

The Tale from the Tape:

Decedent's Statements Help Stalking Victims Secure Civil Justice

By Phillip B. Leiser, Esq.

October 29, 1998 was the darkest day in the life of the Wooldridge family. It was the day their home ceased to be their sanctuary. It was the day when Clayton and Patricia Wooldridge and their two young children realized that they were the targets of hatred—that someone was trying to terrorize them in order to drive them from their home.

The evening before had been pretty uneventful. Clayton Wooldridge came home from work and had dinner with his family. Since it was a couple of days before Halloween, the family spent some time carving pumpkins and decorating the house. They spent the rest of the evening like many American families do—helping the kids with their homework, taking care of household chores, and relaxing on the couch in front of the television. Clayton and Patricia put the kids to bed around 10 p.m. and went to bed themselves around midnight.

When the glass shattered at about 4 a.m., they had already been in deep sleep for several hours. Clayton and Patricia were jolted awake by the sound. After clearing the cobwebs from their minds, they raced to check on their children. After confirming that they were okay, Clayton headed downstairs.

One of the Worst Cases of Home Vandalism

He slowly took in the view of his desecrated home. The living room windows were smashed, with broken

glass scattered across the floor and all over the couch where his family had sat watching television hours before. Outside, the garden was completely destroyed. Flowers had been yanked out of the ground and thrown about the yard. There was blood-red paint dripping from the front door. Indeed, the entire front of the house, including the siding, windows,

**Someone was trying
to terrorize them in
order to drive them
from their home.**

and doors, was covered with paint. The family van was tilting to one side because one of the front tires had been slashed.

In the backyard, the scene was similar. Indelible, oil-based paint had been splattered on the house and surrounding surfaces. According to one veteran police detective, it was one of the worst cases of home vandalism he had seen in nearly twenty-two years on the force. The Wooldridge family spent the next year and almost \$30,000 putting back together the pieces of their shattered home.

Problems With a Neighbor

The Wooldridges immediately suspected who was responsible. For at least six

months prior to the attack, they had been having problems with a neighbor who lived across the street, Timothy J. Simon. The problems began with threatening letters and escalated when Simon and one of his employees used their vehicles to deliberately block one of the Wooldridges' vehicles. Six months prior to the vandalism, Simon had written a letter to Patricia Wooldridge detailing his grievances against her and her family. He felt spurned by their refusal to attend his annual block party, and he believed that they had "an obsessive need to copy his every landscaping idea." Simon had also previously expressed his resentment at the Wooldridges for not hiring his company for some painting they had done several years earlier. Simon punctuated his letter to Patricia Wooldridge with the ominous threat that "your right to protect your family and your property ends with my right to live in a peaceful and tranquil neighborhood."

Simon did not take part in the actual vandalism of the Wooldridges' home. Instead, he hired one of his former employees to do it. Simon had been convicted of multiple felonies in Illinois in the 1980s, and he specifically targeted young men with troubled pasts to hire for his painting company. He paid one such employee, twenty-year-old Michael T. Petruska, \$250 to destroy the Wooldridges' property.

An informant's tip led the police to Petruska. When the police confronted him, Petruska gave a full confession. He admitted that he had destroyed the Wooldridges' home. He also implicated



Simon, informing the detectives that Simon had carefully orchestrated the crime and had paid Petruska to carry it out. Petruska was anxious to lessen his own punishment, so he agreed to cooperate with the police in a sting operation designed to record Simon making inculpatory statements about the crime. Petruska agreed to wear a body wire, go over to Simon's house, and talk to him about the vandalism. He also agreed to take part in recorded telephone conversations in which he and Simon would discuss the crime. The plan worked. In a series of five recorded conversations—one telephone conversation between Petruska and the police, three telephone conversations between Petruska and Simon, and one body wire conversation between Petruska and Simon—the police obtained statements from Petruska and Simon that clearly established Simon's knowledge of, and complicity in, the crime against the Wooldridge family.

The police were prepared to arrest Simon and charge him with the crime. However, in a bizarre turn of events,

Petruska was murdered in an unrelated domestic dispute one week after his last conversation with Simon. After Petruska's death in May of 1999, the prosecutors' office shrugged its shoulders and dropped the case without making an arrest. The prosecutors concluded that with their key witness now dead, there would be no way to get the telephone and body wire tapes admitted into evidence against Simon.

Admissibility of the Tapes in a Civil Lawsuit

Determined to get justice despite the refusal to prosecute, the Wooldridges turned to the National Center for Victims of Crime. Through its National Crime Victim Bar Association, the Wooldridges were referred to this article's author. In September of 1999, the Wooldridges filed suit against Simon alleging a cause of action of trespass *quare clausum fregit*,¹ seeking both compensatory and punitive damages. Simon counterclaimed against the Wooldridges, alleging defamation and intentional infliction of emotional

distress, seeking \$2.75 million in compensatory and punitive damages, based upon his claims that the Wooldridges had spread rumors that he had been linked to the vandalism and to the murder of Petruska, and that he was a pedophile.

