UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

OBJECTIONS OF DEFENDANT, ALFRED TRENKLER, TO PRESENTENCE REPORT

Now comes Defendant, Alfred W. Trenkler, pursuant to Fed. R. Crim. P. 32(c)(3)(A), and moves that the inaccuracies in Defendant's Presentence Report (hereinafter "PSR") be corrected. The following objections will retain the paragraph numbers contained in the PSR. Defendant has also submitted this day a separate sentencing memorandum on the legal issues involved in determining the appropriate Offense Level under the Sentencing Guidelines which is expressly incorporated herein by reference. See Sentencing Memorandum of Defendant, Alfred W. Trenkler, On The Appropriate Offense Level Computation (attached hereto). The specific objections are as follows:

Charges and Convictions

(2) Defendant was arrested and appeared with counsel for his initial appearance before Magistrate Judge Bowler on December 16, 1992. On December 18, 1992, defendant entered a plea of not guilty at his arraignment and was held without bail following a detention hearing.

(7) Thomas Shay was found guilty of Counts One and Three of the Superseding indictment, not Counts One and Two as stated in the PSR.

Offense Conduct

Although defendant has prepared a memorandum of law on the appropriate Offense Level Computation, see supra, defendant further objects to following facts and conclusions contained in the PSR as follows:

(13) Defendant resided with John Cates from September/October 1990 to the date of his arrest (December 16, 1992), not from the spring of 1990 as stated in the PSR. Tr. 9-53-9-54.

(17) Defendant objects to the vague and ambiguous term "relationship." Moreover, defendant objects to the statement that he and Shay, Jr. had a "relationship". The evidence did not establish that they had a "relationship; they were merely acquaintances. There was evidence that they knew each other. The evidence at trial established that Shay, Jr. and Trenkler knew each other in June 1991 (Tr. 9-97; 9-157) and they may have met before this date. Tr. 10-27; 10-37. However, there was no evidence of a "continuing relationship" over any period of time, and no evidence of any relationship after June, 1991.

(18) There was no evidence at trial that Shay, Jr. ever "decided to kill his father." In fact, at Shay, Jr.'s sentencing hearing, the Court held that there was no evidence that Shay, Jr. "intended to kill his father." Shay Disposition Tr. p. 122. In addition, the government's claim of Shay's dual motives was sketchy

at best. Assuming the government established any motive, there was absolutely no evidence that: 1) Shay, Jr. informed Trenkler of any insurance recovery; 2) approached Trenkler; or 3) sought Trenkler's assistance.

DEFENDANT FURTHER OBJECTS TO THE STATEMENT THAT SHAY, JR. KNEW "THAT TRENKLER HAD BEEN INVOLVED IN BUILDING A REMOTE-CONTROLLED EXPLOSIVE DEVICE IN 1986." There was absolutely no evidence at either trial on this factual issue. There was not even any evidence from which this fact could be inferred.

Finally, there was no evidence that Shay, Jr. told Trenkler "what he wanted to do", or "asked Trenkler to build a bomb for him" or promised Trenkler "he would split his share of the proceeds with [him]". This was the government's theory; however, there was no evidence supporting any of these factual propositions.

(19) The government did not establish that Trenkler was involved "in yet another struggling electronics business." In fact, the evidence at trial established that Trenkler's business was very successful during the Fall 1991 time frame, and that defendant was involved in a $38,000.00 project for the Christian Science Church. Tr. 14-39. In fact, Richard Brown testified that it was the government's investigation in this case which contributed to defendant's business failing. Tr. 10-4-10-5. Moreover, there was no evidence that Trenkler "sympathized with Shay, Jr." over anything.

Finally, there was no evidence that Trenkler was "in need of money". In fact, apart from the government's unproven claim that Trenkler's business was not doing well, there was no evidence Trenkler expressed any need of money. Although the evidence supported the inference that Trenkler was not rich, it does not follow from this fact that he was "in need of money".

(20) There was no direct evidence that Trenkler designed or constructed the device in this case. However, the government presented two forms of circumstantial evidence to prove these facts. First, the government presented evidence that in 1986 Trenkler built a remote control device which contained a common radio control design, to wit, a main charge, fuzing circuit and firing circuit. The government also presented the questionable testimony of David Lindholm that Trenkler admitted he built the 1991 device three days after meeting Lindholm, and the day before Lindholm was transported to another facility. The jury apparently believed Mr. Lindholm's testimony, and discounted the fact that the three radio control design features above (i.e. main charge, fuzing circuit and firing circuit) are very common for remote control devices because, from this circumstantial evidence, the jury inferred that defendant built the 1991 bomb.

Moreover, there was no evidence that "Trenkler ... obtained the dynamite and blasting caps" or obtained these explosives "alone." In fact, there was no evidence as to when, or by whom, the explosives were obtained.

