

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 92-10369-Z
)	
THOMAS A. SHAY)	

MOTION FOR JUDGMENT OF ACQUITTAL

The defendant Thomas A. Shay ("Shay Jr.") hereby moves this Court, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, for judgment of acquittal. As grounds therefor, Shay Jr. states the following:

I. THERE WAS INSUFFICIENT EVIDENCE OF A CONSPIRACY

1. In Count I, the jury found Shay Jr. guilty of conspiring with Alfred E. Trenkler ("Trenkler") (1) to receive explosives in interstate commerce with the knowledge and intent that the same would be used to kill, injure, or intimidate Shay Sr. or damage or destroy Shay Sr.'s Buick; and/or (2) to maliciously attempt to destroy, by means of an explosive, Shay Sr.'s Buick which was used in or affected interstate commerce, in violation of 18 U.S.C. § 371.

2. In order to find Shay Jr. guilty of conspiracy, the jury was obliged to find each of the following three elements beyond a reasonable doubt:

(a) that Shay Jr. entered into an agreement with Trenkler to receive explosives with the intent to kill, injure, or intimidate Shay Sr. or with the intent to damage or destroy his Buick, or that Shay Jr. entered into an agreement with

Trenkler to attempt to destroy the Buick by means of explosives;

(b) that Shay Jr. entered such agreement knowing and intending at least one of the alleged objectives of the agreement;

(c) that Shay Jr. or Trenkler performed at least one of the overt acts which the government alleged.

3. On the ninth day of trial, this Court noted there had been no evidence of a connection between Shay Jr. and Trenkler. (T.p. 9-2, 12). Taking the evidence in the light most favorable to the government, there was no evidence thereafter of an agreement between Shay Jr. and Trenkler, other than Shay Jr.'s statements, none of which were corroborated.

A. The Evidence Was That the Relationship Between Shay Jr. and Trenkler Was No More Than a Frivolous Association.

4. The government showed that Trenkler's name was in Shay Jr.'s address book (T.p. 15-104-05), which the Court noted and the government conceded was insufficient to show a conspiracy. (T.p. 9-6). The address book implied only an acquaintance, and the government produced no evidence beyond an acquaintance through any witness at trial.

5. Ed Carrion testified that he had dropped Shay Jr. off at Trenkler's parents home two or three times during the three and a half year period between the Spring of 1988 and October of 1991 (T.p. 11-60-62), that he had seen Shay Jr. in the vicinity of Trenkler on "the block" two or three times during the same period, and that Shay Jr. told Carrion that he and Trenkler were "just friends." (T.p. 11-65).

6. Richard Brown testified that Shay Jr. visited Trenkler at ATEL sometime in 1990, and at the apartment Trenkler shared with Cates in the middle of 1991. (T.p. 13-108, 110)

7. John Cates, who lived with Trenkler beginning around October 1990 and until sometime after October, 1991, described Shay Jr.'s relationship to Trenkler as that of acquaintances. He testified that prior to his going on vacation in June of 1991, Trenkler never mentioned Shay Jr., but that later Trenkler told him he had brought Shay Jr. to their home one night while Cates was away. (T.p. 13-16, 41) Later in the summer of 1991, Cates and Trenkler saw Shay Jr. on Boylston Street, at which time Cates expressed his opinion to Trenkler that Shay Jr. should be avoided. He and Trenkler ran into Shay Jr. on two or three occasions on Boylston Street that summer and gave him a ride once. (T.p. 13-22, 44-45) Cates testified that Shay Jr. attempted to contact Trenkler a couple of times on his pager during September and October of 1991. (T.p. 13-11-15) Shay Jr.'s messages were that he had no friends and wanted to go out. On one of those occasions, Shay Jr. left a message inviting Cates and Trenkler to a Halloween party. (T.p. 13-12, 26) Although Cates and Trenkler spent virtually all of their spare time together (T.p. 13-15, 17), two or three rides and a couple of phone messages were the only contacts between Trenkler and Shay Jr. that Cates observed.

