

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

**SENTENCING MEMORANDUM OF DEFENDANT, ALFRED W. TRENKLER,
ON THE APPROPRIATE OFFENSE LEVEL COMPUTATION**

I. INTRODUCTION.

On November 29, 1993, Alfred W. Trenkler was found guilty by a jury of conspiracy (18 U.S.C. § 371), receipt of explosives in interstate commerce (18 U.S.C. § 844(d)), and attempted malicious destruction of property used in interstate commerce by means of an explosive (18 U.S.C. § 844(i)). As the numerous letters attached to this memorandum from friends, family and associates substantiate, these convictions do not tell the whole story in this case. This memorandum, however, will set forth the issues defendant requests this Court to consider when deciding an appropriate sentence.

II. OFFENSE GUIDELINE SUMMARY.

Pursuant to U.S.S.G. § 1B1.2.(a), this Court must determine the appropriate offense guideline from Chapter Two (Offense Conduct) most applicable to the offenses of conviction. The applicable guidelines for convictions under 18 U.S.C. § 844(d) and 844(i) are U.S.S.G. § 2K1.3., and U.S.S.G. § 2K1.4., respectively. The conspiracy guideline (U.S.S.G. § 2X1.1.(a))

mandates that the base offense level for any conspiracy conviction is the base offense level from the guideline for the substantive offense. Thus, the applicable guidelines in this case are U.S.S.G. § 2K1.3., and U.S.S.G. § 2K1.4.

However, because death resulted in this case, the above-mentioned guidelines instruct this Court to apply the "most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide)..." to determine the offense level "...if the resulting offense level is greater than that determined above." See U.S.S.G. §§ 2K1.3.(c)(1)(B); see also 2K1.4.(c)(1) (similar language).

Whether the resulting offense level from Chapter Two, Part A, Subpart 1, is greater than the offense level under § 2K1.4. depends on which homicide guideline this Court finds is "most analogous" to the offenses in this case. If this Court finds that the most analogous homicide guideline is involuntary manslaughter, which has a maximum base offense level of 14, § 2K1.4. would apply because § 2K1.4. has a base offense level of 24 where the offense created a substantial risk of death or serious injury. See § 2K1.4.(c)(1). As will be demonstrated below, since neither the first degree murder guideline (§ 2A1.1.) nor second degree murder guideline (§ 2A1.2.) is appropriate in a case involving an accidental detonation and unintentional death, this Court should apply U.S.S.G. § 2K1.4. (property damage by use of explosives) in this case.

III. SUMMARY OF ARGUMENT.

Defendant submits that this Court should apply the guideline in § 2K1.4. because a finding, by a preponderance of the evidence, that the "most analogous" homicide guideline is either first degree or second degree murder is not supported by the record in this case. Since the "most analogous" guideline supported by the record is involuntary manslaughter, and where the resulting offense level under the involuntary manslaughter guideline (§ 2A1.4.) is less than the offense level under the damage by explosives guideline (§ 2K1.4.), § 2K1.4. requires that it be applied in this case. See § 2K1.4.(c)(1).

First, the evidence presented at trial supports a finding that Officer Hurley's death was unintentional, and arose out of a very peculiar set of circumstances. The evidence at trial does not support a finding that Officer Hurley's death was either premeditated or deliberate.

Second, from the evidence presented, the elements of the offenses, and the jury instructions, it is clear that the jury was not required to find that defendant intended to injure or kill anybody to return its verdict of guilty. In addition, there was no evidence which supports a finding that defendant had an intent to injure or kill Thomas L. Shay (hereinafter Shay, Sr.). Moreover, even though David Lindholm's testimony permitted the jury to infer that defendant constructed a device which, under the circumstances of this case resulted in death, there was no evidence that this defendant placed the device on Shay Sr.'s car,

turned the device on, or attempted to detonate the device. Finally, given that the actual detonation was accidental, the record does not support a finding, by a preponderance of the evidence, that this defendant was aware that his conduct was a serious risk of death or bodily harm. Thus, a finding that the second degree murder guideline is the "most analogous" homicide guideline is also unwarranted in this case.

