

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID BONIFACE, NISSAGE MARTYR,)	
AND JUDERS YSEMÉ,)	
)	
Plaintiffs,)	Civil Action
)	No. 17-10477-ADB
v.)	
)	
JEAN MOROSE VILIENA,)	
a.k.a. JEAN MOROSE VILLIENA,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT JUDGE

JURY TRIAL DAY SEVEN

March 21, 2023
9:24 a.m.

John J. Moakley United States Courthouse
Courtroom No. 17
One Courthouse Way
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR
Official Court Reporter
One Courthouse Way, Room 3200
Boston, Massachusetts 02210
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1 P R O C E E D I N G S

2 (The following proceedings were held in open court
3 before the Honorable Allison D. Burroughs, United States
4 District Judge, United States District Court, District of
5 Massachusetts, at the John J. Moakley United States Courthouse,
6 One Courthouse Way, Courtroom 17, Boston, Massachusetts, on
7 March 21, 2023.)

8 THE COURT: I have my proposal. I'll hear you on
9 yours. Would you like to hear mine first?

09:24 10 MR. MCLAUGHLIN: Sure.

11 THE COURT: You don't have to. All right.

12 MR. MCLAUGHLIN: Why don't we give you our proposal,
13 if that's okay.

14 THE COURT: Do have strategic advantage to --

15 MR. MCLAUGHLIN: We have our rationale. I'd like to
16 put it out there.

17 THE COURT: Happy to hear it.

18 MR. MCLAUGHLIN: We largely ended up back where I
19 think you wanted us to be, which is that attempted
09:24 20 extrajudicial killing does require an intent to kill. And so
21 in response to the jury's question, we would propose something
22 along the lines of, "The defendant or the direct perpetrator
23 must have the intent to kill. You may infer intent to kill
24 including from the injuries."

25 THE COURT: All right. Here is mine. "For questions

1 2 and 4, intent to kill must be proved by a preponderance of
2 the evidence. An intent to injure is not enough. You may
3 infer intent from conduct but the conduct or the conduct
4 considered with other credible evidence has to convince you by
5 a preponderance of the evidence that the intent was to kill
6 even if killing didn't result."

7 MR. MCLAUGHLIN: The portion that I think is missing
8 from that is that the intent can be either the defendant's or
9 the direct perpetrator's. So if that can be clarified, I think
09:25 10 we would be okay with the rest of it.

11 THE COURT: Well, it says "intent to kill." I
12 wasn't -- they haven't asked anything about the who.

13 MR. MCLAUGHLIN: Well, I think it's crucial to clarify
14 to them whose intent we're speaking of. The instructions talk
15 about person or persons. So in this case, we don't have to
16 give specific names of this person or that person, but I think
17 it's important to clarify that it's either the defendant could
18 be the one who directly participated in the attempted
19 extrajudicial killing by having that intent and taking a
09:26 20 substantial step towards, or it could be that the direct
21 perpetrator had that intent, took a substantial step, then
22 you're linking the defendant via any of the secondary theories
23 of liability as with any other --

24 MR. HALEY: Defendant would note that the jury didn't
25 ask that question. And every time we add things to the

1 instruction, then we're supplementing the instructions that
2 were otherwise arrived at at the time they were provided and
3 are suggesting to the jury that there are other facts or issues
4 they should consider which wasn't in the ambit of their
5 question.

6 The defendant although continues to maintain that the
7 absence of a statutory provision for recovery for attempted
8 extrajudicial killing makes the count improper is satisfied
9 with the language, subject to that reservation, that the court
09:27 10 has suggested and then to add the additional language answers
11 the question the jury hasn't asked and suggests to the jury
12 that there are other issues or facts they should start to
13 concentrate on which the defendant believes is proper in the
14 context of the question that has been posed.

15 THE COURT: Okay. Hold on a minute. I'm pulling
16 something up. That was a lot of words. Let's see.

17 So you're okay with the language that I'm giving,
18 subject to your ongoing objection about the charge to begin
19 with?

09:27 20 MR. HALEY: That's correct, Your Honor.

21 THE COURT: Okay. I'm going to give the language that
22 I proposed. They can follow up with a question about the who
23 if they want to, but there's nothing about the who in here.
24 And all we have said is a person or persons. So I will add, if
25 you want, I'll add person or persons, but I'm not going to add

1 any language about the perpetrator or about the committer.
2 What did you say, perpetrator or orderee, whatever the word was
3 we used.

4 MR. MCLAUGHLIN: We do think it's important to clarify
5 that the intent can go both to -- as currently constructed, it
6 seems to highlight solely the intent of the direct perpetrator
7 to the exclusion of the intent of the defendant, which we think
8 is contrary to law. And we are not asking to change in any way
9 either the instructions on attempted extrajudicial killing or
09:28 10 liability but again think it's important to clarify that that
11 intent can be linked either to the defendant or to the
12 underlying perpetrator. So some reference to that is what we
13 would request.

