

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.

Alvin

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

No Solicitation

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.

Contrary
Solicitation

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.

No Nexus

Not connected
to motive
in this case

Time

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.

Not teenage
male

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.

No relevance
stipulated
Time
bad person
irrelevant

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

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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