

THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO
Plaintiff

CASE NO. CR 490551

vs
LOUIS TELERICO
Defendant

MEMORANDUM OF OPINION
AND ORDER

FRIEDMAN, J.:

INTRODUCTION

{¶1.} In his classic 1950 film, *Rashomon*, Akira Kurosawa tells a simple story through the eyes of four different narrators, each of them relating the same incident from his own perspective and each striving to put himself in the best light.

{¶2.} In the trial of this case we similarly had the testimony of several eyewitnesses, all of them sworn to tell the truth, the whole truth, and nothing but the truth. Only in the grossest sense could their testimonies be reconciled, and one is left with the inescapable conclusion that there is no truth in this case, only perception and perspective.

BACKGROUND FACTS

{¶3.} At the outset the Court notes a few uncontroverted facts. The defendant, Louis Telerico, and his wife, Elaine, have been married for approximately forty years. During that time he has become extraordinarily successful as an investment counselor at Merrill Lynch, the head of his own group there. The couple have two adult children, one of whom—Mark Telerico—joined the firm several years ago. The couple own large amounts of property, including both the marital residence and a new home under construction on Bristol Road in Barrington. It appears that—before construction was halted by order of the Domestic Relations Court—some ten million dollars had been sunk into

that house. Despite that, and although the current value remains in dispute, the one appraisal testified to at trial values it at \$2,300,000.

{¶4.} At some point (and for reasons that were merely hinted at during trial) Elaine Telerico contacted an attorney in order to pursue divorce proceedings from her husband. In November of 2005 the attorney, Vincent Stafford, filed an action for divorce in the Cuyahoga County Domestic Relations Court; that case remains pending, although set for trial in February, 2007. Of particular relevance to this case, and with remarkable candor, Elaine testified that she chose Vincent Stafford to represent her because : “Vince is more or less a bulldog, and he serves my purpose.” In fact, consistently throughout her testimony Elaine Telerico made it clear that she considers herself – in Congreve’s terms – “...a woman scorn’d.”¹

{¶5.} Her husband, the defendant Lou Telerico, responded in kind, and as early as January of 2006 told Elaine that he would agree to a proposed settlement of their property claims upon the sole condition that she fire Vincent Stafford as her attorney. Thus poisoned from the outset, the situation could only deteriorate over time, and over time it did so.

{¶6.} Whether innocently or with intent to cause distress to Elaine, the defendant took a female friend (described by Elaine as his “paramour”) as his guest to the Barrington Club, to which the couple belong as founding members. According to testimony at trial, the friend, Sharon Novotny, was seen wearing a Pittsburgh Steelers t-shirt with the name “Telerico” emblazoned on the back – an incident that was claimed to be an intentional provocation.

{¶7.} Vincent Stafford testified that he also is a member of the Barrington Club, and that, some time in June, 2006, the defendant approached him in the locker room there, mentioned his home address, and stated that it is surprising what one can learn from the Club’s membership directory, then adding: “You don’t know who you’re

¹ “The Mourning Bride”, Act III, Scene 2:
Heav’n has no Rage, like Love to Hatred turn’d,
Nor Hell a Fury, like a Woman scorn’d.

messing with.” Stafford further testified that he did not respond to this remark, that he did not complain about it to the club management, to the Aurora police, or to the defendant’s attorneys. Furthermore, he did not allege that there were any subsequent incidents to suggest that the defendant was stalking him or otherwise engaging in any threatening conduct. Even though, by Stafford’s testimony, the defendant knew where he lived, there was no showing that he was seen driving by the house, making harassing telephone calls, or doing anything that even remotely could be argued to constitute a pattern of menacing or threatening activities.²

{¶8.} On August 24, 2006, a meeting was held at the offices of Kohrman, Jackson & Krantz, two of whose partners (Ari Jaffe and Sarah Gabinet) were representing the defendant in his divorce action. Virtually every witness at the trial claimed credit for arranging this conference, but it appears that the idea was hatched between Ari Jaffe and Mark Telerico, and that at Mark’s suggestion, Elaine sent a certified letter to Stafford to insist that he set it up.