Finally, there was circumstantial evidence (i.e. a Radio Shack receipt) that Shay, Jr. purchased one (1) component (e.g. toggle switch) which may have been in the device. There was also evidence that Shay, Jr. admitted that he purchased this relatively common toggle switch. However, there was no evidence that Trenkler knew anything about this purchase prior to said purchase.

(21) There was no evidence that at the time of Shay, Jr.'s Radio Shack purchase he was "acting at Trenkler's direction" "with a shopping list prepared by Trenkler". In the Shay trial, this was the government's contention because this was one of Shay, Jr.'s numerous statements. However, during the Trenkler trial, the government did not attempt to prove this point, and ultimately conceded that it did not prove this fact, by stating that it did not matter. Tr. 17-91. Thus, in the Shay trial, to convict Shay, Jr. the government had Trenkler standing outside the Radio Shack, but in the Trenkler trial the government argued that defendant told Shay, Jr. what to buy sometime before October 18th because it could not place Trenkler anywhere near the vicinity of the store at the time of the Radio Shack purchase. Consequently, the government conveniently changed its theory to gloss over the absence of evidence.

In addition, although Shay, Jr. stated in an interview more than a year after this incident his belief that the toggle switch he purchased was in the device, he further stated his belief that the battery holder he presumably purchased the same day was also in the device. See Redacted Transcript of October 17, 1992

interview, pg. 12 attached hereto. In fact, the toggle switch in the device was the same "class" toggle switch (i.e. same model number) as on the Radio Shack receipt, but the battery holder identified on the receipt was definitely not in the device. Notwithstanding Shay, Jr.'s lack of knowledge on this critical point, the jury apparently found that he purchased the toggle switch contained in the device.

(25) The government never proved when the device was affixed to Shay, Sr.'s automobile. However, since Shay, Sr. claimed that he first "discovered" the device on Sunday morning at approximately 11:30 a.m. (October 27, 1991) the jury apparently inferred that it was attached sometime between Friday afternoon, October 25, 1991 (when Shay, Sr.'s vehicle was returned to him) and October 27, 1991 (when Shay, Sr. "discovered" the device).

More importantly, defendant objects to the report's statement that "by insuring that the low-profile device was affixed to this location ... Trenkler sought to maximize:..." since it implies that he attached the device to Shay, Sr.'s car. In fact, there was no evidence at trial that defendant placed the device on the car, or was aware, beforehand, where the device was to be placed.

(26) The evidence at trial established that Shay, Sr. "discovered" the device on Sunday morning in his driveway. Tr. 6-76. Upon "discovering" the device he picked it up and "threw it against his house." Tr. 2-51; 3-14. After going inside to watch a football game, at approximately 1:00 p.m., he went back outside, picked up the device a second time, and placed it between two

parked cars in the back of his driveway." Tr. 6-88. Apparently, Shay, Sr. moved this device one more time because the Boston bomb squad officers did not find it between the two parked cars as he claimed, but underneath the bumper of one of the cars - the Pontiac GTO. Tr. 14-11. In fact, Officer Foley testified that he had to bend down and look under the car to see the object. Tr. 14-11. Officer Foley further testified that he retrieved the device from under the vehicle because Officer Hurley had a bad back. Tr. 14-11.

(29) There was no evidence that "Shay, Jr. or Trenkler planned for and intended to kill Shay, Sr.". In fact, there was no evidence that Shay, Jr. or Trenkler ever discussed killing Shay, Sr. or had the intent to kill Shay, Sr. Moreover, the jury was not required to find that Shay, Jr. or Trenkler planned for or intended to kill Shay, Sr. The jury merely had to find that Trenkler and Shay, Jr. intended to intimidate Shay, Sr. to return its verdict.

Although by virtue of a combination of unforeseen circumstances, one police officer is dead and another permanently maimed, we do not know from the evidence whether the device was ever armed by whoever attached it after it was attached, or whether it became armed after Shay, Sr. drove over it, or whether a loose wire connection caused the device to arm after it had been damaged by Shay, Sr. driving over it. Thus, the evidence does not support the inference that Shay, Jr. or Trenkler "planned for and intended to kill Shay, Sr.".

(30) David Lindholm testified that he told defendant that his father "attended" both Milton Academy and Thayer Academy. Tr. 13-89. The PSR states that Lindholm told Trenkler his father "graduated" both prep schools. It is highly unlikely Lindholm's father graduated from both prep schools, if he attended either.

Moreover, the evidence was not that Trenkler began to "seek out" Lindholm for information. The evidence was that each conversation between Trenkler and Lindholm was initiated by Lindholm. Tr. 13-86; 13-87; 13-88.