Third, where the record supports a finding that an unintentional killing occurred, without malice aforethought, defendant submits that the "most analogous" homicide guideline is involuntary manslaughter. Defendant submits this guideline is the most analogous because although his conduct was reckless, there was no evidence that his conduct caused the unintentional killing in this case. The Sentencing Guidelines require that this Court only hold this defendant accountable for his conduct, and the reasonably foreseeable conduct of others. However, because there was no evidence in this case as to the scope of the criminal activity this defendant agreed to undertake, this Court should not assume that this defendant agreed to placing the device in a position to injure or kill, or that such placement was reasonably foreseeable. Since the evidence did not show that this defendant's conduct alone made him aware of a serious risk of death or serious bodily harm, the "most analogous" homicide guideline is involuntary manslaughter. This is so because although the building of a bomb is, in and of itself a reckless act, it is the further step of placing the bomb in a position

which can injure or kill which makes a person aware of a "serious risk" of injury or death. Since in this case there was no evidence suggesting that this defendant agreed to place the bomb in a position which could injure or kill, and no evidence that defendant actually placed the device in a position to injure or kill, a finding that his conduct was reckless is the only finding, by a preponderance of the evidence, supported by the record. Since a finding of recklessness is supported by the record, the "most analogous" homicide guideline supported by record is the involuntary manslaughter guideline. Assuming this Court finds that the involuntary manslaughter guideline is the "most analogous" homicide guideline applicable here, the appropriate offense guideline to apply would be the property damage by use of explosives guideline contained in U.S.S.G. § 2K1.4. because the resulting offense level under this guideline is greater than the offense level under the involuntary manslaughter guideline.

IV. ARGUMENT.

A. PRELIMINARY LEGAL CONSIDERATIONS.

At the outset it is important to note that this Court alone must determine from the evidence presented at trial which homicide guideline is "most analogous". See U.S.S.G. §§ 2K1.3. and 2K1.4. Sentencing questions of this kind are usually referred to as "mixed questions" of fact and law. Compare United States v. Wright, 873 F.2d. 437, 443 (1989). On any sentencing matter, this Court is entitled to draw any inference it believes

appropriate, and to make its own assessments as to the weight of the evidence, and the credibility of witnesses. United States v. Jacobo, 934 F.2d 411, 417 (2nd Cir. 1991). This is true of any matter that was unnecessary to convict. Id. at 416. Thus, on sentencing matters, this Court is even free to make findings that differ from those made by the jury. Id. at 417.

It is also clear that when a particular guideline provision enhances a sentence, it is the government's burden to persuade this Court that said guideline provision applies. See United States v. McDowell, 888 F.2d 285 (3rd Cir. 1989); United States v. Urrego-Linares, 879 F.2d 1234 (4th Cir. 1989); United States v. Wilson, 884 F.2d 1355 (11th Cir. 1989); United States v. Kirk, 894 F.2d 1162 (10th Cir. 1990); United States v. Rodriguez, 896 F.2d 1031 (6th Cir. 1990). This burden is particularly important when sentencing a person who has been convicted of conspiracy because the scope of conduct for which a defendant can be held accountable under the sentencing guidelines is "significantly narrower" than the conduct embraced by the law of conspiracy. United States v. Perrone, 936 F.2d 1403, 1416 (2nd Cir. 1991); accord, United States v. Patriarca, 4 F.3d 70, 76 (1st Cir. 1993).

To obtain a conviction for conspiracy, the government must demonstrate only that the accused had some knowledge of the unlawful aims of the conspiracy. It is not necessary that the accused knew all of the unlawful aims of the scheme charged. Perrone, supra at 1416.

However, under the guidelines, a defendant convicted of conspiracy can only be held accountable for what he reasonably could have foreseen.¹ Because the indictment in this case alleged a "jointly undertaken criminal activity", before defendant can be held accountable for the conduct of Thomas A. Shay (hereinafter "Shay, Jr."), this Court must determine from the evidence presented at trial both the scope of the criminal activity Mr. Trenkler agreed to undertake jointly (i.e., the scope of the specific conduct and objectives embraced by this defendant's agreement), and the conduct of Shay, Jr. that was both in furtherance of, and reasonably foreseeable in connection with, the criminal activity jointly undertaken by Mr. Trenkler. See U.S.S.G. § 1B1.3, Application Notes 2. If this Court finds that the conduct of Shay, Jr. was not in furtherance of the

¹Section 1B1.3(a)(1) of the Sentencing Guidelines entitled "Relevant Conduct (Factors that Determine the Guideline Range)" provides that the base offense level shall be determined on the basis of:

- A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or wilfully caused by the defendant; and
- B) in the case of a jointly undertaken criminal activity, ... all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity....

