

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

CRIMINAL NO.: 92-10369-Z

DEFENDANT'S MOTION IN OPPOSITION TO GOVERNMENT'S
MOTION IN LIMINE TO ADMIT EVIDENCE OF 1986 BOMBING

Now comes defendant, Alfred W. Trenkler, in opposition to the governments's motion *in limine* to admit evidence of 1986 bombing, and in support thereof states the following:

1. This Court has previously ruled in the Shay trial that the similarities between the 1986 device and the 1991 device were "not so unusual and distinctive as to be like a signature" for purposes of establishing identity. See Transcript of Shay trial, p. 16-2, lines 22-23.

2. The government concedes "there is no eyewitness or other direct testimony regarding the planning, design, construction or placement of the 1991 Device...". Government's Memorandum at pg. 32. Moreover, the government has no physical evidence linking defendant to the planning, design, construction or placement of the 1991 Device. Thus, the government's case against Alfred Trenkler is entirely circumstantial.

3. The government requests this Court to admit, under Rule 404(b), evidence relating to an incident which occurred seven (7) years ago, claiming that this evidence is not being introduced to establish the defendant's propensity to commit the 1991 crime.

4. The government claims this evidence will be introduced for the "legitimate purposes" of showing defendant's identity, knowledge and intent in the 1991 incident. In other words, lacking direct or other circumstantial proof of the defendant's involvement in the 1991 bombing, the government requests this Court to allow it to "bootstrap" evidence of the planning, design, construction and placement of the 1986 device to prove circumstantially the planning, design, construction and placement of the 1991 device. See Government's Memorandum pg. 32.

5. Defendant opposes the admission of the 1986 device, and the circumstances of its planning, design, construction and placement on both Rule 404(b) and fundamental fairness grounds.

6. First, defendant submits that the government has failed to identify sufficient "idiosyncracies" in the 1986 and 1991 devices to establish that they were both the handiwork of the defendant, and only the defendant. Thus, admission of the 1986 evidence to prove the defendant is the maker of the 1991 device is prohibited by Fed. R. Evid. 404(b). Compare Ingraham v. United States, 832 F.2d 229, 233 (1st Cir. 1987).

7. Second, the government's *modus operandi* evidence proffer relating to the 1986 device is internally inconsistent, indicates the 1986 device was not designed to kill or injure anyone, lacks the requisite foundation for its admission, and creates the risk of a mistrial.

8. Third, even if this Court was to accept the government's claim that knowledge and intent are "legitimate purposes" for the admission of this highly prejudicial evidence,

the minimal probative value of the 1986 incident is substantially outweighed by the danger of unfair prejudice. See United States v. Lynn, 856 F.2d 430, 435 (1st Cir. 1988); United States v. Garcia-Rosa, 879 F.2d 209, 220 (1st Cir. 1989).

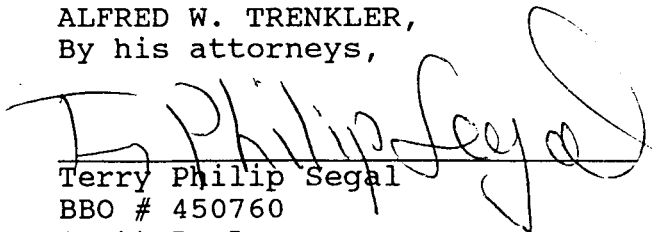
9. Fourth, admission of the 1986 incident on the issue of knowledge or intent will not only confuse the issues at trial, but also waste a substantial amount of time.

10. Finally, defendant will stipulate to the requisite knowledge to avoid the admission of this highly prejudicial evidence.

For these reasons, as more particularly set forth in the memorandum attached hereto, defendant submits that admission of the 1986 incident will effectively deprive him of a fair trial and could constitute plain error.

WHEREFORE, defendant respectfully requests this Court to deny the government's motion *in limine* and prohibit the government from introducing in its case in chief any evidence or reference to the defendant's involvement in the 1986 incident.

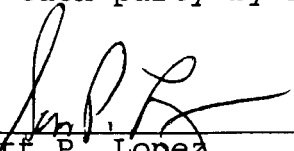
Respectfully submitted,
For the Defendant,
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by messenger on October 15, 1993.



Scott P. Lopez