

DIANA ZALESKI

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IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO  
SUMMIT COUNTY  
CLERK OF COURTS

STATE OF OHIO	:	CASE NO. CR 2005-01-0032
	:	
Plaintiff,	:	Judge Patricia A. Cosgrove
	:	
vs.	:	
	:	VERDICT
CYNTHIA M. ROHR-GEORGE	:	
	:	
Defendant.	:	

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**COUNT ONE - CONSPIRACY TO COMMIT MURDER - MAY 8, 2001**

**R.C. 29.03.01 (A) and R.C. 2923.01**

In order to find the Defendant guilty of Conspiracy to Commit Murder on or about May 8, 2001, the State must prove beyond a reasonable doubt that Cynthia Rohr-George, with purpose to commit or promote or facilitate the commission of Aggravated Murder did agree with John Zaffino that one or more of them would engage in conduct that facilitates the commission of Aggravated Murder in violation of R.C. 2903.01 (A) and R.C. 2923.01.

The substantial overt acts in furtherance of the conspiracy are the purchase of the firearm that Zaffino possessed and the effort to lure Zack into the Cuyahoga Valley National Park by Cynthia George. Although the phone records of calls between the Defendant, Zaffino, and Zack certainly point to a conspiracy to lure Zack into the park, without more, this Court cannot conclude that the State met its burden of proof on this count. For all the pretrial rangling in this case over the admission of taped phone conversations between Zaffino and others, the Court did

not consider them in arriving at its verdict in Count One or Count Two. For the foregoing reasons, the Court finds the Defendant **NOT GUILTY OF COUNT ONE** and the accompanying firearm specification.

## **COUNT TWO – COMPLICITY TO COMMIT AGGRAVATED MURDER**

**JUNE 16, 2001 – R.C. 2903.01 (A) and R.C. 2923.03 (A) (1)**

In order to find the Defendant guilty of Complicity to Commit Aggravated Murder, the State of Ohio must prove beyond a reasonable doubt that Cynthia M. Rohr-George solicited or procured John Zaffino to purposely, with prior calculation and design, cause the death of Jeff Zack. Since this is a complicity charge, the Court will first address the evidence that John Zaffino purposely and with prior calculation caused the death of Jeff Zack.

Numerous witnesses testified to the drive-by-shooting of Jeff Zack on June 16, 2001 as he was sitting in his vehicle at the gas pumps at BJ's Wholesale Club on Howe Road. The witnesses as well as a video surveillance camera caught sight of a Ninja style motorcycle that sped away immediately following the shooting. The witnesses described the motorcycle as black in color with bright lime green stripes. The driver was wearing black and had on a helmet that concealed most or all of his face.

Christen Rettberg testified that Zaffino purchased a black Ninja style motorcycle with lime green stripes on May 23, 2001. Zaffino told her that he wanted a motorcycle with large horsepower and "he didn't plan to keep the vehicle a long time." Two days after the homicide, Zaffino drove the motorcycle to Pennsylvania, leaving the vehicle with Nancy Forrest, his ex-wife. Zaffino had obscured the distinctive lime green stripping on the motorcycle with duct tape. He told Forrest that he covered the stripes because the police were looking for him because he had been speeding on the motorcycle. Duct tape was later recovered from Zaffino's apartment.

The Akron Police Department continued the investigation into the homicide of Jeff Zack and uncovered the purchase of two firearms by Zaffino prior to the killing from his friend, Robert Cole. The second weapon sold by Cole to Zaffino was a .357 Magnum. The Ohio Bureau of Criminal Identification and Investigation later determined that the bullet that killed Jeff Zack could have been fired from a .357 Magnum revolver (State's Exhibit 140). Cole had previously told Zaffino to use copper jacketed hollow point bullets to keep the weapon clean. The bullet that killed Zack was a .38 jacketed hollow point bullet. Zaffino had also turned over a box of .38 bullets to his ex-wife, Christine Todaro. Considering the totality of the evidence produced in the trial, there is no reasonable doubt that John Zaffino murdered Jeff Zack purposely and with prior calculation and design on June 16, 2001.

The Court will now turn to the pivotal issue as to whether the State proved beyond a reasonable doubt that Cynthia M. Rohr-George solicited or procured John Zaffino to commit the Aggravated Murder of Jeff Zack. Apart from sentencing a man to die in a capital murder case, the decision in this case has been one of the most difficult for this Court. The duty upon the Court is not only to impose sentence but to decide whether the Defendant will spend the rest of her adult life in prison for the murder of Jeff Zack. The Court has spent three days deliberating and reviewing the evidence in this case.