Section 1B1.3(a)(3) also provides that all harm that resulted from the acts and omissions specified in Section 1B1.3(a)(1) above shall also be taken into account when determining the base offense level for a particular defendant.

criminal activity jointly undertaken by this defendant, or was not reasonably foreseeable in connection with said criminal activity, defendant can not be held accountable under the guidelines for Shay, Jr.'s conduct. Id. Compare United States v. Patriarca, 4 F.3d 70, 75 (1st Cir. 1993).

The problem in this case is despite the jury's conclusion that defendant was involved in the offenses alleged, there was no evidence indicating the "scope" of the criminal activity defendant agreed to undertake jointly. Specifically, although the jury could infer from David Lindholm's testimony that defendant built the bomb, there was no evidence as to why he did it. Without any evidence as to the scope of the criminal activity jointly undertaken², it is unknown at this juncture whether the conduct of Shay, Jr. was in furtherance of, or reasonably foreseeable in connection with the criminal activity agreed to by defendant. Nevertheless, it is against this background that this Court must determine a mixed question of fact and law, to wit, which homicide guideline offense level is "most analogous" in this case.

²Defendant notes that this Court can only rely at sentencing on information that has "sufficient indicia of reliability." See U.S.S.G. § 6A1.3.(a). Given this Court's prior determinations as to the unreliability of Shay, Jr.'s statements, defendant requests that this Court disregard Shay, Jr.'s statements when it considers what defendant agreed to do in this case.

B. WHERE NEITHER A FINDING OF FIRST DEGREE NOR SECOND DEGREE MURDER IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, THE "MOST ANALOGOUS" HOMICIDE GUIDELINE APPLICABLE IN THIS CASE IS THE INVOLUNTARY MANSLAUGHTER GUIDELINE.

1. Where an unintentional killing resulted from unusual circumstances, a finding of murder with premeditation and deliberation is unwarranted.

To find murder in the first degree is the "most analogous" homicide offense in this case, this Court must disregard the evidence presented at defendant's trial. It is clear from the evidence that Officer Hurley's death was unintentional. In fact, to this day it is unknown what caused the device to detonate. Tr. 5-124-5-125.

Moreover, there was no evidence offered to indicate that this defendant attached the device to Shay, Sr.'s car, or turned the device on, or attempted to detonate the device. In fact, the corresponding transmitter unit was never found. Tr. 6-11.

Under 18 U.S.C. § 1111, first degree murder is defined as a killing with 1) malice aforethought; 2) premeditation; and 3) deliberation. See United States v. Shaw, 701 F.2d 367, 392 (5th Cir. 1983) cert. den. 465 U.S. 1067.³ The language of Section 1111 further sets forth the circumstances under which a killing is properly classified as murder in the first degree. Section 1111 provides: "Every murder perpetrated by poison, lying in

³Defendant notes that 18 U.S.C. § 1111 also provides that murder during the commission of specific felonies constitutes murder in the first degree. However, the specific felonies (arson, rape, burglary, and robbery) are not involved in the instant case.

wait, or any other kind of willful, deliberate, malicious, and premeditated killing ... is murder in the first degree."

(Emphasis added). Thus, under the express terms of Section 1111, murder in the first degree cannot be established where an unintentional death occurs.⁴

Given that the evidence supports the conclusion that an accidental detonation resulted in an unintentional death, it cannot support the legal conclusions of either deliberation, which requires a "cool mind that is capable of reflection" or premeditation, which requires that "one with a cool mind did, in fact, reflect before his act of killing". Id. at 392. Thus, a finding, by a preponderance of the evidence, that the first degree murder guideline is the "most analogous" homicide offense simply cannot be supported by the record in this case.