As reflected by the prosecutors' decision not to pursue the criminal case, the critical issue in the civil case was the admissibility of the various tape-recorded conversations. If the court refused to admit the tapes into evidence, the strength of the case against Simon would be greatly diminished. Petruska was dead. He obviously could not testify in court. Unfortunately for the plaintiffs, the tapes consisted of out-of-court statements and would be offered as evidence at trial to prove the truth of the assertions stated on the tapes, namely, that Simon was responsible for masterminding the crime. Therefore, the tapes contained hearsay, and they would not be admissible unless they fit within a recognized exception to the hearsay rule.²

Virginia recognizes several hearsay

exceptions. In this case, the court concluded that Petruska's statements to the police in the "confession tape" were admissible against Simon under the "declaration against penal interest exception" to the hearsay rule. In Virginia, there is a four-part test for the admissibility of an otherwise-hearsay statement under this exception.³ First, the court must determine that the declarant is unavailable to testify at trial. Second, the declarant must have been subjectively aware at the time he made the statement that it was against his interest to make it. Third, the statement must have actually been against the declarant's interest at the time it was made. Finally, the court must be satisfied that the record contains evidence other than the declaration itself establishing the declaration's reliability. Such evidence may include testimony from other witnesses, physical evidence, and similarities between a declarant's account of events and the accounts of other witnesses. The indicia of reliability may also include evidence of the declarant's demeanor and the circumstances surrounding the giving of the statement.⁴ If a court determines that an otherwise-hearsay statement falls within the declaration against penal interest exception, the *entire* statement is admissible against the defendant.

The first prong of the test was satisfied by the fact that Petruska had been murdered and was obviously "unavailable" to testify. With respect to the second prong, Petruska stated in his confession to the police that "I understand that what happened was wrong. So what I'm interested in is if I can get some kind of probation or something, the minimum that I can get." Clearly, he subjectively believed that his confession was against his penal interest when it was made.

Petruska's statements also satisfied the third prong of the test because they were against his penal interest when he made them. Petruska stated, "I threw like a quart or two. I had a knife and two quarts of paint. I believe the last time I talked to Simon was when we had the conversation 'cause all four of the tires didn't get slashed, and he didn't want to pay three hundred." By making these

statements, Petruska subjected himself to liability for a variety of criminal offenses, including trespass and conspiracy to commit trespass.

The fourth prong often presents the biggest obstacle to the admissibility of statements against penal interest. In order to be admissible, the statement must contain sufficient indicia of reliability beyond just the confession itself. Courts have identified a number of factors that may indicate that a statement is reliable (*e.g.*, the voluntariness of the confession, the circumstances surrounding the confession, the demeanor of the declarant, and the corroborative physical evidence.)

There were several such factors present in this case. In making his telephone confession, Petruska, had not been arrested or detained by the police. Rather, he had called them from the comfort of his own home. In addition, Petruska's statements to the police about Simon's motives were corroborated by a letter that Simon wrote to the Wooldridges. Petruska's statements were also corroborated by tacit admissions of liability that Simon made in the course of the taped conversations. Finally, Petruska's taped descriptions of the crime scene accurately described what really happened there. After reviewing all of these factors, the trial court correctly exercised its discretion in admitting Petruska's tape-recorded confession despite its status as hearsay.

The Trial

With these tapes as evidence, the plaintiffs were able to prove not only that Simon was involved in the destruction of their property, but that he had masterminded the vicious crime as part of an ongoing harassment campaign. The case was tried for five days in Fairfax County, Virginia before a jury of seven women. After five hours of deliberation over two days, the jury returned a verdict in favor of the Wooldridges for \$205,000. They awarded \$30,000 in compensatory damages and \$175,000 in punitive damages. The jury rejected Simon's claims, finding that the Wooldridges were not liable for defamation or intentional infliction of emotional distress. **W**

Phillip B. Leiser, Esq., is a Charter Member of the National Crime Victim Bar Association. His practice, which is based in Fairfax County, Virginia, focuses on representing crime victims who are seeking justice in the civil legal system. He can be contacted at 8027 Leesburg Pike, Suite 207, Vienna, VA 22182, (703) 734-5000.

1. The term literally means "wherefore he broke the close." In Virginia, a trespass action which seeks the recovery of damages for an unlawful entry upon another's land is termed "trespass *quare clausum fregit*," "Breaking a close" is the technical expression for an unlawful entry upon land. Black's Law Dictionary, 6th ed. at 1244.

2. In addition to the hearsay problem, there were several Virginia statutes, including the wiretapping statute, that also created admissibility problems for the tapes. There was even a potential Sixth Amendment "Confrontation Clause" impediment to their admissibility. The litigation and resolution of these issues is beyond the scope of this article, other than to note that the court ultimately resolved the issues in the plaintiffs' favor.

3. See, *e.g.*, *Rankins v. Commonwealth*, 31 Va. App. 352 (2000).

4. *Id.* at 362.