8. Trenkler's parents, John and Josephine Wallace, testified that although their son Alfred often visited their home

and spent time working in their garage, and that they were at home most evenings and in and out frequently during the day, they never met Shay Jr. (T.p. 17-31, 41, 42)

9. Nancy Shay testified that in 1988 or 1989, a man picked Shay Jr. up at their home in Milton a few times. After the bombing incident when he was in jail, Shay Jr. told her the man was Trenkler. (T.p. 14-12-13, 24) Nancy Shay also testified that when she came home late one night sometime during cold weather, she saw a man asleep on the couch. She was upset because she knew many of Shay Jr.'s friends, but did not know this one. (T.p. 14-14, 18) She described the man on her couch as "slim," "not heavy set or beefy." (T.p. 14-26) Richard Brown testified that Trenkler was "not fat, he's not skinny, he's beefy." (T.p. 13-136) Again, it was Shay Jr. who told her the man on the couch was Trenkler, after the bombing incident when he was in jail. (T.p. 14-17) Although Shay Jr. introduced her to or told her the names of many of his friends, he never mentioned Trenkler until he was in jail and Trenkler had been mentioned in the newspaper in connection with the bombing. (T.p. 14-24-25-28)

10. Russ Bonnano testified that during the two months preceding and the two days after the explosion, during which time Shay Jr. lived with him or was in contact with him, the only relationship Shay Jr. mentioned was a lover in New York. Bonnano did not recall any mention of Alfred Trenkler. (T.p. 12-82-84)

B. Shay Jr.'s Uncorroborated Statements Are Insufficient Evidence of a Conspiracy.

11. The only evidence of an agreement between Shay Jr. and Trenkler was the testimony of two inmates who related that Shay Jr. had made certain statements to them. The details of these statements were not corroborated by independent evidence.

12. Robert Evans testified that Shay Jr. told him someone had made the bomb for him, and that his best memory of that person's name, the same day as the conversation and thereafter, was "Sam." (T.p. 11-148, 12-17, 12-37-40) Evans testified that Shay Jr. did not tell him that he or Trenkler had placed a bomb underneath Shay Sr.'s car. (T.p. 12-18) No testimony concerning procuring another person to build a bomb was elicited from Christopher Henry, who was in the same cell with Evans, next to Shay Jr. (T.p. 12-118-147)

13. Robert Plant, another inmate, to whom Shay Jr. introduced himself as "boom-boom," testified that in mid-October 1992, the same time that the Channel 56 interview took place, Shay Jr. told him that Trenkler said he had a surprise for him, and that thereafter he and Trenkler together built and placed the bomb. Plant testified that Shay Jr. told him that Trenkler knew how to get the "C-4" explosive for the bomb. According to Plant, Shay Jr. said that his motive was to get even with his father and Trenkler's was to get money from a life insurance policy on Shay Sr., but never mentioned the Dedham Service Center lawsuit. Plant further testified that Shay Jr. told him Trenkler was in hiding in California at that time and that he was excited about

cooperating with the federal authorities by going for boat rides with them every morning to look for the bomb parts. Shay Jr. bragged to Plant about the interview he had recently given to Channel 56 and said he was waiting for it to be on television. (T.p. 13-60-62, 76-85)

14. The jury was instructed to consider whether Shay Jr.'s statements were corroborated by independent evidence before considering any such statement as evidence of guilt. (T.p. 19-87-88) There was no independent corroboration. Indeed, many of his statements or parts of them were directly contradicted by other evidence.

15. Cynthia Wallace testified that the explosive material in the bomb was not C-4 as Shay Jr. had mentioned to Plant, but dynamite. (T.p. 6-41) The battery pack found in the bomb debris was not a Radio Shack battery pack as Shay Jr. mentioned during the Channel 56 interview, but a Futaba battery pack. (T.p. 6-48) There was no evidence to corroborate Plant's testimony that Shay Jr. hoped to benefit from an insurance policy, that Trenkler was in hiding in California, or that any bomb parts had been recovered by a diving team.