The continued investigation by the Akron Police Department established a love triangle between Cynthia George, Jeff Zack and John Zaffino when Christine Todaro came forward with information in 2002. According to testimony at trial, Zack had a ten year love affair with George and that resulted in the birth of one child. It was stipulated by the State and the Defendant that one of the George's children was fathered by Jeff Zack.

Bonnie Cook, Zack's former wife testified that she and her husband met Cynthia George in late 1991 or early 1992 and became friends. Sometime thereafter, the relationship between Jeff Zack and Cynthia George became a sexual one. In 1998, Zack promised Bonnie that he

would end the sexual relationship with Cynthia George while remaining friends. According to testimony, sometime between March-May 2001, Bonnie Cook overheard a heated phone conversation between Zack and George. Bonnie Cook confronted her husband and Zack told her "you don't understand, one of Cindy's children is mine."

Mary Ann Brewer, a babysitter for the Georges from 1987 to 2000 testified regarding the often volatile relationship between Zack and George. Mrs. Brewer described the relationship between Zack and George as "close, but angry at times" and called him a "constant visitor". At one point during a "nasty" phone conversation in the Spring of 2001 between Zack and George, she heard Cynthia George screaming and crying "Jeff" on the phone. When Mrs. Brewer asked George why she took his abuse, Cynthia George replied, "you don't understand, he said he would take my child with him to Israel." Brewer testified that toward the end of the relationship that George was "either screaming or crying in her exchanges with Zack."

In the year 2000, during the same time period that Cynthia George was having a relationship with Jeff Zack, she also started having an affair with John Zaffino. Numerous witnesses, including Chad Atkins, Jennifer Zavada, Bonnie Cook, and others testified regarding George's affair with Zaffino. While the relationship between Zaffino and George blossomed, the relationship between George and Zack began to sour after George told Zack that she no longer wanted a relationship from him.

The acrimony of the relationship began to surface in late 2000 and early 2001. Edward George, the Defendant's spouse, testified regarding numerous hang-up phone calls. Mr. George also testified to a cell phone call that apparently the Defendant answered while attending a church service on Christmas Eve in December 2000. Mr. George was concerned by the harassing nature of the calls to his wife to the point that he sought advice from an acquaintance, Paul Callahan, a former Akron detective. Cynthia George never told her husband the true nature of her relationship with Jeff Zack or mentioned John Zaffino.

Contact between Jeff Zack and Cynthia George came to an abrupt end in May, 2001. according to phone records from Verizon introduced at trial, Cynthia George had her cell phone numbers changes so Jeff Zack could no longer contact her on May 10, 2001. When Jeff Zack visited his mother in mid-May 2001, she noticed that her son's demeanor was "shockingly different" and he seemed "frightened". She testified that her son was "sad, was making up with everyone, and did not talk to Cindy George on his cell phone as he had in the past." On cross-examination, Mrs. Zack testified her son was upset in May-June 2001 before his death and during his visit Jeff told her "I can't see Cindy anymore, I can't call her anymore." Mrs. Zack stated that her son had been severely rejected by his father when he was young and "could not take rejection".

The depth of Zack's feelings of rejection that also encompassed his child was illustrated through the testimony of Ben Fluellen, a co-worker of Zack. Approximately one month before Zack's death on June 16, 2001, there was an encounter, chance or otherwise, between Cynthia George and Jeff Zack on Merriman Road while Zack was working as a landscaper. Fluellen testified that Zack received a call on his cell phone. Approximately one-half hour later, a truck pulled up and Zack went over to talk to the occupant. When Zack returned, Fluellen testified that he was upset, had a tear in his eye, and told him that he had received some bad news. Zack told him that he wanted to see his child but "the mother of his child would not let him."

One of the pieces of evidence that was not presented in the trial of John Zaffino was the counseling records of Alan Kurzweil who treated the Defendant for depression from January 30, 2001 to March 2, 2001. These records give insight into the Defendant's mind in the crucial months leading up to Jeff Zack's murder on June 16, 2001. These records reveal not just that the Defendant was concerned about the harassment by Jeff Zack, but she was frightened of Zack to the point that she felt her life was in danger. On February 27, 2001, George told Kurzeil that she "feared death if she broke up with her friend and that was the primary reason that she stayed with

him." George told Kurzweil that her friend was "abusive" and she was afraid that "he would put a contract out on her if he can't have her."

The defense posits that the Defendant had no motive to kill Zack as she terminated the relationship with him on May 8, 2001. We know through phone records, that numerous calls continued for several more days after the incident in the Akron Metropolitan Park. Further, it was clear from the testimony of Ben Fluellen that approximately one month before the killing, he again told the Defendant that he wanted to see his child. Jeff Zack was not going to go peacefully into the night.

