

SUPREME COURT OF THE UNITED STATES
WASHINGTON DC

TO: CLERK OF THE COURT

WRIT OF CERTIORARI

RE-REQUEST FOR EXTENSION OF TIME TO FILE WRIT OF CERTIORARI

APPEAL #24-1224 OF THE 7TH CIRCUIT COURT OF APPEALS

THOMAS JAMES ZAJAC – Petitioner

vs

7TH CIRCUIT COURT OF APPEALS – Respondent(s)

ON PETITION FOR A WRIT OF CERIORARI TO THE 7TH CIRCUIT COURT OF APPEALS

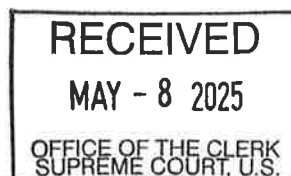
Thomas Zajac, Pro Se Petitioner, herein re-requests for an extension on time to file Writ of Certiorari regarding the above 7th Circuit case #24-1224.

The petitioner's first request was mailed to the court April 24, 2025, and, according to USPS records, received by the court on April 28, 2025.

The 7th Circuit court's decision was rendered on February 13, 2025 (Dkt. #57).

The petitioner was hospitalized from February 14, 2025, through March 27, 2025, with no contact outside of the hospital allowed. No documents etc. in or out. The petitioner was returned to the prison, due to postponement of a required surgical procedure which was eventually performed on April 13, 2025. All medical documents are available.

USP Coleman II has been on lockdown between 50-70% of the time from January 2025 to date,



NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted February 13, 2025*

Decided February 13, 2025

BeforeFRANK H. EASTERBROOK, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 24-1224

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,**v.*

THOMAS J. ZAJAC,

*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:10-CR-00376(1)

Matthew F. Kennelly,
*Judge.***ORDER**

Thomas Zajac, a federal prisoner, was convicted by a jury of bombing a train station and using the mail to threaten additional bombings. He now appeals, asserting a host of errors, ranging from violations of his right to a speedy trial to errors in

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

evidentiary rulings, faulty jury instructions, and insufficient evidence to convict. We affirm.

I.

In September 2006, a pipe bomb exploded inside a trash can in the waiting room of a Metra station in Hinsdale, Illinois. One month later, the Chief of the Hinsdale Police Department received a letter that claimed credit for the pipe bomb, citing retribution for misconduct by the Hinsdale police and threatening future deadlier bombs. The letter contained information about certain components in the bomb that were not public knowledge. That same month, a pipe bomb exploded in a public library in Salt Lake City, Utah. The Chief of the Salt Lake City Police Department received a letter similar in content to the one sent to the Hinsdale police. A forensic analysis of the letters and bombs led to Zajac becoming a suspect in both bombings. One motivation for the bombings appears to have been the 2005 arrest of Zajac's son, who then was suffering from a medical crisis. A search of Zajac's apartment turned up other evidence tying him to the bombings.

Zajac was then indicted in both the District of Utah and the Northern District of Illinois. In 2010 he was convicted in the Utah case and ultimately sentenced to 258 months' imprisonment. The Illinois case, however, stalled. A succession of attorneys appointed to represent Zajac sought to withdraw because of conflicts with him, leading him to proceed pro se in 2017. In the ensuing years, the district court resolved hundreds of pretrial motions, and the COVID-19 pandemic delayed matters further.

The Illinois case finally went to trial in January 2023. Almost at the outset, the district court declared a mistrial after two jurors fell sick—one from COVID-19—and others asked to be excused based on fear of infection. Zajac did not object to excusing the jurors or declaring a mistrial. With the parties' agreement, the court rescheduled the trial to begin September 5 and to last three weeks. The court ordered the intervening time excluded from the calculation of the 70-day speedy trial period. 18 U.S.C. § 3161(h)(7)(A), (B)(iv). The court, however, did not put on the record any findings regarding the excluded time.