16. The government introduced no evidence that Trenkler had ever been abused by his natural father, whom his mother divorced when Trenkler was five years old, or that he ever said he had been. In fact, Trenkler's mother Josephine Wallace testified that she had no knowledge of any such abuse. (T.p. 17-32)

17. Other statements of Shay Jr. indicated he did not conspire with Trenkler. Fred Burke testified that while Shay Jr. was in custody in San Francisco in March of 1992, when he asked Shay Jr. if he thought Trenkler had anything to do with the bombing, Shay Jr. "said I don't know, very sadly, very resolutely, very quietly . . . I got the impression that he was fearful of this Alfred Trenkler person." (T.p. 15-67)

18. During his interview with Channel 56 in October 1992, Shay Jr. described Trenkler as an acquaintance. He said that Trenkler had told him he was building him a surprise, which he thought was a remote control car. He stated that he had purchased electronic parts for Trenkler, with the understanding that they were for Trenkler's work. Shay Jr. stated that he had not seen Trenkler build the bomb "so he might not have, but the little pieces add up." Shay Jr. stated that since the toggle switch and the AA battery holder which he bought for Trenkler were in the bomb, "Al Trenkler must have built it." He explained that he thought Trenkler built the bomb as retaliation against his father for putting him in the care of DSS as a child and because Trenkler couldn't retaliate against his own father for abusing him, and maybe even thought Shay Jr. was going to collect money from a lawsuit his father had against some people. Shay Jr. stated his belief that only after an automobile accident can survivors collect on a lawsuit if the victim later dies. He spoke of being in regular contact with Paul Kelly, and that the federal authorities were spending millions to corroborate his

story. He said that the Coast Guard and Navy and an ATF diving team were looking for the bomb parts he and Trenkler had later thrown in "300 depth of water." In response to Karen Marinella's expressions of disbelief, Shay Jr. urged that this time was different from all the other times when what he told her was "stuff that has poured out of mouths by police, my family and myself." Shay Jr. denied any knowledge or planning with Trenkler prior to the explosion.

19. In sum, the evidence adduced at trial indicated an association between Shay Jr. and Trenkler which was frivolous at best. The only evidence of an agreement between Shay Jr. and Trenkler to commit the crimes charged were Shay Jr.'s uncorroborated statements as related by two inmates. This is clearly insufficient. Indeed, by the time all of the government's witnesses who had anything to say about Trenkler had testified, this Court stated that "the evidence of the association between the defendant and Mr. Trenkler is relatively slim." (T.p. 16-3, 4)

20. Shay Jr. therefore asks that this Court enter judgment of acquittal on Count I.

II. THERE WAS INSUFFICIENT EVIDENCE OF AIDING AND ABBETTING AN ATTEMPT TO DESTROY THE BUICK

21. The jury found Shay Jr. guilty in Count III of aiding and abetting Trenkler in the attempted malicious damage or destruction, by means of an explosive, of a 1986 Buick owned by Shay Sr. and used in interstate commerce and in activities

affecting interstate commerce, in violation of 18 U.S.C. § 844(i).

22. In order to find Shay Jr. guilty of Count III, the jury had to find beyond a reasonable doubt that Shay Jr. and Trenkler, between the two of them, did what the government alleged, that is, that Trenkler built the bomb at Shay Jr.'s direction and that one or both of them placed the bomb underneath Shay Sr.'s Buick.