In order to prove the charge of Complicity to Commit Aggravated Murder, the State must prove beyond a reasonable doubt that the Defendant, Cynthia George, solicited or procured John Zaffino to commit the Aggravated Murder of Jeff Zack. "Solicit" means to seek, to ask, to influence, to invite, to tempt, to lead on, to bring pressure to bear. "Procure" means to get, obtain, induce, bring about, motivate. R.C. 2901.22. The Court, having listened to the two weeks of testimony and painstakingly examined all of the evidence, is firmly convinced that but for the conduct of the Defendant, Cynthia George, in financing and inducing John Zaffino to commit this crime, that primarily benefited her, that Jeff Zack would not have been murdered on June 16, 2001. The Court will discuss some of the evidence bearing on the Court's decision.

#### Financial Records

The Defendant claims that if John Zaffino was the killer of Jeff Zack then it was a "spur of the moment" decision his part without any knowledge on the part of the Defendant. The evidence does not support this conclusion. On May 11, 2001, one month before the murder, Zaffino described himself as "John Smith" accompanied by an unknown woman, and visited Midwest Motorsports to purchase a motorcycle. Zaffino told the sales people that he was looking for a motorcycle with high rpm's. He also said that he was not going to keep the

motorcycle for a long period of time. During this time period, there was no evidence produced that Zaffino was seeing any woman other than George.

On May 24, 2001, Cynthia George withdrew \$5,300.00 from a savings account in case (State's Exhibit 30). On May 24, 2001, Zaffino gave Midwest Motorsports \$5,300.00 in cash. The motorcycle cost \$4,900.00 and with some additional equipment costing \$367.98, the total cash expenditure came to \$5,267.98. After the purchases, Zaffino received \$32.02 cash back from the dealership (State's Exhibit 38). An examination of John Zaffino's bank records for the same period show that he was overdrawn in his checking account and never had more than \$740.00 in his account during this time (State's Exhibit 252).

In addition to the Defendant giving Zaffino money to purchase the motorcycle that was used in the murder, she also gave Zaffino \$100.00 so that he could go to Pennsylvania two days after the homicide at which time he attempted to dispose of the motorcycle. According to the testimony of Nancy Forrest, Zaffino's ex-wife, when he arrived in Pennsylvania on June 18, 2001, he wanted to trade the motorcycle for a vehicle he had bought some three weeks earlier. Zaffino told Forrest that Cindy had given him the \$100.00 that he used to get a hotel room at the Super 8 Motel in Canonsburg, Pennsylvania (State's Exhibit 50). According to Zaffino's bank records, he had no money of his own for the trip (State's Exhibit 252).

From the evidence, when the Defendant gave money to her lovers she knew exactly what it was being used for, whether it was the phone bills that were sent to her for John Zaffino's phones, being present when Zack bought vending machines and then paying the bill on several occasions when he missed payments, paying for the motorcycle used in the killing and giving money to Zaffino so he could dispose of the motorcycle in Pennsylvania.

The repeated attempts by Zaffino to contact Myron Jeffrey so "he could rough up" Zack only demonstrate that Zaffino was searching for an alternative way to deal with the problem with Zack. When this could not be accomplished, the stage was set for killing of Zack.

### Phone Records

The State produced a plethora of phone records indicating frequent phone calls between Cynthia George, Jeff Zack and John Zaffino. The Court placed some weight on these records. It is true that the phone records cannot give us the content of the conversations, but the records tell us the phone number, time, length and some cases the general geographic area where the calls originated. However, in this Court's experience, rarely are criminal acts recorded by the persons committing them for posterity. The timing of the phone calls coupled with the absence of calls during critical times these criminal acts were being perpetrated by the Defendant and Zaffino are another piece of salient evidence of guilt in this case.

In analyzing the cell phone records of John Zaffino and Cynthia George on the date of the murder on June 16, 2001, Zaffino (714-0133) called George's cell phone (714-0132) at 11:49 a.m. The call lasted until 11:56 a.m. (State's Exhibits 32-33, Defendant's Exhibit L.) According to police records, Jeff Zack was shot in the head at 12:07 p.m. There are no phone calls between Zaffino and George during the homicide (See, State's Exhibit 106 for the phone numbers for all phones.) The first person Zaffino (714-0133) called after Jeff Zack was murdered was Cynthia George on her cell phone (714-0132) (Defendant's Exhibit L.)