2. Where an unintentional killing resulted from unusual circumstances, a finding of murder in the second degree is also unwarranted.

18 U.S.C. § 1111 also sets forth the definition for second degree murder. Section 1111 provides: "Murder is the unlawful killing of a human being with malice aforethought." In short, § 1111 retains the common law distinction between second degree murder, which requires a killing with malice aforethought, and

⁴Defendant notes that even the portion of 18 U.S.C. § 1111 which describes the elements of first degree murder in a transferred intent situation requires "a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed." Thus, even under the transferred intent portion of § 1111, premeditation must be established, and premeditation can not be established, as a matter of law, where the detonation of a bomb is accidental, and a person's death is unintentional.

first degree murder, which in addition to malice aforethought requires a killing with premeditation and deliberation. Shaw supra at 392.

The element of malice aforethought can, but does not require, proof of a subjective intent to kill. Id. Malice aforethought may be established by evidence of conduct which is "reckless and wanton and a gross deviation from a reasonable standard of care, of such a nature that a jury is warranted in inferring that defendant was aware of a serious risk of death or serious bodily harm." Id.; see also United States v. Black Elk, 579 F.2d 49, 51 (8th Cir. 1979). However, even under this definition, the act of building a bomb, by itself, does not warrant the inference that this defendant was aware of a serious risk of death or serious bodily injury. Rather, to infer that this defendant was aware of a serious risk of death or serious bodily injury, additional facts, not proved in this case, would have to be found.

A couple of examples help illustrate this point. Shooting a gun at a passing car without regard for the life and safety of others which results in death would constitute second degree murder because the person who does the shooting is aware, at the time of his act, that serious risk of death or serious bodily injury may result. Compare United States v. Hinkle, 487 F.2d 1205, 1207 (D.C. Cir. 1973)(stabbing victim). However, if a person gives a loaded gun to an individual who is capable of understanding the dangers inherent in the gun, and unknown to

this person, said individual thereafter shoots the gun at a passing car, the person who gave the loaded gun to this individual is not guilty of second degree murder because said person is not aware, at the time of his act, that serious risk of death or serious bodily injury may result. Thus, the facts known to this defendant at the time of his acts determine whether he was aware of a serious risk of death or serious bodily harm.

In the present case, although the testimony of David Lindholm permitted the jury to infer that defendant built the bomb in question, there was no evidence that at the time of his acts he was aware that the bomb would be placed in a location that could injure or kill. Moreover, from the evidence presented, the elements of the offenses, and the Court's instructions, it is clear that the jury was not required to find that defendant intended to injure or kill anybody to return its verdict of guilty. Rather, the jury was only required to find that defendant built the bomb with an understanding that it would be used to intimidate Shay, Sr. to reach its verdict. Since there was no evidence presented at trial which supports a finding that this defendant had any intent to injure or kill Shay, Sr., or even intended to detonate the device, and there was also no evidence that this defendant placed the device on Shay Sr.'s car, or turned the device on, or took steps to detonate the device, and where the actual detonation of the device was accidental, this Court should not conclude that the government has shown that defendant was aware of a serious risk of death or bodily harm at

the time of his acts. Consequently, a finding, by a preponderance of the evidence, that the second degree murder guideline is the "most analogous" homicide guideline is also unwarranted in this case.

3. Where an unintentional killing resulted from unusual circumstances, the involuntary manslaughter guideline is the "most analogous" homicide guideline that can be supported by a preponderance of the evidence.

18 U.S.C. § 1112 defines manslaughter as the unlawful killing of a human being without malice.⁵ Manslaughter is further subdivided under § 1112 as voluntary and involuntary. Voluntary manslaughter has been defined as an unlawful, intentional killing committed without malice aforethought, while in sudden heat of passion due to adequate provocation. See Wakaksan v. United States, 367 F.2d 639, 645 (8th Cir. 1966) cert. den. 386 U.S. 994. Under a voluntary manslaughter theory, the accused intends to kill (malice aforethought), but because of sufficient provocation, and heat of passion, the element of malice aforethought is mitigated. Id. Involuntary manslaughter, on the other hand, has been defined as conduct amounting to a wanton and reckless disregard for human life resulting in an unintentional killing. See United States v. Pardee, 368 F.2d 368, 374 (4th Cir. 1966). Under an involuntary manslaughter