A few weeks after the mistrial, Zajac moved to continue the trial based on his paralegal's schedule. The court agreed to move up the starting date a week, to August 29, 2023.

In April 2023, Zajac moved under the Speedy Trial Act to dismiss the indictment based on the new trial's delayed start, adding that impermissible considerations—namely, the court's congested calendar—dictated its rulings on the mistrial and its exclusions of time under the Speedy Trial Act. The court denied the motion. The court explained that the mistrial stemmed from juror illnesses and related excusals, not the anticipated length of trial, and that time had been excluded under the Speedy Trial Act because of the complexity of the case, the need for continuity of standby counsel, and the time for the parties to effectively prepare for trial.

On August 29, the second trial began. The government presented evidence and testimony from 17 witnesses that Zajac built and detonated the pipe bomb and sent the threatening letter to the Hinsdale Police Department. An employee of the Hinsdale Metra Station, Gloria Dado, testified that the explosion was so powerful that it perforated her eardrum and ignited a fire inside a trash can. Forensic testimony described how the materials used in the bomb resembled materials found in Zajac's apartment. Fingerprint examiners testified that Zajac's fingerprints matched the fingerprints on the envelope of the letter sent to the Hinsdale Police Department. A Hinsdale police officer also testified that Zajac went to the police station after his son's 2005 arrest, became "irate," tore items off the wall, and cursed at and threatened the officers. Zajac, who presented 17 witnesses of his own, argued that his son had framed him, that the government failed to prove that the bomb was an explosive, and that the absence of damage to the train station meant that the bomb's maker could not be charged with attempt to damage the station.

During deliberations, the jury sent a note to the court asking three questions, among them a request for a definition of "real and personal property." The court responded that the phrase in context referred to "the Hinsdale Metra Station or accompanying railroad tracks." Zajac endorsed the court's response to the jury's note. The jury convicted Zajac on three counts: attempting to damage the Hinsdale Metra Station (count one), 18 U.S.C. § 844(i); possession of an unregistered destructive device (count three), 26 U.S.C. § 5861(d); and use of the mail to make a threat to the Hinsdale Police Department (count four), 18 U.S.C. § 844(e).

Zajac moved for a judgment of acquittal as to count one, arguing that the evidence failed to establish that the pipe bomb could damage the Hinsdale Metra Station. The court disagreed and denied the motion.

The court then sentenced Zajac to concurrent terms of 240 months' imprisonment on count one and 120 months' imprisonment on counts three and four. The terms of imprisonment were to run consecutive to the sentence imposed by the district court in Utah.

II.

A. Speedy Trial Act

Zajac first argues that the court improperly excluded time under the Speedy Trial Act. This Act, which contains a long list of exclusions, requires a new trial to begin within seventy days from the date of a mistrial. 18 U.S.C. § 3161(e), (h). In Zajac's view, the district court impermissibly excluded time in the mistrial's aftermath based on reasons related to its busy calendar. *See id.* § 3161(h)(7)(C).

Zajac misapprehends the basis of the district court's ruling. As the court explained later (in its order denying Zajac's motion to dismiss the indictment), it excluded time based not on calendaring concerns but rather the case's complexity, the need for continuity of standby counsel, and the importance of giving the parties reasonable time to prepare effectively for trial. *See id.* § 3161(h)(7)(A), (B)(iv). While it is the "best practice, of course, for a district court to put its findings on the record at or near the time when it grants the continuance," we have held that a post-hoc explanation, as here, can satisfy the on-the-record finding requirement, *United States v. Chanu*, 40 F.4th 528, 547 (7th Cir. 2022) (discussing *Zedner v. United States*, 547 U.S. 489, 506–07 (2006)), and the district court here appropriately exercised its discretion to exclude the seven-month delay after the mistrial. The court was right to highlight the case's complexity (spanning more than a thousand docket entries and involving large numbers of witnesses and exhibits), the limited availability of standby counsel (only in August and September), and the parties' need for more time to prepare (the second trial was anticipated to last three weeks with an expected 56 witnesses from at least 12 different states).

