

COMMONWEALTH OF MASSACHUSETTS  
DISTRICT COURT DEPARTMENT  
WESTERN DIVISION

Hampden, ss.

Docket No. 201143CV293

BRIAN JOHNSON,  
Plaintiff

v.

PETER FREI,  
Defendant

HEARING HELD ON SEPTEMBER 11, 2013 AT  
SPRINGFIELD DISTRICT COURT

Tani Sapirstein, Esq.,  
Representing the Plaintiff

Henry Rigali, Esq.,  
Representing the Defendant

(Transcript Prepared from Tape)

Roxanne C. Costigan

THE CLERK: Brian Johnson v. Peter Frei.

MS. SAPIRSTEIN: Good afternoon, Your Honor.

MR. RIGALI: Can we bring some chairs up here, Judge?

THE COURT: Sure. Yes, of course. Is it going to be that long, you need to sit down?

MR. RIGALI: No, I'm hoping it won't.

THE COURT: I'm joking. Let me ask this question, though, before we start. Are you arguing today the JNOV motions plus the attorney's fees? I wasn't sure what was on today. It's just the JNOV?

MS. SAPIRSTEIN: Yeah, because I thought we had decided earlier that the attorney's fees are to be more appropriate after the JNOV was decided.

THE COURT: Right, I agree with you, but they handed me the whole packet so I wasn't sure, I didn't look through the mark up so I wasn't sure if you decided to argue them all at the same time given that you're here.

MS. SAPIRSTEIN: No, Your Honor. I'm not actually prepared to argue the attorney's fees motion today.

THE COURT: Alright. So it would be just the JNOV. Alright. So then Attorney Sapirstein, I'll hear from you, your motion.

MS. SAPIRSTEIN: Thank you, Your Honor. We're just looking to, we've moving for judgment notwithstanding the verdict just on the Civil Rights Act count.

THE COURT: Mm-hmm.

MS. SAPIRSTEIN: And as Your Honor knows, the standard for JNOV is taking into account all of the evidence in its aspect most favorable to Mr. Frei in this case and determine whether without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, whether the jury could return a verdict reasonably for the plaintiff based on the evidence as it came in at trial. Now, the Civil Rights Act in Massachusetts prohibits interference with a constitutional, either

state or federal, constitutional right, but it has to be by threats, intimidation and coercion. And there is actually a lot of case law as to what each of those phrases means, threats, intimidation and coercion. I did file a memorandum of law.

THE COURT: I read it. Thank you.

MS. SAPIRSTEIN: So a threat as the Supreme Judicial Court says is the intentional exertion of pressure to make another fearful or apprehensive of injury or harm. And intimidation involves putting on in fear for the purpose of compelling or deterring conduct. And coercion is the application to another of force to constrain him to do against his will something he would otherwise not have done. And I'm quoting from the Mancusa case, which is a Supreme Judicial Court case. The Supreme Judicial Court has actually considered the issue of what is a threat, what is coercion and what's intimidation, quite frankly, more than a lot of other things that they've

considered, and the kinds of things that constitute threats, intimidation or coercion is the active domination of another's will. I'm now quoting from *Currier v. The National Board of Medical Examiners*, which is a 2012 case, SJC case. Where one party deprives another of rights under a contract, for example, or makes it impossible due to sexual harassment to continue employment and the standard, or economic coercion can also fall within intimidation, threat and coercion, but for economic coercion it really has to be the deprivation somehow of an economic benefit and there was no evidence of that at all in this case. And the standard is an objective standard, it's not a subjective standard. So you have to look at it as whether a reasonable person would find the conduct to be threatening, intimidating or coercive. And we would submit that there's actually no evidence of Mr. Johnson engaging in any threatening or coercive or intimidating conduct, no

evidence that came in at this trial. Quite frankly, I ordered the transcript back in April and haven't gotten it yet but I do remember what evidence came in and the Supreme Judicial Court is very clear that this statute is not to be construed as a vast constitutional tort. The threat really has to fall within one of the definitions that the Supreme Judicial Court has already articulated. And again, examples would be deprivation of rights due under a contract would be the Redgrave case, or actually a case cited by Mr. Rigali, which was the Hull case. And in the Hull case that set of facts is completely different than the set of facts that was presented to this jury. In the Hull case there was a dispute between a housing authority and a board of selectmen about elderly housing and essentially, in a nutshell, the board of selectmen fired or forced the resignation of all of the members of the housing authority that voted in a way that they didn't want. That's clearly

coercive, I think we can all agree that that's coercive and the Supreme Judicial Court found that that's coercive. So there has to be some act in order for there to be enough evidence to find that Mr. Johnson violated the Civil Rights Act. There has to be some act by Mr. Johnson which objectively viewed would cause a person not to exercise a constitutional right or which would deprive that person of the right and that's the Doe case.