14 THE COURT: Well, I'm not going to go beyond person or
15 persons, which is what's in the instruction.

16 MR. MCLAUGHLIN: Understood. We would respectfully
17 disagree, but understood.

18 THE COURT: I can't understand the basis of your
19 disagreement. You want a favorable instruction, but all
09:29 20 they've asked about is the intent element, and we haven't --
21 you want me to link -- they're talking about questions 2 and 4,
22 intent very specifically.

23 MR. MCLAUGHLIN: Correct.

24 THE COURT: And you're wanting me to link it to
25 secondary liability, and I'm not going to do that.

1 MR. MCLAUGHLIN: Not necessarily. The defendant
2 himself could be sort of -- in fact, on page 24 when we speak
3 about liability, plaintiffs claim the Defendant Viliena
4 directly perpetrated or participated in the torture and
5 attempted extrajudicial killing. Then we go on to say he could
6 also be linked to alternative forms of liability. So this is
7 just making clear that the defendant can either be sort of
8 directly participating in the attempted extrajudicial killing,
9 in which case he's the one whose intent matters in a
09:29 10 substantial step, or it can be the direct perpetrator whose
11 specific intent is to kill, and then you're linking the
12 defendant via secondary theories of liability.

13 In either case, we agree that there is a specific
14 intent to kill that's required. We're not trying to sort of
15 pussyfoot around that. We just want to be clear that that
16 specific intent to kill can be either the defendant's or the
17 perpetrator's and that is consistent with both the jury charge
18 on attempted extrajudicial killing and on liability.

19 THE COURT: Okay. What about this? Questions 2 and 4
09:30 20 require -- I've just added, this is what I have. So next
21 proposal. "Questions 2 and 4 require proof that a person or
22 persons intended to kill. Intent to kill must be proved by a
23 preponderance of the evidence." Then I just go on with the
24 same language. So I added the language "requires proof of a
25 person or person's intent to kill." I'm not going to go any

1 further than that.

2 MR. MCLAUGHLIN: Understood.

3 MR. HALEY: Subject to the earlier reservation the
4 defendant --

5 COURT REPORTER: I'm sorry, I can't hear you.

6 THE COURT: You trailed off.

7 MR. HALEY: I was just waiting to repeat myself. I'm
8 sorry, Your Honor. Subject to the earlier reservations the
9 defendant made, the defendant is satisfied with the language
09:31 10 the court has proposed.

11 THE COURT: I'm going to handwrite it on the bottom of
12 this question, and then anyone that wants to take a picture of
13 it or look at it before I send it back can do that. Just give
14 me a minute to do it.

15 MR. MCLAUGHLIN: That would be great. Is it possible
16 to just restate it? We were weren't entirely --

17 THE COURT: Restate?

18 MR. MCLAUGHLIN: What you were about to write.

19 THE COURT: "Questions 2 and 4 require proof that a
09:32 20 person or persons intended to kill. Intent to kill must be
21 proved by a preponderance of the evidence. An intent to injure
22 is not enough. You may infer intent from conduct, but the
23 conduct or the conduct considered with other credible evidence
24 has to convince you by a preponderance of the evidence that the
25 intent was to kill even if killing didn't result."

1 MR. MCLAUGHLIN: Again we would ask that the defendant
2 needs to be specifically identified as one of the individuals
3 who can have that intent but understand that this is your
4 ruling on it.

5 THE COURT: I mean, if it asked a different question,
6 you're not wrong, but that's not the question they asked, and I
7 want to just limit it to the question that they asked. I love
8 Ms. Lau sitting there because she nods, and she basically
9 shakes her head when she thinks I'm getting it wrong. It's all
09:33 10 very helpful.

11 MR. MCLAUGHLIN: Then you know what's coming out of my
12 mouth next.

13 THE COURT: Mr. Haley just gives me that look, like,
14 right? Let me write this down and then you can look at it.

15 So my clerk is showing you both the answer. Just one
16 final comment. I think that the question was about whether
17 injuring was enough, which is why the focus is on killing
18 versus injuring.

19 MR. MCLAUGHLIN: Will that then be reflected in the
09:37 20 portion -- I know you've already read this.

21 THE COURT: It is.

22 MR. MCLAUGHLIN: -- in terms of "you may infer from
23 the conduct," shouldn't it be also be "you may infer from the
24 conduct and the injuries"?