⁵Like § 1111, § 1112 is a codification of the common law. Under common law, manslaughter was defined as an unlawful killing of a human being without malice aforethought. See United States v. Chagra, 638 F.Supp. 1389, 1397 (D.Tex. 1986). Thus, the absence of malice aforethought, express or implied, distinguishes second degree murder (common law murder) from manslaughter. Consequently, defendant submits the term "malice" in § 1112 means "malice aforethought".

theory, the accused does not intentionally cause the death of the victim. Thus, the term "involuntary" can be equated with the term "unintentional".

Although § 1112 excludes from the definition of involuntary manslaughter a killing committed during a felony, a literal interpretation of this language leads one to the conclusion that an unintentional killing during the commission of a felony is neither involuntary manslaughter⁶ nor second degree murder where the element of malice aforethought is absent. For this reason, under recent case law, involuntary manslaughter is generally defined as an "unintentional killing resulting from the commission of wanton and reckless conduct." See Commonwealth v. Welansky, 316 Mass. 383 (1944). Interestingly, this "recklessness" definition of involuntary manslaughter is consistent with Application Note 1 of the involuntary manslaughter guideline (§ 2A1.4) which provides:

"Reckless" refers to a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard the risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. The term thus includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. § 1112.

⁶Defendant also notes that the crime of "misdemeanor" involuntary manslaughter has been severely criticized. See LaFave & Scott, Criminal Law 602 (1972); Wilner, Unintentional Homicide in the Commission of an Unlawful Act, 87 U. Pa. L. Rev. 811 (1939). In fact, under the Model Penal Code, a defendant's conduct must be reckless before he can be punished for manslaughter. Model Penal Code and Commentaries, Official Draft & Revised Comments 210.3(1)(a) (1980). For this reason, Massachusetts has abolished "misdemeanor manslaughter" unless the accused's conduct amounts to reckless conduct. Commonwealth v. Catalina, 407 Mass 779, 789 (1990).

Given the definition of involuntary manslaughter contained in Application Note 1, defendant submits that the involuntary manslaughter guideline is the "most analogous" homicide guideline which can be supported by a preponderance of the evidence in this case and which is consistent with the accountability provisions of the Sentencing Guidelines.

First, the evidence supports a finding that defendant's construction of a bomb was reckless. From this finding it is reasonable to infer that defendant was aware of the risk created by his conduct, and the risk was of such a nature and degree that to disregard the risk constituted a gross deviation from the standard of care that a reasonable person would exercise under the circumstances.

Second, finding that defendant's conduct was reckless is consistent with the guidelines accountability provisions (U.S.S.G. § 1B1.3) because although defendant's conduct was reckless, there was no evidence that his conduct caused the unintentional killing in this case. The guidelines require this Court to hold this defendant accountable only for his conduct, and the reasonably foreseeable conduct of others. See Application Note 2, U.S.S.G. § 1B1.3. However, because there was no evidence in this case as to the scope of the criminal activity that this defendant agreed to undertake, this Court should not assume that defendant was aware that the device would be placed in a position to injure or kill, or that such placement was reasonably foreseeable absent clear proof. Since the evidence at

trial did not show that this defendant was aware, at the time of his conduct, that there was a serious risk of death or bodily harm, the "most analogous", albeit not perfect, homicide guideline is involuntary manslaughter. In short, although the building of a bomb is, in and of itself a reckless act, it is the further step of placing the bomb in a position where it can injure or kill which makes a person aware of a "serious risk" of injury or death. Since in this case there was absolutely no evidence suggesting that this defendant placed the bomb in a position which could injure or kill, or even agreed to place the bomb in a position which could injure or kill, the only finding supported by a preponderance of the evidence is that his conduct was reckless. Defendant therefore requests this Court to find, based on the evidence, that his conduct was reckless, and hold that the involuntary manslaughter guideline is the most analogous homicide guideline applicable in this case.