Even if the court had improperly exclude time under 18 U.S.C. § 3161(7)(A), the Speedy Trial Act's 70-day clock would not have expired because each of Zajac's 29 pretrial motions triggered automatic time exclusions under § 3161(h)(1)(D), (H). *United States v. Avila*, 106 F.4th 684, 698 (7th Cir. 2024) (discussing § 3161(h)(1)(D), (H)).

Accounting for those exclusions, the district court calculated that 59 days of unexcluded time elapsed from the clock (the government, asserting that the court overlooked three days that were automatically excluded because they were the dates on which the court issued its rulings, calculates 54). To the extent Zajac believes that the district court misapplied two motions (a motion to continue the trial and a motion to admit a police report), they would not affect the speedy trial calculations because disregarding both would still result in only 54 days of unexcluded time, given three other motions pending at the same time.

B. Sufficiency of the Evidence

Zajac next challenges the sufficiency of the evidence at trial regarding count one, concerning the damage the device caused to the train station's structure or tracks. To establish the element of attempt, the government had to prove that he intended and took a substantial step to damage the Hinsdale Metra Station with an explosive device. *See United States v. States*, 72 F.4th 778, 785 (7th Cir. 2023). Zajac maintains that the evidence was insufficient to prove that he took a substantial step to damage the train station with a bomb because the device's explosion did not damage the train station's structure or tracks.

If we view the evidence in a light most favorable to the government, *see United States v. Page*, 123 F.4th 851, 858 (7th Cir. 2024) (en banc), the evidence at trial was sufficient for a rational jury to conclude that Zajac intended and took a substantial step to damage the train station with an explosive device. Testimony from forensic examiners and chemists, for instance, linked bomb-making materials with materials found in Zajac's apartment. Fingerprint experts testified that Zajac's fingerprints were on the letter sent to the Hinsdale police; that letter stated that the bomb was placed to embarrass and punish the police department. A Hinsdale Police officer recalled how Zajac became "irate" at the police station after his son's arrest. A bomb reconstruction expert testified that shrapnel from PVC pipe bombs have the capability to damage windows and walls. A train station employee also testified that the explosion started a fire in the trash can and that first responders had to remove the trash can and extinguish the fire. And a forensic chemist recounted that she found unexploded components of the device that had blown out of the trash can in the explosion.

C. Evidence of Employee's Injured Ear

Zajac next challenges the district court's decision to allow the government to introduce evidence that the pipe bomb's explosion perforated the eardrum of a ticket agent for Hinsdale Metra, Gloria Dado. Zajac contends that the district court constructively amended the indictment by admitting evidence of Dado's injured ear such that the jury convicted him for injuring a person rather than attempting to damage property—the charged offense. Constructive amendment occurs when the court broadens the possible bases for conviction beyond those presented by the grand jury. *United States v. Farmer*, 38 F.4th 591, 606 (7th Cir. 2022).

The court here did not broaden the indictment. The evidence of Dado's injury was used not to prove a new or different crime but rather to show that Zajac placed the explosive device in a trash can to cause property damage to the train station.

Relatedly, Zajac argues that Dado's testimony and the government's reference at closing argument to it was unfairly prejudicial because it inflamed the jury to convict him based on "heinous injury evidence" rather than the capability of the device to damage the train station. But the risk of unfair prejudice did not substantially outweigh the probative value of Dado's testimony. *See* FED. R. EVID. 403. Dado's testimony was probative because it tended to prove a key disputed element of the charged crime, *see United States v. Johnson*, 89 F.4th 997, 1004 (7th Cir. 2024)—that a device that could damage Dado's eardrum was also capable of damaging property. As for the government's closing argument, the government drew permissible inferences from the record when invoking Dado's testimony to argue that the device was an explosive that could have damaged the train station. *See United States v. Chavez*, 12 F.4th 716, 732 (7th Cir. 2021). Regardless, any error in admitting the testimony was harmless because of the overwhelming evidence of guilt. *United States v. Parker*, 11 F.4th 593, 596 (7th Cir. 2021). The jury heard evidence from dozens of witnesses over three weeks showing that Zajac built and detonated a pipe bomb for which he claimed responsibility in a letter to the police.