THE COURT: Let me just interrupt you, okay, for a minute, because I did read everything, I didn't read all the cases yet but I read your memos. What about, and I'm going to specifically focus on the activities at the lake that day. So what about if he is, I mean, could the jury have found that he was acting in concert with others to intimidate Mr. Frei?

MS. SAPIRSTEIN: Well, in order for him to be liable under the Massachusetts Civil Rights Act for the action of others, and I

think I did address this in the brief I submitted...

THE COURT: You did.

MS. SAPIRSTEIN: There has to be evidence that Mr. Johnson either approved or, well basically approved the conduct that was going on.

THE COURT: Was there not enough?

MS. SAPIRSTEIN: There wasn't evidence that he approved the conduct that was going on. In fact, what the evidence showed was that Mr. Johnson never came onto Mr. Frei's property.

THE COURT: Right.

MS. SAPIRSTEIN: There were two trespassers on Mr. Frei's property at one time during the day and Mr. Frei actually testified that he asked them to leave and they nicely said I'm sorry and they left. In fact, there was no confrontation between anybody until Mr. Frei came out on the ice at 3:00 and then started tape recording what was going on. But there was no testimony,



the only witnesses that testified were Mr. Johnson, Mr. Frei, Dana, whose last name I forget at the moment, and the police officer. And no one testified that Mr., that they heard Mr. Johnson approve or encourage or suggest that anybody do anything. Essentially they were fishing on public property in a fishing derby and nobody had any interaction with Mr. Frei at all until he came on the ice at 3:00 or so after they had been there most of the day and started engaging them. So in order for Mr. Johnson to be found liable for the conduct of others there has to be something more affirmative than his just being there. There was a whole group of people who were there. And there wasn't any evidence that he did anything or said anything to anybody regarding their conduct. So if you're just focusing on the fishing derby...

THE COURT: Well, I don't mean I'm just focusing on that but that seems to be the main incident I guess that kind of stuck out

as perhaps being intimidating, trying to intimidate him.

MS. SAPIRSTEIN: It has to be more than intimidating though. The standard has to be the intimidation, I don't want to bore you by reading it again, but it has to be, let me see if I can find that particular quote, essentially the coercion has to be the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.

THE COURT: And is that the same definition as intimidation?

MS. SAPIRSTEIN: As intimidation, intimidation involves putting one in fear for the purpose of compelling or deterring conduct.

THE COURT: Right.

MS. SAPIRSTEIN: I don't think, I know that Mr. Frei testified that he was in fear. I think quite frankly the tape of him didn't sound particularly fearful nor did he ever

testify that Mr. Johnson touched him, threatened to touch him or did anything to him. In order for Mr. Johnson to be liable for the conduct of others there has to be evidence that he authorized or approved and there is no evidence that he authorized or approved. So if the jury found Mr. Johnson liable on that basis there's no evidence that he did either of those things. Other than his physical presence, there's no evidence he did much of anything on the day of the fishing derby and fish. He never entered his property, he never engaged him, he didn't do anything. He was fishing at the fishing derby.

THE COURT: Was there some, I can't remember this myself, but was there some evidence that he, once Mr. Frei came out on the ice that there was some back and forth between them? I thought there was some statement on the tape by, was purported to be by Mr. Johnson.