{¶9.} Present at this settlement conference were: the defendant and his attorneys (Ari Jaffe and Sarah Gabinet), Elaine Telerico and her attorneys (Vincent Stafford and Gregory Moore), Mark Telerico, and Bernard Agin—a special master appointed by the Domestic Relations judge. Except for the defendant himself, all testified at trial. All were sworn to tell the truth, the whole truth, and nothing but the truth. Moreover, five of those who testified are attorneys. Nevertheless, and as has been noted, the testimony of the several witnesses as to what happened at this conference is completely irreconcilable.

FINDINGS OF FACT

{¶10.} What is clear is that at the beginning of the meeting the defendant was either calm and optimistic (Mark Telerico, Ari Jaffe, Sarah Gabinet) or sullen (Elaine Telerico) or stressed (Greg Moore). Defense counsel intended to discuss financial issues,

² According to Sharon Novotny’s uncontroverted testimony, however, there were a number of instances in which Vincent Stafford confronted her and/or Louis Telerico at Barrington with the apparent intention of causing discomfort or

including debt servicing and frozen assets, while Vince Stafford insisted on discussing the Bristol house. Stafford made some reference to the defendant's "lavish lifestyle" (Jaffe and Gabinet). Either Stafford intentionally "pushed some buttons" in order to goad the defendant (Mark Telerico, Ari Jaffe, Sarah Gabinet) or for no discernable reason (Vince Stafford, Gregory Moore, Elaine Telerico) the defendant suddenly became visibly emotional, to which Stafford either quietly said to Moore "Is he going to cry?" (Stafford, Moore) or stated specifically to the defendant: "Are you going to cry for us, Lou, are you going to cry for us?" (Mark Telerico, Ari Jaffe, Sarah Gabinet). Telerico and Stafford both stood up and shouted at one another (Mark Telerico) or Stafford remained seated, never losing his composure (Agin, Stafford, Moore, Elaine Telerico). Seeing that the meeting had deteriorated, Sarah Gabinet announced that it was over, and got up, with Ari Jaffe and their client, to leave the room (Mark Telerico) or the defendant got up and ran around the table as though to attack Stafford (Agin, Stafford, Elaine Telerico, Moore). The defendant then threatened to kill Stafford, to split his skull, to have him done in (Stafford, Elaine Telerico, Moore) or said "I'm going to pop you. Let me take him out." (Mark Telerico) or said nothing of the kind (Jaffe, Gabinet). The defendant remained out of the room for thirty to forty-five minutes; at Stafford's request, he was brought back in and either sat quietly through the rest of the meeting (Agin, Mark Telerico, Jaffe, Gabinet) or resumed his angry tirade at Stafford (Stafford, Moore) or remained hostile and angry but not violent (Elaine Telerico).

{¶11.} The foregoing is merely a summary of the inconsistencies that were rife throughout this trial. Vincent Stafford; his associate, Greg Moore; and their client, Elaine Telerico were generally consistent with one another. The defendant's attorneys, Ari Jaffe and Sarah Gabinet, were consistent with one another, but totally at odds with the testimony of Stafford, Moore, and Elaine Telerico. Bernard Agin's testimony is silent as to much of what is in dispute. Mark Telerico, although called by the State, appears to have tried to be balanced in recollecting and recounting what happened as events unfolded that afternoon.

embarrassment.

{¶12.} As the trier of fact, this Court is required to apply the same standards as would twelve jurors in weighing the testimony of the witnesses. Like a jury, it may believe, or disbelieve all, part, or none of the testimony of any witness. With that in mind, the Court notes that it simply not credible that a man of Louis Telerico's age and experience would have overreacted as explosively and violently as claimed without any provocation. Granted, there was evidence that he has a quick temper; however, nobody testified that his outbursts in the past had led to any violent acts towards anybody. Even his estranged wife of nearly 40 years was clear that Louis Telerico is not a physically violent man.