25 THE COURT: No.

1 MR. MCLAUGHLIN: Okay.

2 THE COURT: Because that sort of assumes that the
3 intent is related to the characteristics of the victim, right?

4 MR. MCLAUGHLIN: Or that if you're talking about
5 inferences and circumstantial evidence, if somebody shows
6 grievous injuries, that would be relevant to the intent to
7 kill. If for example it's a water gun, right, and the person
8 doesn't show any injuries, that link is missing. But what
9 happens --

09:37 10 THE COURT: That is conduct -- if you shoot a gun at
11 somebody, whether or not it hits them or they're injured or
12 they're seriously injured, the shooting of the gun at another
13 human being, I think it's the conduct of the shooter.

14 MR. MCLAUGHLIN: First and foremost absolutely. But
15 if we're talking about various pieces of circumstantial
16 evidence, the result of that conduct, including the injuries,
17 would allow you to make -- would be one more piece of the
18 puzzle in deciding whether the intent was to kill or if the
19 intent was to do something else to scare them, for example.

09:38 20 So if somebody is grievously injured from a shot that
21 goes to the conduct but particularly goes to the intent of the
22 person who is carrying out that conduct.

23 THE COURT: I think I got it as well as I'm going to
24 get it.

25 MR. MCLAUGHLIN: Okay.

1 THE COURT: I'll leave it on the table for them. I'm
2 going to make my usual suggestion that in case they have a
3 follow-up question you hang around until 10:30 or so but you
4 don't have to.

5 MR. MCLAUGHLIN: I don't think we're going anywhere.

6 THE COURT: Mr. Haley, are you going --

7 MR. HALEY: Yes, Your Honor, but I'll be available in
8 ten minutes.

9 THE COURT: Thank you.

09:38 10 MS. LAU: Sorry, Your Honor. We have one more issue.

11 THE COURT: Yes.

12 MS. ADEMOLA: Your Honor, this morning we learned
13 information about additional threats to the family of Osephita
14 Lebon who testified at the trial last week. Specifically, it's
15 a level of detail that we think only someone who sat in the
16 courtroom would have learned and could have provided this
17 information to individuals in Haiti who then visited Osephita's
18 husband yesterday. Specifically she was visited by Pierrot
19 Boileau who was named by one of the defendant's associates last
09:39 20 week multiple times by different witnesses as being involved in
21 some of the key attacks in this case.

22 Pierrot Boileau told Ms. Lebon's husband that she
23 named both Pierrot and Meritus Beaublanc as, quote, "henchmen."
24 And that's the term that we understand was used by Pierrot when
25 he spoke with Ms. Lebon's husband. It's also consistent with

1 threats that trial witness Vilfranc Larrieux's wife received in
2 Haiti on Saturday. She was visited by both Pierrot Boileau and
3 Meritus Beaublanc who said that Vilfranc had named them as
4 criminals; that when Vilfranc returns to Haiti, they'll respond
5 accordingly.

6 We just, we think that this is the type of information
7 that Pierrot Boileau and Meritus Beaublanc could only have
8 learned the specific detail about the testimony through someone
9 who sat in the court proceedings, like the defendant. And
09:40 10 we're not aware of any media coverage that provides this level
11 of detail about individuals who are named in the attacks in
12 Haiti.

13 THE COURT: So there's not much I can do about that,
14 other than, Mr. Haley, you should tell your client in the
15 strongest possible terms not to be interfering or violating my
16 protective order, number one.

17 I really hope that he's not stupid enough to be
18 arranging for threats to people in Haiti while this case is
19 pending in front of a jury. In the meantime, there's nothing I
09:40 20 can do about it. My suggestion is that you talk to the U.S.
21 Attorney's Office about it while you're in the building. If
22 you want me to facilitate that meeting, I can, and they can see
23 what's going on with the phone records or whatever else if
24 they're interested in it. I notice there have been -- some
25 representatives from the office have been in and out of the

1 courtroom this week, so they may be happy to talk to you about
2 that. I don't think there's anything I can do beyond what I've
3 done and the message I've just conveyed to Mr. Haley to convey
4 to his client.

5 MR. HALEY: Your Honor, the defendant understands the
6 court's message, takes it with appropriate seriousness, has
7 acted consistent with the court's instruction and will continue
8 to do so.

9 MS. ADEMOLA: Thank you, Your Honor.

09:41 10 THE COURT: So do you need a name of someone in the
11 U.S. Attorney's Office?

12 MS. LAU: No, thank you, Your Honor.

13 THE COURT: I've seen who is in and out. All right.
14 See you all later.

15 The jurors told Karen last night when they asked the
16 question that they were leaving at 4:00 and they would be here
17 throughout the day today, it was something like that. And I
18 also firmly believe that no jury ever comes back before lunch.
19 So you get that one more free lunch before you come back with
09:41 20 your verdict. So I don't know if we'll see you this morning,
21 but hopefully either later today or tomorrow.

