, 1993

BY HAND

Terry Philip Segal, Esquire
Segal & Feinberg
210 Commercial Street
Boston, Massachusetts 02109

Re: United States v. Alfred W. Trenkler
Criminal No. 92-10369-Z

Dear Terry:

This letter will summarize the Jencks and other pretrial discovery material provided herewith.

1. Criminal Records Checks On Prospective Witnesses

I am enclosing computerized Massachusetts Board of Probation checks on prospective government witnesses. If there is some specific record entry that you think you may want after reviewing the material, please let me know. Once admissibility issues are resolved, stipulations as to unauthenticated records of conviction should not be a problem.

2. Jencks Material

I have voluntarily provided you with early Jencks material for the following prospective government witnesses:

Dwayne Armbrister
Richard Bender (see ATF reports)
Jeff Berry
William Bridgeforth
Richard Brown
Phillip Caldwell
Nurdan Cagdis
Edward Carrion
John Cates
Michael Coady
Jack Coyle
Robert Craig
Thomas Creavin
John Doering
Robert Evans

Brent Donaghue (see ATF reports)
Mary Flanagan
Francis Foley
Judy Fredette (see ATF reports)
Michael Greene
James Harding
James Keough
Denise Kraft
Todd Leach
Bob Lee (see ATF reports)
David Lindolm
Robert Maloney
James McKennon
Eleanor McKennon
David Millette
Paul Nutting (see ATF reports)
Patricia O'Donoghue
Evelyn Pirello (see ATF reports)
Lawrence Plant
Alan Pransky
James Quinlan
Andy Robinson
Louis Rotman
Thomas Shay, Jr.
Thomas Shay, Sr.
Nancy Shay
Paula Shay
Donna Shea
David Shilallis
Randall Stoeller
Anastasiose Vasiliadas
David Wallace

I have not included prior trial testimony (from the Shay trial) or suppression hearing testimony of any of the above-listed witnesses, since it is my understanding that you already have copies of these transcripts.

3. 404(b) Evidence Which May Be Offered At Trial

- A. Evidence of Trenkler's design, construction and detonation of a substantially similar explosive device in September, 1986.

(see Government's Motion In Limine, previously filed with the Court)

- B. Evidence of Trenkler's solicitation of teenage males as companions and sexual partners, including his willingness to provide them with money, drugs, other material goods, and the performance of personal favors to induce and/or maintain the relationship.

(This evidence will be offered as proof of motive,

intent, plan, etc.)

- C. Evidence of Trenkler's use and distribution of marijuana, cocaine and other controlled substances.

(This evidence will be offered as proof of intent, plan, etc., to show how Trenkler used drugs to curry favor with high school age youths)

- D. Evidence of Trenkler's placement of a listening device inside a stereo speaker to eavesdrop on a former roommate's sexual encounters.

(This evidence will be offered to show Trenkler's expertise in electronics as well as to show intent, knowledge, etc.)

- E. Evidence of Trenkler's "hot wiring" of a garage door handle which resulted in his step-father receiving a jolt of electricity.

(This evidence will be offered to show Trenkler's expertise in electronics as well as to show intent, knowledge, etc.)

4. Other Discovery Items Provided

Also being produced to you are the following items:

- A. Resumes of government experts (Thomas Waskom, Steve Scheid, Albert Gleason, Cynthia Wallace and Dr. Christopher Shapley)
- B. Handwriting analysis report dated March 19, 1993
- C. BPD audio tapes of dispatch calls on October 28, 1991, and an anonymous call to police on same date
- D. Transcript of Shay Jr. press conference of October 31, 1991
- E. Transcript of Shay Jr. interview by WLVI-TV (Channel 56) of October 17, 1992
- F. Tax records for Trenkler, Thomas Shay, Jr. and Thomas Shay, Sr.
- G. Anonymous letter received by Boston Police Department on November 23, 1992
- H. Videotapes of hypnosis sessions of Randy Stoeller and James McKernon
- I. Materials describing EXIS database input codes,

standard report forms (FBI and ATF "Explosives Incident Report 1991,") and computer analysis of "bombings and attempted bombings". This material relates to the government's pending motion in limine concerning the 1986 bomb.

- J. Letter from Austin Powder Company to ATF dated June 23, 1993.

5. Physical Evidence, Trial Exhibits

This will confirm that you plan to review the government's proposed trial exhibits on Wednesday, October 20th at 4:00 p.m.

6. Proposed Stipulations

In the interest of attempting to streamline the trial, we would like you to consider stipulating to the following facts or to the admissibility of the evidence described below:

I. FACTS

- A. That the detonators (basting caps) described in Count Two of the Superseding Indictment were manufactured outside of Massachusetts and shipped or transported in interstate commerce prior to October 28, 1991.
- B. That Thomas L. Shay's 1986 Buick automobile, as referenced in Count Three of the Superseding Indictment, was used in interstate commerce and in activities affecting interstate commerce.
- C. That Thomas L. Shay's automotive repair business, which he was conducting on the property at 39 Eastbourne Street in Roslindale in October, 1991, affected interstate commerce.
- D. The indictment in this case was returned by a federal grand jury on December 16, 1992.
- E. On or about Wednesday, October 30, 1991, The Boston Herald reported that Thomas Shay, Jr. had stated on the previous day, October 29, 1991, that Boston Police had "grilled" him for 90 minutes and during this interview asked if his father "could . . . build a remote control?"

II. EVIDENCE

- A. Admissibility of the death certificate -- Jeremiah Hurley, Jr.
- B. Admissibility of the autopsy report -- Jeremiah Hurley, Jr.