{¶13.} We have as well Elaine Telerico's testimony that she selected Vincent Stafford to represent her specifically because of his reputation as "something of a bulldog." In closing argument the State conceded that Vincent Stafford is known to be a particularly aggressive attorney in a field noted for aggressive lawyering. Thus, this Court must conclude that Vincent Stafford in fact did (as Mark Telerico put it) know which buttons to push and that he consciously and intentionally pushed those buttons with the express purpose of inciting Louis Telerico into overreacting. Was it comments about porcelain teeth? Vacations, cars, plastic surgery? Or was it simply the taunting remark about crying? In the absence of a transcript or recording of that conference, we will never know; nevertheless, this Court is convinced beyond any reasonable doubt that Vincent Stafford taunted Louis Telerico with the specific intent of producing a particular result. Louis Telerico responded precisely according to plan, and the result is this indictment.³

{¶14.} In order to convict the defendant of retaliation, the State must prove beyond a reasonable doubt:

- a. That the defendant made a threat of physical harm to Vincent Telerico on August 24, 2006;
- b. That he did so purposely; *and*

³ The State urges that "even the Vince Staffords of the world" are entitled to represent their clients zealously, without fear of physical attack by opposing counsel or parties. That goes without saying. That also is entirely beside the point in this trial. What is at issue is whether the response of this defendant to the intentional goading by the alleged victim crossed the line and constituted the crimes of retaliation, menacing by stalking, and/or aggravated menacing.

- c. That this was a “quid pro quo” for Vincent Stafford’s representation of his client.

{¶15.} Depending upon which words one believes were spoken by Louis Telerico, one may conclude that he made a threat of physical harm – or not. The Court finds that the outrageous statements attributed to the defendant by both Vincent Stafford and Gregory Moore are simply not credible. Setting aside the testimony of Ari Jaffe and Sarah Gabinet, we are left with the versions related by Elaine Telerico, Mark Telerico, and Bernard Agin. Elaine confirmed that Vince Stafford looked at her husband and asked him (not Greg Moore): “Are you going to cry?” At that, she stated that “Lou just lost it.” She testified that the defendant yelled at Stafford: “You fucking lowlife, scumbag lawyer. I’m going to do you in, Vince Stafford, and I’m going to smash your skull.” If that is what happened, then clearly this was not a credible threat, but rather a spontaneous outburst directly precipitated by the “crying” taunt by Vincent Stafford. Alternatively, one may believe the testimony of Bernard Agin. However, he seems not to have heard much of what was going on at the beginning of the meeting, and thus his testimony is sketchy at best. Nonetheless, he did observe that the defendant was becoming “very, very angry. Angry and upset.” When Ari Jaffe grabbed him, Telerico said: “Let me go, Ari, let me get him.” This testimony is roughly consistent with that of Mark Telerico, who, however, was able to provide more background to what happened.

{¶16.} Mark noted that at the beginning his father was “normal and calm,” but that shortly there were “some pointed remarks” from Vince Stafford “that were pushing buttons – hot buttons to which my father reacted.” The defendant and Stafford then were both arguing, and Stafford said to the defendant: “Are you going to cry for us now, are you going to cry for us?” Mark Telerico testified that, as they were discussing the marital assets, his father’s demeanor changed. The defendant got angry and stood up, as both he and Stafford were yelling at one another. Stafford got up, leaned on the table, and pointed at the defendant, saying: “You can’t talk to me like that.” Both men then sat down, and Sarah Gabinet said: “This meeting is over.” Ari, Sarah, and the defendant all stood up and started to leave the room, as the yelling between the defendant

and Stafford got louder. “Ari was with my father and Sarah behind him, trying to exit the room. They were arguing.” He testified that the defendant said: “Let me pop him. I’m going to take you out.” He concluded that this reminded him of “two kids in school who were having an argument” that they both expected someone would break up before it got out of hand. Moreover, it did not look to him as though the defendant was going to strike Stafford. Mark stated, moreover, that Vince Stafford probably had learned from Elaine Telerico which buttons to push in order to set off his father, and that from the beginning of the conference he had pushed those buttons.

