

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM PART 34

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GREGORY SCOTT,

Plaintiff,

- against -

CHARGE CONFERENCE
(Continued)

KOSOVA PROPERTIES INC., HAMDI NEZAJ,
SHPEND NEZAJ, LAZER PLUNAJ,

Defendant.

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INDEX NO. 155225/16

60 Centre Street
New York, New York
January 31, 2025

BEFORE:

THE HON. DAKOTA RAMSEUR, J.S.C.

And a Jury

APPEARANCES:

FOR THE PLAINTIFF:

THE BASIL LAW GROUP, P.C.
125 West 31st Street #19-b
New York, New York 10001
BY: ROBERT J. BASIL, ESQ.
DAVID A. COHEN, ESQ.

FOR THE DEFENDANTS:

McELROY, DEUTSCH, MULVANEY & CARPENTER LLP
225 Liberty Street, 36th Floor
New York, New York 10281
BY: JOHN P. COOKSON, ESQ.
A. AUGUSTUS LaSALA, ESQ.

ALSO PRESENT: GREGORY SCOTT, Plaintiff

JACK L. MORELLI
Senior Court Reporter

PROCEEDINGS

1 (Jury not present)

2 THE COURT: We're going to go on the record.
3 We're going to memorize the same discussion, we're having
4 a continuation. I do want the record to reflect that
5 there is an addition to the lawyers' table. Can you put
6 your name on the record. Maybe just put their names on at
7 the beginning of the day.

8 MR. BASIL: For the plaintiff, Gregory Scott,
9 David A. Cohen and Robert J. Basil.

10 MR. COOKSON: For the defendants Kosova
11 Properties, Inc., Hamdi Nezaj and Shpend Nazaj, John
12 Cookson and Augustus LaSala, of McElroy, Deutsch, Mulvaney
13 & Carpenter.

14 THE COURT: So, I just want to say, we're
15 continuing discussing the jury charges because our jury
16 was adjourned to March 5th, so we can use this time to
17 do that.

18 Where we left off, we were discussing the charge
19 of false arrest, PJI 3:53, I call it 5. And we were up to
20 the paragraph specifically dealing with "The defendants
21 must prove that they had a reasonable cause for believing
22 that both a crime had been committed, and that Dr. Scott
23 had committed it."

24 Now, yesterday when we discussed, our first
25 edits included saying, adding the defendants, and the name

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1 of the defendants that it would pertain to, the Kosova
2 Properties, Joey, Lazer, those three defendants. That was
3 the initial change. But then I made the observation with
4 the language, I was concerned with the way that the
5 wording was. That I felt that it would suggest that the
6 burden was going to be switched from the plaintiffs to
7 defendant. And we left off trying to tweak that.

8 So, we continued that conversation today, where
9 I'll let Mr. Cohen speak, because he came in here with
10 what he thought was a remedy, and then we'll continue.

11 MR. COOKSON: Could I just make a note for the
12 record, that what we're discussing now is the proposed
13 jury instruction of the plaintiff. We have not gotten to
14 the proposed jury instruction of the defendants. That's
15 what we're working off of.

16 THE COURT: Just to be clear, as I stated when
17 we started this discussion, where I asked everyone if they
18 had a recommendation on how they wanted to proceed. No
19 one said anything specifically. And I said, the way that
20 we would proceed things, is to start with plaintiff's
21 submissions for the jury charge and tweak it accordingly,
22 which at each sentence I will let the defense counsel, Mr.
23 Cookson, interject to incorporate what he thought was an
24 appropriate change to each sentence as we came along.
25 Which means that he had the time, the opportunity to

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1 incorporate whatever he felt like to go as we were
2 proceeding on this jury instruction.

3 So, we're doing it simultaneously. I am not
4 taking this time to use all of this time and in creating
5 this charge by acting like now we're critique the
6 plaintiff's and then critique defendants'. This is a
7 simultaneous effort to create a final charge.

8 So, I'm not sure what you thought was happening
9 or what you think is happening, or what you suggest we do
10 alternatively or after, but this is how we're proceeding.

11 MR. COOKSON: All right. Well, if that's the
12 case then, Your Honor --

13 THE COURT: I want to ask what did you think was
14 the case then? What did you think was happening? Because
15 we just started this exercise today.

16 MR. COOKSON: I was perfectly happy to go
17 through the plaintiff's charge first and interject things
18 that I thought would -- if you let me finish. But I don't
19 see why my charge gets no consideration whatsoever.

20 THE COURT: Okay. So, again, it's not that your
21 charge doesn't get any consideration. I'm not going to
22 waste my time and go back and read what I stated
23 yesterday.

24 I have your charge in front of me. I was
25 reading your charge along with this charge. There are

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1 several times I said, Mr. Cookson, did you want to add
2 anything at this juncture?