C. SINCE THE RESULTING OFFENSE LEVEL UNDER THE INVOLUNTARY MANSLAUGHTER GUIDELINE IS LESS THAN THE OFFENSE LEVEL UNDER THE PROPERTY DAMAGE BY USE OF EXPLOSIVES GUIDELINE, THE APPROPRIATE OFFENSE LEVEL GUIDELINE IS THE LATTER.

U.S.S.G. § 2K1.4.(c)(1) provides: If death resulted, ... apply the most analogous guideline from Chapter Two, Part A (Offenses Against the Person) if the resulting offense level is greater than that determined above. Under § 2K1.4.(a)(1), the base offense level is 24, "if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense, and that risk was created knowingly;...." If this Court agrees that the "most

analogous" homicide guideline is Involuntary Manslaughter, the base offense level under § 2A1.4.(a)(2) is 14. Thus, pursuant to § 2K1.4.(c)(1), § 2K1.4. is the appropriate guideline to apply in this case.

V. SENTENCING COMPUTATION.

Base Offense Level	
U.S.S.G. § 2A1.4.(a)(1).....	24
Specific Offense Characteristic	
U.S.S.G. § 2A1.4.(b)(1).....	0
Total Offense Level	24
Criminal History Category	I
Sentencing Range	51-63 months

VI. DEPARTURES.

If this Court finds that the involuntary manslaughter guideline is the "most analogous" homicide guideline, neither an upward or downward departure is necessary.

Specifically, an upward departure under U.S.S.G. § 5K2.1. is not necessary because the factors contained therein have been sufficiently considered when determining the applicable offense level. Since the extent of the increase under § 5K2.1. depends, in part, on "the extent to which the offense level for the offense of conviction ... already reflect the risk of personal injury..." or in this case, death, taking this factor into account again to increase the sentence would penalize defendant a second time for the same conduct. Conversely, because a death

occurred in this case, defendant does not suggest that a downward departure is warranted where the sentencing range is based on § 2K1.4.

If this Court finds that the second degree murder guideline is the most analogous homicide guideline, defendant submits that a upward departure is clearly inappropriate, but requests that the Court consider a downward departure given the less than clear proof in this case.

Finally, if this Court finds that the first degree murder guideline is the most analogous homicide guideline, then a downward departure is not only appropriate, but encouraged under said guideline when applied to the facts of this case.

The guideline for first degree murder specifically encourages a downward departure "[i]f the defendant did not cause the death intentionally or knowingly." U.S.S.G. §2A1.1., comment, (n.1). This departure is permitted whenever "the defendant is convicted under a statute that expressly authorizes a sentence of less than life imprisonment." Id. (background). The statutes under which defendant was convicted, 18 U.S.C. §§ 844(d) & (i), authorize a sentence of death, life, or any term of years when the offense results in death.

The extent of the departure depends upon "the defendant's state of mind (e.g., recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct." Id. (n. 1). Although this guideline further states that "the Commission does not envision that departure

below that specified in § 2A1.2. (second degree murder) is likely to be appropriate," Id., a departure below second degree murder is not forbidden. See United States v. Rivera, 994 F.2d 942, 947-8 (1st Cir. 1993) (Commission did not "adequately" take unusual cases "into consideration").

Given the total absence of proof that this defendant intended to injure or kill anyone, the lack of proof on the scope of his agreed participation, the lack of proof on his awareness of the placement of the device, and the accidental manner in which the device was detonated, a departure downward to second degree murder (level 33) or below is appropriate in this case.

VII. CREDIT FOR TIME SERVED.

Defendant should receive credit for all the time he has served as a result of this case. Defendant was first placed in custody on December 16, 1992. Thus, he should receive credit from this date forward.


VIII. FINES AND RESTITUTION.

Defendant has no ability to pay fines or restitution in this case.

IX. CONCLUSION.

For the reasons stated above, Alfred W. Trenkler respectfully requests that this Court sentence him under U.S.S.G. § 2K1.4.. Alternatively, he requests this Court depart downward if it finds that the second degree or first degree murder guideline is applicable in this case.

Respectfully submitted,
For the Defendant,
ALFRED W. TRENKLER,
By his attorneys,

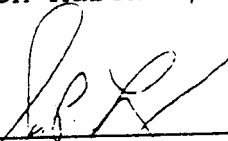


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Dated: March 1, 1994

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