{¶17.} In reviewing all the testimony concerning the August 24 conference, this Court unquestionably finds that of Mark Telerico to be the most consistent with the known facts and the least subject to bias towards any party. Based upon that testimony, and upon all the evidence presented at trial, this Court must conclude that the defendant in fact did not commit any act of force or credible threat of harm to anyone on September 24, 2006. Rather, it was Vincent Stafford who, in a cynical and calculating manner, laid a trap for Louis Telerico by means of comments and innuendo which he knew were likely to incite him into overreacting. Even if Louis Telerico’s actions were found to have evidenced an intent to harm Vincent Stafford, the testimony is uncontroverted that he never got closer than six feet from Stafford before being either restrained or escorted from the room – either by Ari Jaffe alone or by Ari, Greg Moore, and Bernard Agin. Moreover, by his own conduct subsequent to the defendant’s outburst, Vincent Stafford made it clear that he never truly believed that there was any credible threat of harm.

{¶18.} The day following the ill-fated settlement conference, the defendant clearly was still upset and depressed over what had transpired. He arrived at work and told his associates, Rita Covert and Trudy Miner, that he was disappointed. He told them that Vincent Stafford had egged him on, that he knew what buttons to push. He was clearly depressed, and said he wanted to pack up his stuff and quit the firm. Rita testified that he reported to her that Stafford would not release funds to make necessary payments, and that he and Elaine were going to lose everything. Under the circum-

stances, it made no sense to keep working. He added that he was going to get Vince, and didn't care if he was going to spend the rest of his life in prison. She stated, "We didn't know if he was really serious."

{¶19.} Trudy similarly testified that, when Telerico arrived at work on Friday, he stated that the meeting "didn't go so well" as he had hoped. He asked her to get some boxes, stating that he wanted to pack up, get out, and start over. She observed, however, that this was not an uncommon remark for him over the twenty-nine years she has known him. Lou has a temper, she said, and if things didn't go well he'd say, "That's it, I'm packing up and getting out of here." She further recalled that he called Stafford an "unethical attorney" and stated he would "blow his fucking head off before he'd let [Stafford] destroy everything he had built." Tellingly, however, Trudy went on: "I just blew it off, that Lou was venting." She testified that in her experience the defendant felt comfortable venting with her, and by the following Monday she had forgotten about the incident.

{¶20.} If this were all that happened, the Court is convinced that neither the incident on Thursday, August 24, nor the comments on Friday, August 25, would have justified any criminal charges. The events of the following Monday, August 28, however, require some closer analysis and consideration.

{¶21.} The evidence is uncontroverted that, when the defendant arrived at work on Monday, he brought a DVD, which he asked Trudy to help him load into his computer. When she did so, she stated she was shocked to see that it opened with "some kind of a gun coming up out of a marsh." Without waiting to see what else was on the disk, she left the room and reported the incident to Rita. The two of them contacted their superior, Adam Chesler.

{¶22.} When Mark Telerico arrived a short time later, he was advised of what was going on. He testified that he looked through the window into his father's office and at the computer monitor. He stated that what he saw was guns, ducks, and so forth. Based upon that, and upon the previous events, he decided to contact his father's attor-

neys, simply to let them know that he was concerned about what might happen. He then met with his father, Ari, Sarah, and Adam Chesler.