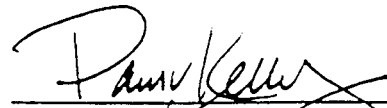
- C. Admissibility of all crime scene photographs and diagrams.
- D. Admissibility of videotape of October 31, 1991 press conference by Shay, Jr.
- E. Admissibility of Radio Shack receipt dated October 18, 1991.
- F. Admissibility of Shay, Jr.'s videotaped interview by Karen Marinella of WLVI-TV on October 17, 1992.
- G. Admissibility of brief excerpt from videotape of "People Are Talking" television show (WBZ-TV) in June, 1990.

We would appreciate hearing from you concerning these proposed stipulations, by the end of the week if possible.


Very truly yours,

A. JOHN PAPPALARDO
United States Attorney

By:



PAUL V. KELLY
Assistant U.S. Attorney



FRANK A. LIBBY, JR.
Assistant U.S. Attorney

Enclosures

cc: Honorable Rya W. Zobel
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 vs.) Criminal No.:
) 92-10369-Z
ALFRED W. TRENKLER)

DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION *IN LIMINE* TO EXCLUDE
404(b) EVIDENCE AT TRIAL

By a letter dated October 17, 1993, the government notified defendant that, in addition to the 1986 incident, it intends to offer other 404(b) evidence at trial. This memorandum sets forth defendant's objections to the admission of this evidence.

1. Motive.

The government states that it intends to offer "evidence of Trenkler's solicitation of teenage males as companions and sexual partners, including his willingness to provide them with money, drugs, other material goods, and the performance of personal favors to induce and/or maintain the relationship." The government alleges that this evidence will be offered as proof of motive. The government has not alleged how this evidence is relevant to the motive in this case.

a. Relevance.

This alleged evidence, if true, is not relevant to this case. The government has not alleged, nor has it sought to prove that defendant "solicited" Thomas Shay, Jr. On the contrary, the

government's theory has been that Shay, Jr. solicited defendant's assistance. Thus, it is difficult to understand how this evidence, if true, would be relevant in this case.

In addition, there is no nexus between these bad acts and the present case. Specifically, the government does not allege that the above acts were the motive for committing the charged offense. In fact, there is no indication from the government's submission when these acts allegedly occurred. Clearly, the age of these acts reduce their probative value.

Finally, Shay, Jr. was not a teenage male at the time of the charged act. Admitting evidence of defendant's alleged bad acts with "teenage males" will serve no purpose other than to show that defendant is a bad person. Under these circumstances (i.e. where propensity is a necessary inference), Rule 404(b) absolutely prohibits this evidence.

b. Prejudice.

Even if Rule 404(b) is not a complete bar, the danger of unfair prejudice created by this evidence substantially outweighs its probative value. Neither defendant's alleged lifestyle, nor his alleged choice of sexual partners, is on trial in this case. Distribution of drugs is not an issue in this case (i.e. the government does not allege that defendant gave Shay, Jr. drugs). Allegedly giving money, other material goods, or doing favors for teenage males does not tend to prove any material fact in this case. The prejudice from this evidence, however, will be great because it assassinates defendant's character by innuendo and

portrays him as a manipulator or exploiter of young children. Thus, the danger of unfair prejudice outweighs any probative value of this evidence.

2. Intent, Plan, etc.

The government further intends to offer "evidence of Trenkler's use and distribution of marijuana, cocaine and other controlled substances" to show "how Trenkler used drugs to curry favor with high school age youths." Without repeating what has been said above, there is no evidence that defendant ever gave any marijuana, cocaine or other controlled substances to Shay, Jr. Thus, this evidence is totally irrelevant and prejudicial.

Moreover, the government's identification of "plan" as a justification for this evidence is misplaced. "True Plan" cases are situations where the prior acts and charged acts comprised different parts of the same plan. See Imwinkelried, Uncharged Misconduct Evidence, § 3:21. These "true plan" cases are distinguishable from "spurious plan" cases, as Professor Imwinkelried calls them, wherein a similar *modus* is alleged, but the similarities are insufficient to establish a distinct *modus operandi*. Id. at § 3:23. In the present case, however, the government does not even allege a "spurious plan" because there is no evidence that defendant ever offered or distributed any drugs to Shay, Jr. Thus, we submit this evidence is inadmissible on both relevance and prejudice grounds.

3. Intent and Knowledge.

The government also proposes to admit two (2) additional prior acts to show intent and knowledge. First, the government intends to offer "evidence of Trenkler's placement of a listening device inside a stereo speaker to eavesdrop on a former roommate's sexual encounters." Second, the government intends to offer "evidence of Trenkler's "hot wiring" of a garage door handle which resulted in his step-father receiving a jolt of electricity." The government claims that this evidence will be offered to show his "expertise in electronics" as well as to show intent and knowledge.

First, we are at a loss as to how this evidence is relevant to the planning, design, construction, and placement of the 1991 device. Second, we have previously indicated that we will stipulate to defendant's knowledge. Thus, this evidence is unnecessary and duplicitous. Third, these acts occurred many years ago. Specifically, sometime in the 1970's. Thus, any relevance they may have once had has long since passed. Finally, we submit this is just another attempt to paint defendant as a "bad person" or as a person who eavesdrops on friends and jolts his step-father with electricity. Thus, this evidence is not only irrelevant, but absolutely prohibited by Rule 404(b) and Rule 403.

For all of the above reasons, defendant submits that his motion *in limine* excluding any and all reference to this evidence should be granted.

Respectfully submitted,
For the Defendant,
ALFRED W. TRENKLER,
By his attorneys,

Terry Philip Segal
BBO # 450760
Scott P. Lopez
BBO # 549556
Segal & Feinberg
210 Commercial Street
Boston, MA 02109
(617) 720-4444

Dated: October 22, 1993

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I hereby certify that a true copy of the above document was served upon the attorney of record for each party by hand on October 22, 1993.

Scott P. Lopez