

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVEN WEISS, ERNEST STRINGER, JR., and  
KEMLYN STRINGER,

Plaintiff-Appellees,

v

RICHARD G. VARTANIAN,

Defendant-Appellant.

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UNPUBLISHED  
April 17, 2001

No. 216829  
Wayne Circuit Court  
LC No. 96-636844-NO

Before: Holbrook, Jr., P.J., and Hood and Neff, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's entry of judgment in favor of plaintiffs following a jury verdict that awarded plaintiffs Ernest and Kemlyn Stringer \$125,000 each in damages on their fair housing claim under the Elliot-Larsen Civil Rights Act (CRA), MCL 37.2701; MSA 3.548(701), and awarded plaintiff Steven Weiss \$17,500 on his fair housing and assault claims. We affirm.

I

Plaintiffs Stringers, an African-American couple, engaged the services of plaintiff Weiss as a buyers' agent to purchase a home in Harper Woods, across the street from defendant's home. Following the Stringers' inspection of the home before their purchase, defendant confronted plaintiff Weiss and the seller's real estate agents, threatening them in regard to the sale of the home to the Stringers. According to the real estate agents, it was clear that defendant was upset that the home was being sold to blacks. The Stringers purchased the home. Plaintiffs subsequently filed an action claiming that defendant had unlawfully interfered with their real estate transaction in violation of the CRA's fair housing provisions. Following a trial, the jury found in favor of plaintiffs, awarding them \$267,500 for emotional distress. The trial court denied defendant's motion for a new trial, or in the alternative, remittitur. Defendant appeals.

II

Defendant first claims that he was denied a fair trial by opposing counsels' improper conduct, which inflamed the jury and resulted in an excessive verdict. We disagree. Comments which are intended to improperly and unfairly influence the jury, and which do so, merit a new

trial. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 638; 601 NW2d 160 (1999); *Willoughby v Lehrbass*, 150 Mich App 319, 333-334; 388 NW2d 688 (1986). However, an attorney's comments generally will not warrant reversal unless they indicate a deliberate course of conduct aimed at preventing a fair and impartial trial. *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996).

Defendant cites as improper numerous references to inadmissible evidence, personal attacks on defendant and his counsel, conspiracy arguments unsupported by the evidence, terrorist references to defendant, and improper civic duty argument during the trial. He claims that although none of the alleged improprieties, standing alone, is sufficient to warrant a new trial, taken together, the prejudice to defendant was overwhelming. We conclude that the alleged improprieties do not rise to the level of error warranting a new trial.

The references to inadmissible evidence cited by defendant cannot be viewed as a deliberate attempt by plaintiffs' counsel to violate the court's rulings on defendant's motions in limine. For the most part, these were merely passing references, they did not violate the court's pre-trial rulings, and they resulted in no prejudice to defendant. Other alleged improper references were either insignificant or prompted by defendant's own testimony or comments. Reversible error must be that of the trial court, and not error to which the aggrieved party contributed by plan or negligence. *Harville v State Plumbing & Heating, Inc*, 218 Mich App 302, 323-324; 553 NW2d 377 (1996).

Further, the court sustained defense counsel's objection to plaintiffs' civic duty argument and instructed the jury to disregard it. The court's instruction was sufficient to avoid any improper or unfair influence on the jury. Although defendant also complains of other improper closing argument, defendant did not preserve these objections.

Defendant also claims prejudice from references to "great conspiracies" and arguments of complicity. Any comments in this regard were not exaggerated to intentionally inflame the jury and, moreover, were properly based on the evidence.

Finally, it cannot be said that any alleged attacks on defense counsel contributed in any way to unfairly influence the jury. When defense counsel objected to these remarks, the trial court promptly sustained the objections, and the court directed plaintiffs' counsel to refrain from attacking defense counsel.

### III

Defendant next claims that the verdict was against the great weight of the evidence, and, thus, the court erred in denying his motion for a new trial. We disagree.

This Court reviews for abuse of discretion a trial court's decision to deny a new trial on the ground that the verdict is against the great weight of the evidence. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000). A court may overturn a jury's verdict only when it was manifestly against the clear weight of the evidence. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). This Court gives deference to the trial court's unique ability to judge the weight and credibility of the evidence and

should not substitute its judgment for that of the jury unless the record reveals a miscarriage of justice. *Id.*

Defendant first claims that the assault verdict in favor of Weiss was unsupported by the record. We disagree. “An assault is any intentional, unlawful threat or offer to do bodily injury to another by force, under circumstances which create a well-founded fear of imminent peril, coupled with the apparent present ability to carry out the act if not prevented.” SJI2d 115.01, citing *Tinkler v Richter*, 295 Mich 396; 295 NW 201 (1940). The testimony established that defendant approached the three real estate agents and in no uncertain terms threatened bodily harm. Weiss testified that defendant obviously meant every word and that Weiss was scared. There was ample testimony from both Kathleen Martin and Weiss to support the jury’s determination that defendant assaulted Weiss.

Defendant also contends that the verdict in favor of plaintiffs on their CRA claim is against the great weight of the evidence. Defendant’s contention is without merit. His arguments merely address the weight and credibility of the evidence, matters in which we defer to the trial court. *Ellsworth, supra.*

Plaintiffs claimed that defendant violated § 701 of the CRA, MCL § 37.2701; MSA 3.548(701). Section 701 of the CRA provides, in relevant part:

Two or more persons shall not conspire to, or a person shall not:

\* \* \*

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

\* \* \*

(e) Willfully obstruct or prevent a person from complying with this act or an order issued or rule promulgated under this act.

(f) Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act. [MCL 37.2701; MSA 3.548(701).]

The evidence established that defendant confronted the real estate agents concerning the sale of the home to the Stringers. Although defendant argues that there was no evidence that his actions were racially motivated, he testified that during the confrontation he stated that he would buy a house near the Martins and rent to blacks and see how their neighbors liked it, and that they would probably cut them up into little pieces and bury them in the backyard. This statement, along with defendant’s other threats and actions opposing the sale of the home to the Stringers, testimony from Weiss and Kathleen Martin that there was no question that defendant was upset

because the Stringers were black, and evidence of his subsequent harassment of the Stringers leaves no question that the jury's verdict was not manifestly against the clear weight of the evidence.

#### IV

Defendant next contends that the jury award was grossly excessive and that the trial court erred in denying his motion for remittitur. We disagree.

A trial court's decision regarding remittitur is reviewed on appeal for an abuse of discretion. *Henry v City of Detroit*, 234 Mich App 405; 415; 594 NW2d 107 (1999). In determining whether remittitur is appropriate, a trial court must decide whether the jury award was supported by the evidence. *Id.* at 414. The trial court is in the best position to evaluate the credibility of witnesses and the evidence, as well as the jury's reaction, and due deference should be given to the trial court's decision. *Id.* at 415; *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995).

Although defendant contends that there was no support for the damages award other than plaintiffs' self-serving statements, the record is replete with evidence that defendant's threats and animosity forced dramatic life changes for plaintiffs and that plaintiffs suffered emotional damage. Defendant presented his arguments to the trial court and the court rejected them, citing the evidence. The trial court is in the best position to determine whether a verdict was motivated by impermissible considerations. *Id.* We find no abuse of discretion.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Harold Hood

/s/ Janet T. Neff