3 MR. COOKSON: Well --

4 THE COURT: Several times.

5 MR. COOKSON: If it became unwieldily, Your
6 Honor, and you'll have to forgive me if I didn't make
7 myself clear.

8 THE COURT: What do you want to do, Mr. Cookson?
9 What do you want to do right now?

10 MR. COOKSON: What I want to do is, I don't want
11 to stop and start over, by asking you to stop and start
12 over.

13 THE COURT: Thank you. I appreciate that.

14 MR. COOKSON: But there are certain things that
15 are in my charge that I want to be in the charge.

16 THE COURT: In the section that we already
17 discussed?

18 MR. COOKSON: Our charges are not following the
19 same track. Paragraph one of their charge is like
20 paragraph five of mine and vice versa, so.

21 THE COURT: Which is another thing that will be
22 on that record yesterday, which is something I actually
23 said how the charges do not mirror each other at all, and
24 how it's almost impossible to reconcile. Which is why I
25 gave you a road map of how we would proceed.

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1 I can't -- this is what happens when you send
2 your information on the midnight hour literally, that gave
3 nobody an opportunity to review it accordingly and prepare
4 it. So, I take it you also had an opportunity to review
5 that information, and now you have some objection and you
6 want to go back in time.

7 So, what is it that you want to address that was
8 previously discussed?

9 MR. COOKSON: We discussed already that this is
10 not -- that the form charge deals with police officers.
11 We all understand that's not the case here.

12 THE COURT: We already discussed this yesterday.

13 MR. COOKSON: I know that. From my perspective
14 of the clients that we are representing, we understand
15 that Lazer called the police. Lazer. That initiated the
16 case.

17 THE COURT: I don't need you to tell me the
18 facts, we were all here during the trial. What is it that
19 you want to change that we previously discussed already?
20 Because no paragraph we're up to -- I started the record
21 stating that where we were. We're now up to the paragraph
22 on the plaintiff's version. What is it that we did thus
23 far that you want to change? Because we're not starting
24 from scratch.

25 MR. COOKSON: I'm not asking to start from

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1 scratch.

2 THE COURT: So, again, what we already
3 established as the charge thus far, what is it that you
4 want to revisit?

5 MR. COOKSON: Nothing. I just want to make sure
6 that our language is in the charge or at least considered
7 to be.

8 THE COURT: Since we're not done with the charge
9 you want to, as you have always had the opportunity to do,
10 as we continue with the charge, to incorporate your
11 suggestions, your objections. Help tweak it how we're
12 going to proceed.

13 MR. COOKSON: Yes.

14 THE COURT: Okay, great.

15 So, now that we're discussing the same exact
16 sentence, I propose that we introduce your affirmative
17 defense with something to the extent that the defendants
18 can take and read, I don't have in front of me. Is there
19 a paper that you can give me with the affirmative defense,
20 Mr. Cookson?

21 MR. COOKSON: Yes.

22 MR. LaSALA: It's circled.

23 THE COURT: You guys should consider yourself
24 lucky that the jury is not here.

25 MR. BASIL: You want me to read it?

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1 THE COURT: Sure, go ahead.

2 MR. BASIL: As and for an Eighth Affirmative
3 Defense, this is the wording of the defendants.

4 "Defendants acted properly under the circumstances and
5 defendants acts were justifiable and reasonable."

6 Our part of the charge would be that defendants
7 claim they acted, blah, blah, blah. And it is your burden
8 to prove that they have acted, blah, blah, blah.

9 THE COURT: There is no debate about that,
10 right? It's your burden for an affirmative defense. And
11 the introductory cause of defendants' claim will be the
12 way to make it in the charge consistent with the way that
13 the other paragraphs are introducing. Such as the
14 previous charge that we discussed in detail yesterday,
15 Dr. Scott claims that the defendants Hamdi, Joey, Lazer
16 instigated or directed his arrest or retention. You see
17 how it works and it's consistent and it addresses your
18 affirmative defense.

19 What would be your objection, that exact
20 wording? We can discuss it right now.

21 MR. COOKSON: That's what they claim, Your
22 Honor. But in this charge there also has to be language
23 that Kosova and Hamdi and Shpend contend that they can't
24 be -- it can't be lumped together with Lazer's activity.
25 Lazer made the call and they're trying to act as though we

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1 all made the call, which is not what happened.

2 THE COURT: So, again, we're not going to
3 include ever any particular facts like that, because the
4 jury is going to be the fact holder. So, the defendants
5 at issue who had this affirmative defense --

6 MR. BASIL: It's all of them.

7 THE COURT: Exactly, this is what I was about to
8 say. You're not going to act like the person who made the
9 call -- I'm not even sure, do we actually know that from
10 anybody's testimony who made the call? We might know who
11 the complaining witness was, but who actually instigated
12 the call -- excuse me, who made the call, we don't know
13 that. So, let's not even put this language in this
14 record. I'm assuming that you know who the complaining is
15 because you have the complaint.