(T.p. 20-10-12)

23. The jury had to find each of the following elements beyond a reasonable doubt:

(a) that Shay Jr. and/or Trenkler attempted to destroy the Buick by means of an explosive;

(b) that Shay Jr. intended to destroy the Buick;

(c) that Shay Jr. knowingly and willfully participated by doing something that he understood at the time as an act constituting a substantial step toward accomplishing destruction of the Buick;

(d) the substantial step corroborated that Shay Jr. intended to destroy the Buick;

(e) the Buick was being used at the time in interstate commerce or in an activity affecting interstate commerce

(f) Shay Jr. acted maliciously

24. There was no evidence other than Shay Jr.'s uncorroborated statement to Plant that Trenkler built the bomb. That statement was contradicted by his statements during the Channel 56 interview: that he had not seen Trenkler build the

bomb "so he might not have, but the little pieces add up;" that since the toggle switch and the AA battery holder which he bought for Trenkler were in the bomb, "Al Trenkler must have built it." The battery holder was not, in fact, in the bomb.

25. While the government exhaustively searched the places where Shay Jr. and Trenkler lived and/or worked, and took anything that they thought might link Shay Jr. or Trenkler to the bomb (T.p. 12-114, 17-49-54, 14-87-88, 14-130-31, 15-12), no physical evidence was ever linked with either of them. (T.p. 14-137, 6-82-90)

26. There was no evidence other than Shay Jr.'s uncorroborated statement to Plant that he or Trenkler placed the bomb. The government's theory was that the bomb was placed under Shay Sr.'s car sometime between mid-day on October 25, 1991, and Sunday, October 27, 1991, when Shay Sr. testified he found it. However, the government presented no evidence that Shay Jr. or Trenkler were anywhere near the vicinity of Shay Sr.'s home during that time period.

27. The only evidence of Shay Jr.'s whereabouts during the time period when the bomb had to have been placed was that he was at home, at Scott Critcher's Halloween party, or at the Store 24 in Quincy. (T.p. 14-40-43, 17-80-85, 17-101-104, 17-105-108, 18-57-61)

28. The government failed to show that Trenkler was present in Shay Sr.'s neighborhood on October 28 or at any other time. James McKernan testified that he saw a car parked at the corner

of Eastbourne and Beech Streets on the morning of October 28, 1991. Mr. McKernan described the car he saw as "grayish blue. It wasn't black or white or red." (T.p. 5-54-55) He did not see any rust marks or insignia on the car. (T.p. 5-70) Trenkler's car was "definitely white," (T.p. 13-8), and had noticeable rust and a red decal measuring one and a half feet in diameter on the hood (T.p. 13-32, 33). The photograph of Trenkler's car introduced in evidence as Exhibit 54 was tinted blue so as to give a bluish appearance to the car, but the car itself was white. (T.p. 13-33) Mr. McKernan was shown a photographic array of automobiles, including that of Alfred Trenkler, but could not identify any of them as the car he had seen. (T.p. 5-71, 18-69)

29. The only direct evidence of Trenkler's whereabouts during the October 25-27 time period was that he and Mr. Cates were together Friday night, October 25, 1991, and from late afternoon on Saturday, October 26, 1991, until the morning of Monday, October 28, 1991. (T.p. 17-46-49)

30. There was no evidence that Shay Jr. took a substantial step towards accomplishing destruction of the Buick, with the knowledge and intent that the Buick would be destroyed. The government presented the Radio Shack receipt and Shay Jr.'s admission on Channel 56 that he had made the purchases reflected therein, without knowledge that they would be used in a bomb. The government presented no evidence of any kind that it was Shay Jr.'s intent to destroy the Buick at the time of the Radio Shack transaction or at any other time.

31. The only evidence that Trenkler and Shay Jr. participated together in any crime was Shay Jr.'s uncorroborated and contradicted statement to Plant, which is insufficient to establish the elements of aiding and abetting an attempt to destroy the Buick.

32. Shay Jr. therefore asks this Court to order a judgment of acquittal on Count III.

Respectfully submitted,

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CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above document was served upon the attorney or record for each other party by mail (by hand) on 8/3/93

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