

ALFRED W. TRENKLER

THE CASE FOR REASONABLE DOUBT

DISCREPANCIES IN THE MAJORITY OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

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United States Court of Appeals for the First Circuit
July 18, 1995 No. 94 1301

Page 7 Majority

Agents from the Bureau of Alcohol, Tobacco and Firearms ("ATF") recovered from the debris of the Roslindale bomb a switch identical to the one purchased at Radio Shack

Fact

The Agents recovered only two (2) contacts which were not like Radio Shack and not exclusive with Radio Shack.

Page 13 Majority

Both Agents added that they were surprised when they saw the diagram because the use of two electrical blasting caps was a distinctive feature of the Roslindale bomb that, at the time of the interview on November 6, 1991, had not been disclosed to the public.

Fact

Contrary to their statements the use of blasting caps was disclosed to the public in a Boston Globe article on October 30, 1991, prior to the interview, by John Ellement and Toni Locy.

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Majority

The majority considers this significant evidence of Trenkler's guilt because the fact that the Roslindale bomb used blasting caps had not been publicly disclosed.

The majority fails to note, however, that Agent D'Ambrosio actually testified that at least two blasting

caps were used in the Roslindale bombing. Thus, Trenkler's drawing of only two blasting caps was not an exact match.

Page 27 Majority

The evidence of similarity could have been more compelling between the Quincy and Roslindale bombs.

We disagree with the District Court that the evidence did not pose any risk of unfair prejudice.

Page 28 Majority

The District Court stated that the evidence of the Quincy bomb was not unfairly prejudicial.

Fact

The Boston Globe of November 30, 1993 by Matthew Brelis.

The juror said the evidence about the 1986 bombing was very decisive in the jury's findings.

"It was all circumstantial evidence and very hard to come to a decision said one juror on condition of anonymity, we took many votes."

Page 29 Majority

Trenkler's contention with respect to intent stands on firmer ground, we have some difficulty comprehending (and the government does not clearly articulate) any theory of "special relevance" tending to show intent that does not depend heavily on an inference of propensity.

See Benavente Gomez, 921 F. 2d of 306 (harmless error if it is "highly probable" the error did not contribute to the verdict).

Fact

The juror said that evidence about the 1986 bombing was very decisive in the jury's finding. Obviously the error did contribute to the verdict.

Page 37 Majority

We hold that the district court abused its discretion in admitting the EXIS- derived evidence under the reciprocal exceptions to the heresy rule to prove the identity of the Builder of the Roslindale bomb.

Even putting aside our concerns about the reliability of the underlying reports, we remain, in general, somewhat troubled by the government's use of the evidence.

The statement that out of more than 14,000 bombings and attempted bombing incidents in the EXIS database only the Roslindale and Quincy incidents share the eight specifics queried characteristics is a fairly powerful statement, but perhaps a somewhat misleading one.

First, the statement assumes as a necessary predicate that each of the more than 14,000 EXIS entries definitely states whether or not the explosive device therein actually possessed those characteristics. We have some doubt about the validity of such an assumption.

Fact

How could the majority agree with Trenkler that the district court erred in admitting the EXIS-derived evidence, yet find the error harmless beyond a reasonable doubt?

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Majority *DISSENT*

"Contrary to my brethren, I do not believe that this error was harmless beyond a reasonable doubt."

Majority

Principally, David Lindholm, convincingly testified that, in fact Trenkler had actually admitted building the Roslindale bomb.

Other admissions by Trenkler made to various law enforcement officers inferentially corroborated Lindholm's testimony, specifically Trenkler's sketch of the Roslindale bomb, drawn shortly after the explosion and conspicuously featuring two electrical blasting caps.

Fact

One of the jurors said "some members found Lindholm's testimony to be very important while others did not."

The agents did not produce the sketch of the Roslindale bomb; their statement regarding two electrical blasting caps was incorrect.

Assuming arguendo that the admission of the EXIS-derived evidence rises to the level of constitutional error, we accordingly employ a stricter standard, asking whether we can consider the error harmless beyond a reasonable doubt.

See United States vs. Argentine, 814 F 2d. 783, 788-80 (1st Cir., 1987) (constitutional errors may not be regarded as harmless of there is a reasonable possibility that the error influenced the jury in reaching a verdict).

Fact

The error did influence the jury.