16 MR. COOKSON: Yes.

17 THE COURT: That the police officers are
18 informed by Lazer, correct, the criminal complaint?

19 MR. COOKSON: Yes.

20 MR. BASIL: Yes. The criminal complaint says
21 that Lazer reported it.

22 THE COURT: That doesn't mean that he made the
23 call, though.

24 MR. BASIL: It doesn't say who made the initial
25 call, we don't know.

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1 THE COURT: So, we're not going into the facts
2 of that nature. And this recommendation, the defendants
3 claim that the defendant, defendant Joey and Lazer acted
4 properly under the circumstances, and that their behavior,
5 conduct, whatever you want, we can use the word acts, were
6 justified and reasonable. We'll use that.

7 MR. LaSALA: I think that the concern, Your
8 Honor, would be that we have the affirmative defense. And
9 the defendants have the burden to prove that affirmative
10 defense. But I don't believe in the defendants have to
11 prove that affirmative defense in order to be found to not
12 have liability in this case. Because then --

13 THE COURT: That is the language in here is
14 something that you can take. I need to find out what
15 you're proposing the tweak is here. This is where we are.
16 I don't -- I need to know what you're going to recommend
17 and suggest, please.

18 What do you want the sentence to read and why?
19 But this sentence most definitively will incorporate Joey
20 and defendant H on this. If that's your wish list,
21 consider that denied.

22 So, let the record reflect it's 10:40. Should
23 we take a break and come back, Mr. Cookson?

24 MR. COOKSON: Where are we, Your Honor, I'm
25 sorry. Can you give me a coupling of minutes with

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1 Mr. LaSala.

2 THE COURT: Take your time. I need to know what
3 the sentence is going to be. Five minutes should be fine.
4 Five minutes should be fine.

5 I'm not trying to be difficult here, I just want
6 to make this charge. But it has to incorporate something
7 from you, it just has to. And when I say "you," I know
8 that you're objecting with respect to your particular
9 defendants, but it will have to include the defendants
10 collectively.

11 MR. COOKSON: I understand that.

12 (Short recess taken)

13 THE COURT: We're going to go on the record.

14 MR. COOKSON: We've been discussing the false
15 arrest charge. Very collegially going through, let's take
16 this out and put this in, and we're almost there.
17 Mr. LaSala has been doing most of the negotiating.

18 What we wanted to let you know is, or what we're
19 asking you is, would you like for us to try to cobble
20 together today?

21 THE COURT: Yes. Now, yes.

22 MR. COOKSON: Okay.

23 THE COURT: As opposed to some other time, yes,
24 now. That's what we're here for.

25 MR. COOKSON: We'll need Mr. LaSala for that.

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1 We're 90 percent of the way there I think, if not more.

2 THE COURT: So, does the 10 percent get us done
3 before 1:00 or are coming back this afternoon?

4 MR. COOKSON: If we move onto the malicious
5 prosecution in the same manner that we have been doing the
6 false arrest --

7 THE COURT: I'll take any recommendations for
8 any matter you want to pursue.

9 MR. COOKSON: I want to wait for Augie to come
10 back in and finish false arrest. So in the meantime, I
11 would say to continue malicious prosecution and see how
12 far we get, and maybe we can give you the whole thing
13 before 1:00.

14 THE COURT: I'm sorry, when you say in the
15 meantime, how long do you anticipate that he's going to be
16 on this call?

17 MR. COOKSON: He wasn't sure.

18 THE COURT: What are you saying, that we can't
19 continue with what we're doing at this time because he's
20 not here?

21 MR. COOKSON: I'm saying that we can't conclude
22 the false arrest part now because he's on the phone. But
23 we will continue, we have a malicious prosecution charge
24 to work on too.

25 THE COURT: I think that you all should start

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1 talking about that charge as well.

2 MR. COOKSON: That's what I'm asking.

3 THE COURT: You have my permission to come to a
4 final product for both charges, yes, today while we're
5 here.

6 MR. COOKSON: We just wanted you to know where
7 we were progressing.

8 THE COURT: I thought that you were working on
9 these outstanding charges that we had to complete so we
10 can move to the verdict sheet, yes. I think that I'm
11 going to see you Monday too. I'm here for you. Is there
12 anything else you need from me at this juncture?

13 MR. BASIL: No.

14 MR. COOKSON: I don't think so.

15 THE COURT: Let me know. I appreciate the
16 status report.

17 (Short recess taken)

18 (Luncheon recess taken)

PROCEEDINGS

1 A F T E R N O O N S E S S I O N

2 (Continued charge conference off the record)

3 (Trial adjourned)

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5 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

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JACK L. MORELLI, CM, CSR

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