

RECEIVED MAY 29 1997

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 92-10369

UNITED STATES

vs.

ALFRED W. TRENKLER

DOCKETED

MEMORANDUM OF DECISION

ZOBEL, D.J.

Alfred W. Trenkler ("Trenkler" or "Defendant") was convicted on November 29, 1993, after a month long trial, of violations of 18 U.S.C. §§ 371 and 844. Pending before this Court are Defendant's Motions for Judicial Inquiry into possible juror misconduct, and for a New Trial.

In October of 1996, almost three years after the 1993 conviction, an individual named Donna Shea ("Shea") contacted the Bureau of Alcohol, Tobacco and Firearms ("ATF") and implied that an alternate juror from the Trenkler trial, one Ramona Walsh ("Walsh"), had failed to disclose during voir dire that she knew Trenkler. The Government notified Defendant's attorney of this development and initiated an investigation. During two subsequent interviews by an ATF agent, Donna Shea claimed that some twelve years earlier, a friend of hers, one Nancy Tolmie ("Tolmie"), would occasionally buy cocaine from Shea. Shea further claimed that on three to four of these occasions, Walsh accompanied Tolmie to Shea's house for the cocaine purchases, and

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that Trenkler, the alleged supplier of the cocaine, may have been present in the room. The Government also interviewed Tolmie (now Nancy Russell) who, while admitting to purchasing cocaine from Shea during the time period in question, denied that Walsh was ever with her on such occasions.

Defendant now requests that this Court conduct an inquiry into Shea's allegation of juror misconduct. "The law on the subject is well settled. 'When a nonfrivolous suggestion is made that a jury may be biased or tainted by some incident, the district court must undertake an adequate inquiry to determine whether the alleged incident occurred and if so, whether it was prejudicial.'" United States v. Gaston-Brito, 64 F.3d 11, 12 (1st Cir. 1995) (citing United States v. Ortiz-Arrigoitia, 996 F.2d 436, 442 (1st Cir. 1993, cert. denied, Ortiz-Cameron v. United States, 511 U.S. 1003 (1994))). Although this threshold is admittedly a low one, allegations which are frivolous, "that is, entirely conclusory or conjectural, contradicted by the record, inherently incredible, patently false, or obviously inconsequential -- do not trigger any duty of inquiry and do not require that a hearing be held." Neron v. Tierney, 841 F.2d 1197, 1202 n.6 (1st Cir. 1988) (appellate court review of habeas application under 28 U.S.C. §§ 2241 - 54), cert. denied, 488 U.S. 832 (1988).

Defendant's motion is based entirely on Shea's statement,

wholly contradicted by Tolmie¹, that juror Walsh may have been in the same room with Defendant on three or four occasions in the early 1980s - some twelve years prior to the trial. Shea does not claim that Walsh knew Defendant's name, that Defendant and Walsh spoke to one another, or that Walsh purchased cocaine directly from Defendant. Shea claims no other facts, and the record is devoid of any other facts, that might lead one to believe that Defendant and Walsh, other than being present in the same room on three or four occasions twelve years previously, actually knew one another or even that Walsh, some twelve years later would recognize Defendant by face. In fact, Shea, in apparent contradiction, attaches little significance to the alleged contacts between Defendant and Walsh asserting that because "Trenkler didn't know or have dealings with [Walsh] back then, it is unlikely that Trenkler knew who she was during the trial."²

¹ Tolmie acknowledged during an interview with the ATF agent that she had purchased cocaine from Shea on more than fifty occasions, but denied that Walsh had ever accompanied her on one of those cocaine purchases. Tolmie did recall Walsh being present at a cocaine purchase from another individual, one Arthur Pitman, who is now deceased.

² If Trenkler had, in fact, recognized Walsh during jury selection and failed to alert the Court of such fact, he would in any event be foreclosed from raising such acquaintance with Walsh now as a possible claim of juror bias. See United States v. Uribe, 890 F.2d 554, 560 (1st Cir. 1989) ("A sentient defendant, knowledgeable of a possible claim of juror bias, waives the claim if he elects not to raise it promptly.").

Such speculative and incredible claims do not trigger a duty on the part of this Court to investigate the alleged juror misconduct any further. See United States v. Boylan, 698 F. Supp. 376, 389 (D. Mass 1988) (speculative and attenuated reasoning about possible prejudice did not justify further intrusive inquiries into the jury's work). Accordingly, Defendant's motions are hereby denied.

May 22, 1997
DATE

Ryan W. Zobel
DISTRICT JUDGE