

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Dec 6 2 44 PM '93

UNITED STATES OF AMERICA)
)
 vs.)
)
 ALFRED W. TRENKLER)

Criminal No.:
92-10369-Z

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL

Now comes defendant, Alfred W. Trenkler, and moves this Court, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, for judgment of acquittal. As grounds therefore, defendant states the following:

The government's case, which was based on circumstantial evidence that the defendant was the builder of the 1991 bomb, was totally absent of any evidence from which a rational jury could infer that the defendant acted with knowledge of and in furtherance of the aims of the conspiracy or substantive counts alleged. See United States v. Browne, 891 F.2d 389 (1st Cir. 1989) (there must be sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt).

Viewing the evidence in a light most favorable to the government, reveals that a rational trier of fact could only infer the following two facts in this case:¹ first, Thomas Shay, Jr.

¹Defendant assumes for the purposes of this motion that by viewing the evidence in a light most favorable to the government a rational jury could have found that defendant built the bomb in this case. Nevertheless, defendant does not concede this point. Rather, as more particularly set forth in his new trial motion filed herewith, without the improper admission of the evidence

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purchased a toggle switch with a similar model number as the one recovered from the bomb debris, second, defendant built the bomb. Notwithstanding these two facts, defendant submits that no jury could conclude from the other evidence produced at trial that defendant was aware of any of the purposes of the conspiracy or substantive counts alleged beyond a reasonable doubt.

1. Specifically, there was insufficient evidence of any conspiracy to commit the substantive counts alleged (COUNT I). In short, there was no evidence that defendant knowingly and willfully combined, conspired or agreed with Thomas A. Shay, Jr. to commit the substantive offenses of (1) receipt of explosives in interstate commerce with the knowledge and intent that the same would be used to kill, injure or intimidate Thomas L. Shay, Sr. or damage and destroy his real and personal property, including his automobile, in violation of Title 18, United States Code, Section 844(d), or (2) attempted malicious destruction, by means of fire and explosive, of an automobile used in and affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).

2. There was no evidence that defendant and Thomas A. Shay, Jr. even came to a tacit agreement regarding **Thomas L. Shay, Sr. or his car.**

relating to the 1986 device on the signature issue, and the unfair prejudice resulting therefrom, defendant submits that a rational jury would not have found that defendant built the bomb in this case based only on the testimony of David Lindholm.

3. There was also no evidence that defendant affixed the explosive device to the undercarriage of Thomas L. Shay's 1986 Buick; and

4. There was no evidence that Thomas A. Shay affixed the explosive device to the undercarriage of Thomas L. Shay's 1986 Buick.

5. There was also no evidence that Thomas A. Shay solicited the assistance of defendant in a plan to kill his father as alleged.

6. There was also no evidence that defendant agreed to construct the remote-controlled explosive device, knowing the same would be used by Thomas A. Shay, Jr. in an attempt to kill, injure or intimidate his father.

7. There was also no evidence that on or about October 27, 1991 either defendant or Thomas A. Shay, Jr. affixed said explosive device to Thomas L. Shay, Sr.'s automobile as alleged.

8. There was also no evidence that defendant or Thomas A. Shay, Jr., in or about October, 1991, received in interstate commerce explosive materials with knowledge and intent that said explosive materials would be used to kill, injure or intimidate Thomas L. Shay, Sr., or cause damage and destruction to his 1986 Buick automobile (COUNT II).

9. Finally, there was no evidence that defendant or Thomas A. Shay, on or about October 28, 1991, knowingly attempted to maliciously damage or destroy, by means of fire and explosive, Thomas L. Shay, Sr.'s 1986 Buick (COUNT III).

A. THERE WAS INSUFFICIENT EVIDENCE OF A CONSPIRACY TO COMMIT THE OFFENSES ALLEGED.

Viewing the evidence in this case in a light most favorable to the government, it is clear that a jury could not have found the following facts beyond a reasonable doubt:

1. That defendant entered into an agreement with Shay, Jr. to receive explosives with the intent to kill, injure, or intimidate Shay, Sr. or with the intent to damage or destroy Shay, Sr.'s Buick, or with the intent to attempt to destroy said Buick by means of explosives; and

2. That defendant entered into said agreement wilfully and knowingly and with the knowledge and intent of at least one of the above objectives; and

3. That either defendant or Shay, Jr. performed any of the overt acts the government alleged with the requisite knowledge and intent.

In this case, the government failed to present any evidence that defendant entered into an agreement with Shay, Jr. with the intent to kill, injure, or intimidate Shay, Sr., or with the intent to damage or destroy Shay, Sr.'s Buick, or with the intent to attempt to destroy said Buick.

Additionally, the government failed to present any evidence that defendant entered into this agreement with knowledge of any of the alleged objectives of the conspiracy. As noted above, looking at the evidence in a light most favorable to the government, the only two facts the government proved were that Shay, Jr. was

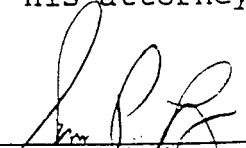
responsible for purchasing a similar model toggle switch, and that the defendant was the bomb maker. Nevertheless, defendant submits that these facts, by themselves, are insufficient for a jury to conclude that, at the time defendant built the device, he and Shay, Jr. had wilfully and knowingly entered into an agreement to commit the substantive objectives of the alleged conspiracy. In other words, the inferences drawn by the jury from these two facts were not supported by the evidence. In fact, there was simply no evidence from which a jury could conclude that a conspiracy to commit the substantive objectives alleged existed at the time of defendant's acts.

B. THERE WAS INSUFFICIENT EVIDENCE OF AIDING AND ABETTING.

Similarly, even assuming that defendant built the device in question, there was absolutely no evidence from which the jury could infer that at the time he built the device he possessed the requisite knowledge and intent to be an aider and abettor. In fact, the record is totally absent of evidence which would tend to indicate that at the time defendant built the device he was aware of the criminal objectives alleged in this case. In short, building a bomb which can be affixed to any metal object by the use of magnets is insufficient to prove that defendant was aware of the substantive objectives of the conspiracy alleged.

WHEREFORE, defendant requests this Court to set aside the verdicts rendered in this case and enter a judgment of acquittal on all counts.

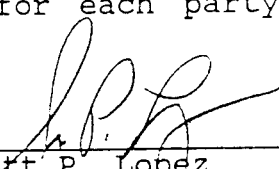
Respectfully submitted,
For the Defendant,
ALFRED W. TRENKLER,
By his attorneys,



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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 mail on December 6, 1993.



Scott P. Lopez