Offense Level Computation

In addition to the separate memorandum defendant has prepared supra defendant objects to the following conclusions:

(54) Defendant objects to the determination that the "most analogous" homicide guideline is first degree murder for the reasons set forth in his memorandum attached hereto.

(55) Defendant objects to the base offense level of 43 because it is based on an erroneous guideline.

(57) Defendant objects to the special skill adjustment. As the court is aware from the trial of this case, the Futaba components contained within the 1991 device, according to the government's expert, Thomas Waskom, came with a set of instructions which explain all there is to know about connecting the radio-controlled components in the device. Tr. 13-36. Thus, Mr. Waskom conceded that no special electronics knowledge was needed to construct the electronic components of the 1991 device.

Moreover, Mr. Waskom not only conceded that it did not take any special electronics knowledge to construct the radio-controlled device, but he further testified that the most "professional" aspect of this device was its wooden container. Tr. 13-54. He further testified that the other distinctive aspect of this device was that the builder had to have some knowledge of connecting explosives in a military fashion (i.e. dual priming). Tr. 13-44. In addition, the evidence demonstrated that information on constructing a typical radio-controlled device like the one in this case is widely available, and contained in available publications (i.e., Paladin Press publications). Tr. 6-11.

Special skill is defined in Application Note 2 to U.S.S.G. § 3B1.3 as "a skill not possessed by members of the general public and usually requiring substantial education, training or licensing." The examples given include pilots, lawyers, doctors, accountants, chemists and demolition experts. Since the evidence establishes that no special electronic skill was necessary to build the device, and since there was no evidence that defendant had any education, training or licensing in woodworking or explosives, there is no factual basis for the PSR's conclusion that "absent Trenkler's electronic knowledge, this crime would not have occurred." Compare United States v. Aubin, 961 F.2d 980, 984 (1st Cir. 1992)(where ATM repairman used knowledge and skill to commit theft of ATM, special skill and insider knowledge "significantly facilitated commission of offense").

(62) Defendant objects to the total offense level for the reasons stated above and contained in his sentencing memorandum.

PART B. THE DEFENDANT'S CRIMINAL HISTORY.

(70) The arrest reports regarding the September 1986 incident did not contain many of the statements contained in the PSR. First, the reports did not specify who obtained the M-21 Hoffman simulator. Second, although Todd Leach testified at trial that he acquired parts when he was 10 or 11 years old from a local Radio Shack store with a list he claimed that he was given by Trenkler, this information was not contained in any arrest report, and was first acquired by the government during its investigation when Mr. Leach testified before the grand jury some 6 years after the fact. Third, the government did not claim or attempt to prove at trial that any of the radio control components contained in the 1986 device came from Radio Shack. The evidence was that the remote control components contained in the 1986 device originated from a Tyco remote control car that defendant modified. Fourth, although the police reports state that defendant obtained "a receiver and remote control from Radio Shack" for the 1986 device, in fact, this statement was erroneous.

(75) A Fugitive from Justice Warrant was issued on 4/17/92, during the investigation of this case, on an outstanding warrant in Rhode Island originating from a bounced check that Trenkler wrote in Rhode Island in September, 1988. In fact, at the time the check was written, there were sufficient funds in the account, and but for a mistake by the bank involved, the check was not honored.

Defendant was unaware of the charge at any time prior to 4/17/92, and upon payment of the check amount, the matter was summarily dismissed at the request of the State of Rhode Island. Subsequently, the Fugitive from Justice Warrant was dismissed at the request of the Commonwealth.

PART C. OFFENDER CHARACTERISTICS.

(81) Mr. Wallace said Alfred "wouldn't hurt a flea", not "couldn't hurt a flea."

(87) David Wallace is a graduate of the University of Massachusetts. He is currently studying to be a paralegal.

(91) In December of 1985, not May of 1986, the defendant moved into a house, not an apartment, located on Randlett Street.... Craig and defendant remained at this address until May 1986, not 1987. In May 1986, not 1987, defendant and Craig moved to Carlisle Street.

(92) After Craig's departure the defendant moved into a house, not an apartment, at 1112 Atlantic Avenue, not 112.

(93) The defendant met John Cates in 1990, not 1989 or 1990.

(104) Change date of "October 1991" to "June 1991". In last sentence, change the terms "two month period" to "six month period.

(105) Change date of "October 1991" to "June 1991". In first sentence change "Rhode Island" to "Massachusetts".

(106) Change date of "March 1991" to "February 1991".

(107) Change amount of "$1,200" in last sentence to "$2,400."

(108) Change dates of "1985 to 1987" to "1987 to 1989".

(110) Defendant did not advise that he owes the IRS $36,000.00 Rather, the correct amount of the debt is $3,600.00 plus interest.

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 probation officer by messenger and the attorney of record for each party by mail on March 1, 1994.

Scott P. Lopez