{¶23.} Mark next placed a call to Merrill Lynch's Ethics Hotline, but instead was directed to Peter Bunnell, an Employee Assistance Program counselor at Merrill Lynch in New York. Bunnell testified that he understood the defendant was viewing a DVD on how to shoot a firearm. This information, coupled with all the events the previous week, led him to believe that there was a potential of physical harm to Vincent Stafford. At the time, Bunnell testified, he believed that there was "a duty to warn" Stafford; however, he stated, he now believes that was wrong. Nonetheless, one can fully understand a corporate decision to err on the side of caution, as Merrill Lynch certainly could have borne considerable liability if in fact some harm had resulted from its failure to warn Stafford of a potential threat to his life.

{¶24.} It appears that the DVD in question (State's Exhibit 2) is in fact not an instructional video but a catalogue of a gun manufacturer, that includes firearms of all sorts, from smooth-bore rifles for skeet shooting to high-powered assault weapons.⁴ None of the witnesses in fact saw what the defendant was viewing on the disk. The defense claims that this was intended as part of a plan to take up skeet shooting as a form of client development; the State asserts that it is consistent with an intention to follow through on what it considers a threat to blow Vincent Stafford's head off. Either theory is possible. However, the State has not presented any evidence whatsoever that Louis Telerico in fact acquired or even attempted to acquire any firearm, let alone a high-powered rifle. Yes, he made inquiries at both Dick's Sporting Goods and Stonewall, Ltd., about guns, but there was no testimony linking those inquiries specifically to any type of gun.

{¶25.} The defendant claims that his inquiries about guns was motivated by a new-found interest in skeet shooting as a means of prospecting for new clients; the State derides this, noting that the first evidence of any interest in guns comes immediately

after the defendant had threatened to blow Vincent Stafford's head off. The Court views this dispute as irrelevant. If Louis Telerico had acquired, or attempted to acquire, a gun in the days or weeks following the settlement conference, then we would know what kind of weapon he was after, and perhaps could conclude whether his intention was skeet shooting or not. At the same time, it must be noted that the State introduced no evidence whatsoever that contradicted the testimony of William Marx concerning discussions about skeet shooting he had with Louis Telerico at a Browns game.

{¶26.} The evidence adduced at trial established that there were precisely two incidents in which the defendant arguably confronted Vincent Stafford: one at the Barrington Club in June, the other at the settlement conference in Cleveland in August. This Court already has found that the August 24 incident did not cause Vincent Stafford to believe that Louis Telerico would cause him any physical harm. This leaves only the Barrington confrontation; however, that took place in Portage County, and thus could not independently sustain a conviction in this county for aggravated menacing. With respect to the comments made by the defendant to his assistants on Friday, August 25, this Court is convinced that these were nothing more than venting, something the evidence shows he was prone to do on a regular basis. Moreover, there is no evidence that statements made to Rita or Trudy were intended to be conveyed to Vincent Stafford or anyone else. Read in the context of the testimony of all the events of that day, those comments were nothing more than an expression of Louis Telerico's frustration and disappointment in the failure of the previous day's settlement conference to resolve the issues between himself and his wife. Put simply, in the absence of any evidence of an intent to convey threats to Vincent Stafford, or any real expectation that this would be done by others, the State has failed to establish beyond a reasonable doubt that the defendant is guilty either of menacing by stalking or aggravated menacing.

⁴ As the disk jacket states: "Discover all that Benelli USA has to offer in our 2006 Video Catalog which covers the entire Benelli USA line of products. ...Learn about your favorite firearms in a whole new way through this video experience helping you to make the most informed decision possible."

CONCLUSION

{¶27.} For the reasons set forth herein, the Court is obliged to conclude that the State has failed to prove, by evidence beyond a reasonable doubt, all the essential elements of each of the crimes charged in this indictment. Accordingly, the defendant is found not guilty as to count one (retaliation), count two (menacing by stalking), and count three (aggravated menacing).

IT IS SO ORDERED

Judge Stuart A. Friedman

Dated: January 18, 2007