

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY

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CRIMINAL NO. 92-10369-Z

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

The United States of America hereby moves in limine, pursuant to Fed. R. Evid. 104(a), for an order permitting it to offer evidence at trial of a substantially similar bombing perpetrated by defendant Thomas A. Shay's ("Shay Jr.'s") co-defendant and co-conspirator, Alfred W. Trenkler ("Trenkler") in Quincy, Massachusetts in September, 1986 (the "1986 Bombing"). In support of this motion, the government states as follows:

1. Evidence of Trenkler's design, construction and detonation of an explosive device in the 1986 Bombing is critically important evidence which will be offered by the government to prove the formation and existence of the two-person conspiracy charged in Count One of the Indictment. Specifically, this evidence is essential to prove, as the government must, the existence and nature of the unlawful agreement and the fact that one of the two conspirators possessed the knowledge, skill, ability and experience to design and build the precise explosive device which killed Boston Police Officer Jeremiah Hurley in Roslindale, Massachusetts in October, 1991 (the "1991 Bombing").

2. The evidence will show that in 1986 Trenkler built a remote-controlled explosive device which was remarkably similar to the explosive device in the 1991 Bombing.

3. The evidence will further show that in 1986 Trenkler utilized a distinctive modus operandi in the planning, construction and attachment of the device (to a vehicle), similar to that employed in the 1991 Bombing.

4. The evidence will show a pronounced "signature" quality appearing in each of the remote-controlled explosive devices used in the 1986 and 1991 Bombings.

5. The evidence will be offered for a proper purpose under Fed. R. Evid. 404(b), namely "identity" (of the builder of the device in the 1991 Bombing), "knowledge", "intent" and "preparation".

6. The evidence is admissible against Shay Jr. since it is relevant and highly probative of the formation and existence of the charged conspiracy (Indictment, Count One).

7. The risk of unfair prejudice or possible jury confusion is substantially outweighed by the manifesting great probative value of the evidence of the 1986 Bombing, and is therefore not excludable under Fed. R. Evid. 403. Moreover, limiting instructions may be employed to insure the proper use and consideration of this evidence by the jury.

8. The government desires to make reference to this evidence in its opening statement, and therefore requests a ruling from the Court in limine -- prior to the jury being sworn.

WHEREFORE, the government requests that this motion be allowed.


Respectfully submitted,

A. JOHN PAPPALARDO
United States Attorney

By:



PAUL V. KELLY
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FRANK A. LIBBY, JR.
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
June 10, 1993

I, Paul V. Kelly, Assistant U.S. Attorney, do hereby certify that I have served the copy of the foregoing by hand, to Nancy Gertner, Esquire, Dwyer, Collora & Gertner, 400 Atlantic Avenue, Boston, Massachusetts 02110 and by first-class mail to Jefferson Boone, Boone & Henkoff, Esquire, 138 Brighton Avenue, Suite 212, Allston, Massachusetts 02134.



PAUL V. KELLY
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