Likewise, on May 24, 2001, when the motorcycle was purchased, there is a close and nearly simultaneous contact between George and Zaffino before and after but not during the time that she is at the bank withdrawing the cash for Zaffino. According to the bank records, George withdrew \$5,300.00 from her account on May 24, 2001 at 12:37 a.m. On May 24, 2001, Zaffino (714-0133) called George's cell phone (714-0132) at 9:51 a.m. and the call lasted until 10:29 a.m. Ten minutes after making the bank withdrawal, George (714-0132) called Zaffino's cell phone (714-0133) at 12:51 p.m.

### Defendant's Statements

The one constant in this case is that the Defendant has not completely told the truth to anyone. Not to her counselor, Alan Kurzweil, her husband, law enforcement, or even to John Zaffino. The Defendant's own words evince a pattern to only partially share the facts to others. The Defendant did not tell Kurzweil her complete involvement with Zack or that they had a child together. She did not tell him that she was also having another relationship with John Zaffino. Kurzweil wrote in the office visit of February 27, 2001, that George described the man harassing her as "having severe mood swings, making threats to cause her harm or death if she attempts to end the relationship with him".

In the next and last visit with Kurzweil on March 2, 2001, George told him that she needed to do three things about the man harassing her, obtain a recording of his threats, hire a bodyguard, and get a photo of the man in a compromising position. The Defendant did none of these things. She did tell her husband about the harassment (which he already knew about), but did not reveal the true nature of the relationship.

On June 17, 2001, when interviewed by Detective Callahan regarding her relationship with Jeff Zack lied and told him that they were "just friends". It is one thing to withhold information and refuse to answer a question that she has a constitutional right to refuse. State v. Leach (2004), 102 Ohio St. 3d 135. It is another thing to deliberately lie to law enforcement once choosing to give information.

Additional evidence in this trial not presented in Zaffino's trial included correspondence taken from Zaffino's sister, Judy Diggelmann during the execution of a search warrant of her house. There were several letters written by the Defendant to Zaffino after he was convicted in death of Jeff Zack. In one letter, (State's Exhibit 180), written on stationery lined with cherubs, the Defendant tells Zaffino of her continued love and promise to see him again. Cynthia George wrote the following words to John Zaffino while in prison for murdering Jeff Zack, "I miss all of

your stubborn, bullheaded, pigheaded ways. But most of all I miss you...And when you say you weep at never seeing me again. Think again. You will always see me again, come what may. You're stuck with the most gentle, levelheaded, patient, funloving, wonderful, not to mention, humble person in the whole world..." The Defendant wrote this letter after receiving two letters from Zaffino.

In another letter to Zaffino after he was convicted in Zack's murder (State's Exhibit 175), the Defendant, Cynthia George again professed her continued love for Zaffino, that "her heart aches everyday". George also praised Zaffino for his "incredible strength" and she stated that she "missed him". Finally, George stated that she would like to speak with him, if only to say a few words. The Defendant went on to caution Zaffino "We must, though, listen to counsel, God is also working through them, too. Pray for their wisdom, we cannot make one mistake".

In conclusion, there is no "smoking gun" in this case. What there is -- is an abundance of direct and circumstantial evidence proving beyond a reasonable doubt that the Defendant procured and/or solicited John Zaffino to commit Aggravated Murder in the death of Jeff Zack. Without the financial assistance to Zaffino, who had barely enough funds to support himself, he could not have purchased the weapon from Robert Cole, he could not have afforded to purchase the motorcycle used by Zaffino in the slaying, he could not have paid for the trip after the homicide when he attempted to dispose of the distinctive and much sought after motorcycle. Without the Defendant's encouragement and influence in procuring and convincing Zaffino to commit this murder, it could not have been accomplished on June 16, 2001. Considering the totality of the evidence, the evidence in this case would convince the mind of an average person of the Defendant's guilt beyond a reasonable doubt. State v. Jenks (1991), 61 Ohio St. 3d 259.

Criminal Rule 23 mandates that the Court must enter a general verdict. Although there is no requirement for the Court to set forth its reasoning, the Court has endeavored to focus on some salient points in the evidence bearing on the Court's verdict in this case. Based up the totality of evidence produced at trial, the Court finds beyond a reasonable doubt that the Defendant, Cynthia Rohr George is **GUILTY OF COMPLICITY TO COMMIT AGGRAVATED MURDER IN COUNT TWO FOR THE DEATH OF JEFF ZACK AS WELL AS THE FIREARM SPECIFICATION.**

**IT IS SO ORDERED.**

  

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Judge Patricia A. Cosgrove