D. Objections to Zajac's Cross-Examination Questions

Zajac next argues that when the district court sustained objections to two questions he asked of a bomb reconstruction expert, the court abused its discretion because his questions were relevant. In the August 2023 trial, Zajac asked a bomb

reconstruction expert, “Given the lack of damage to the tracks and depot, do you have an opinion as to whether an attempt was made to damage the tracks and depot walls?” The government posed an objection, which the court sustained because an expert witness may not opine on whether the construction and placement of the bomb was an attempt. The court did not abuse its discretion in sustaining the objection because Zajac’s question implicated Rule 704(b) of the Federal Rules of Evidence, which prohibits expert witnesses from opining about whether a defendant had the requisite mental state that constitutes an element of the crime charged. *Diaz v. United States*, 602 U.S. 526, 534 (2024). Any question about whether the bomb was an attempt to damage the train station goes directly to the question of the maker’s intent.

Zajac also asked the bomb reconstruction expert, “Now, as it pertains to an attempted damage and destruction of the depot and train tracks, are you aware of a particular bomb that would be capable of destroying both the depot and the tracks?” The government objected on relevancy grounds, and the district court sustained the objection. The court was well within its discretion to find the question irrelevant under Rule 403 of the Federal Rules of Evidence. The scope of damage caused by a larger bomb says nothing about whether the device in the station was a bomb and provides no insight into the maker’s intent.

E. Jury Note and Instructions

Zajac argues that the district court abused its discretion in responding to the jury’s note requesting clarification about the meaning of “real or personal property” for purposes of count one. He argues that the court’s response—that the employee’s injury is not to be associated with property—negated the basis on which the court permitted the evidence to be used. But Zajac waived any challenge to this response when he affirmatively endorsed it and registered no objection. *United States v. Prothro*, 41 F.4th 812, 832 (7th Cir. 2022). Regardless, the court did not plainly err because it accurately restated the definition, consistent with the pattern jury instructions and indictment.

Zajac next argues that the pattern jury instructions limited the government’s burden of proof because they instructed the jury to determine whether the defendant committed the offense of “damaging or attempting to damage a building,” when the indictment charged “damage and destroy and attempted to damage and destroy.” Zajac objected to the pattern jury instructions’ use of the disjunctive “or” rather than the conjunctive “and” that appears in the text of indictment. But a district court does not

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abuse its discretion when it gives jury instructions “in the disjunctive in the context of a conjunctively worded indictment.” *United States v. Rice*, 520 F.3d 811, 817 (7th Cir. 2008) (quotation omitted). And the instruction here accurately reflected the law. Section 844(i) uses the disjunctive “or”: “[w]hoever maliciously damages or destroys, or attempts to damage or destroy.”

Lastly, Zajac argues that it was an error to omit the word “destroy” from the jury instructions. But this is not an error because when a jury returns a verdict on an indictment charging multiple acts in the conjunctive, the verdict stands if the evidence is sufficient with respect to one of the acts charged. *Rice*, 520 F.3d at 817.

We have considered Zajac’s other arguments, none merits discussion.

AFFIRMED

making access to required research, correspondence, etc. extremely limited.

Therefore, the petitioner re-requests this court grant an extension to file Writ of Certiorari regarding the documents appealed (Dkt #31) from case #24-1224 in the 7th Circuit Court of Appeals.

PETITIONER: Thomas James Zajac – #22313424
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P O Box 1034
Coleman, FL 33521



Thomas J. Zajac
Appellant/Petitioner

May 5, 2025
Date

Attachments: Motion for Leave to Proceed in Forma Pauperis
Original: Request for Extension of Time to File Writ of Certiorari