22 MR. HALEY: Thank you, Your Honor.

23 MS. LAU: Thank you, Your Honor.

24 (Recess 9:42 a.m. - 1:20 p.m.)

25 (Jury enters the courtroom.)

1 THE CLERK: Court is now in session. Members of the
2 jury, please remain standing. All others, please be seated.

3 Mr. Foreperson, has the jury reached a unanimous
4 verdict?

5 JURY FOREPERSON: We have.

6 THE CLERK: Can you please hand it to the court. You
7 guys can actually be seated.

8 THE COURT: All set.

9 THE CLERK: Mr. Foreperson and members of the jury,
01:20 10 please listen to your verdict as it is read into the record.

11 In Civil Action 17-10477, Boniface, et al v. Viliena,
12 the verdict is as follows:

13 Question 1. Do you find that Defendant Jean Morose
14 Viliena is liable for the extrajudicial killing of Plaintiff
15 David Boniface's brother, Ecclesiaste Boniface?

16 Yes.

17 2. Do you find that Defendant Jean Morose Viliena is
18 liable for the attempted extrajudicial killing of Plaintiff
19 Nissandère Martyr's father, Nissage Martyr?

01:21 20 Yes.

21 3. Do you find that Defendant Jean Morose Viliena is
22 liable for the torture of Plaintiff Nissandère Martyr's father,
23 Nissage Martyr?

24 Yes.

25 Do you find that Defendant -- Question 4. Do you find

1 that Defendant Jean Morose Viliena is liable for the attempted
2 extrajudicial killing of Plaintiff Juders Ysemé?

3 Yes.

4 5. Do you find that Defendant Jean Morose Viliena is
5 liable for the torture of Plaintiff Juders Ysemé?

6 Yes.

7 6. What amount of money will fairly and adequately
8 compensate David Boniface for the extrajudicial killing of
9 Ecclesiaste Boniface?

01:21 10 \$1,750,000.

11 Question 7. What amount of money will fairly and
12 adequately compensate Nissandère Martyr for the attempted
13 extrajudicial killing of his father, Nissage Martyr, and/or for
14 the torture of -- and/or for the torture of Nissage Martyr?

15 \$1,250,000.

16 8. What amount of money will fairly and adequately
17 compensate Juders Ysemé for the attempted extrajudicial killing
18 and/or torture?

19 \$1,500,000.

01:22 20 9. For any of the claims you have found proven against
21 Defendant Jean Morose Viliena in Questions 1 through 5, what
22 amount of punitive damages, if any, do you award?

23 \$11 million.

24 10. Do you find Jean Morose Viliena liable for the arson
25 of David Boniface's, Nissage Martyr's and Juders Ysemé's

1 dwellings?

2 David Boniface's dwelling: No.

3 Nissage Martyr's dwelling: No.

4 Juders Ysemé's dwelling: No.

5 Signed and dated, the Foreperson of the Jury.

6 So say you, Mr. Foreperson, so say you all, members of the
7 jury, that you agree with the verdict as it was just read into
8 the record?

9 JURORS: We do.

01:23 10 THE COURT: I want to thank you all for your service.
11 Not for the verdict that you've rendered because that's
12 entirely to you but for showing up every day, for paying
13 attention, for doing your job conscientiously.

14 You no longer have to keep an open mind. You can talk
15 about the case with whomever you want. I would only ask that
16 you sort of respect the views of your fellow jurors and not
17 repeat anything that anybody else might have said in the jury
18 room that they intended to keep private. You can do any
19 extracurricular research that you want.

01:24 20 I'm going to talk to the parties for just a couple of
21 minutes, and then I'm going to come up and talk to you. You
22 don't have to stay and wait for me, but I hope that you will,
23 just to thank you a little bit more personally and talk to you
24 for a few minutes.

25 Anything from the parties before I excuse the jurors?

1 MS. LAU: No, Your Honor, not from plaintiffs.

2 MR. HALEY: No, Your Honor.

3 THE COURT: I'm going ask to have us all rise one more
4 time for the jury out of respect for the job that they've done
5 today. And I'll be up in just a few minutes.

6 (Jury exits the courtroom.)

7 THE COURT: All right. So I want to just thank you
8 all again for the job that you've done here. I know not
9 everybody is happy, and maybe not everybody is all happy, but
01:25 10 it's obviously a verdict that they put some thought into and
11 spent some time on.

12 So unless there's anything from anyone else, the case
13 is recessed.

14 MS. LAU: Nothing from plaintiffs, Your Honor.

15 MR. HALEY: Nothing from defendant, Your Honor.

16 THE COURT: Thanks, everyone.

17 (Adjourned, 1:25 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Kelly Mortellite, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 21st day of March, 2023.

/s/ Kelly Mortellite

Kelly Mortellite, RMR, CRR

Official Court Reporter