MS. SAPIRSTEIN: There was a statement

on the tape that Mr. Johnson I think identified himself as saying something like, I actually don't remember exactly what the one statement was so I don't want to misquote. I guess I didn't get the transcript because I didn't tell them what courtroom that trial was in. However, we did tell them today so at some point maybe I'll get the transcript. Hopefully I won't need it, but there was testimony that there was one statement. I think Mr. Johnson actually testified himself that he said one thing. But that again doesn't rise to the level of intimidation, coercion or threats. If somebody comes out to you, confronts you and you say something back, that's not what the Courts have found would satisfy that standard. And the only case that actually comes even remotely close is that Huffer case, and in the Huffer case there were repeated complaints to local authorities, which actually the Court found wasn't a problem. But the problem was that the

defendant in that case trespassed and harassed, trespassed on the plaintiff's property and harassed workmen and other people. There were neighbors who testified he came running at the plaintiff with a rake, so if you took it all together, the Court found that that was sufficient. But in this case we don't have anything like that. We don't even have Mr. Johnson on his property, and one would query and I think I raised this in the case in Palmer District Court, the case that started all this, one would query that if Mr. Frei was really in fear why he would come out on the ice and engage this group of people. That just is incredible that somebody, if you're really in fear, and I think I asked him at this trial as well, you just call the police and say there's a group of people who are disturbing the peace, can you do something about it, but that's not what Mr. Frei did. He went out and taped them and, you know, started the engagement, that was clear on

the tape. So even though there was some unpleasantness, Mr. Johnson actually did nothing and nobody saw Mr. Johnson trip or touch Mr. Frei. The evidence that we presented was that Mr. Frei slipped on the ice and that nobody actually kicked him or did anything. He couldn't identify anybody who did anything to him physically. So yeah, was it unpleasant, it was probably unpleasant but again, unpleasantness doesn't rise to the level of a violation of the Massachusetts Civil Rights Act and if, quite frankly, if this violates the Massachusetts Civil Rights Act then almost any neighborly discord would violate the Massachusetts Civil Rights Act and the Supreme Judicial Court was really clear that's neither the intent nor within the language of the statute. The statute came about basically in 1983 based on race relations and people calling each other racist names. Nothing like that happened and I know that Mr. Rigali argued that because the jury found

that there was, that Mr. Johnson intentionally wanted to inflict emotional distress on Mr. Frei that that's enough, but that's actually not what the case law says either. It's got to be threats, intimidation, coercion. Intentional infliction of emotional distress is a completely separate cause of action and Mr. Frei didn't prevail on that cause of action. And not every cause of action for intentional infliction of emotional distress would sound a cause of action for the Massachusetts Civil Rights Act. In looking at Mr. Rigali's opposition, there are no cases cited other than the ones that were cited in my brief and even quite frankly the facts as presented by Mr. Rigali don't rise to the level of violation of the Massachusetts Civil Rights Act, including the Swanset case, the Redgrave case and as I addressed, the Miller v. Town of Hull case. Those are very different facts than what we have in this case. And actually in the

Redgrave case that was the contract case, the Boston Symphony canceled a contract, that clearly doesn't apply. So unless Your Honor has any questions, there was no evidence at all but if you take all of the evidence that came in at trial, and it was a long trial, and you look at it in a light most favorable to Mr. Frei, he still can't sustain that burden of intimidation, threats and coercion as that's been defined by the Supreme Judicial Court. Thank you.

THE COURT: Thank you. Attorney Rigali?

MR. RIGALI: Your Honor, thank you. As the Court knows, judgments NOV are to be granted very sparingly and only if the Court feels that there was no evidence whatsoever to support the verdict and really that the jury failed to exercise honest and reasonable judgment. Another way of saying it is that only if reasonable people could have reached but one conclusion, which was the Parawalla case from Mass. Appeals Court, 2005 case we cited on our brief, only if



that should the NOV occur. I don't want to go through all the facts, they're in the brief, we laid them out pretty well, but a lot of the points that sister counsel makes really involve weight or credibility arguments. You know, he didn't sound frightened to me. Why would he go out on the ice if he was afraid and so forth. I mean, I don't want to get into, you know, rebutting the facts. She left out obviously critical facts which we addressed in our brief. But those are credibility issues. And the issue isn't whether the Judge or counsel on either side thinks personally about what the weight of that evidence is. It is simply if the evidence was there and clearly it was. Now, this was a discerning jury, much to my frustration at times. In the wire tap case we have them on the special verdict slip saying this was a, essentially a secret recording without the consent that was disclosed. They found, however, no violations of personal or

property interest and no violations of privacy. You know, I mean, we've argued pretrial these very issues for quite some months, and I don't know how much research I've done on that, that's a fairly astute point in my opinion anyway as an attorney for them to pick up. The jury apparently didn't find sufficient evidence to warrant the assault or the assault and battery and that's fine. Defamation was clear. But on the emotional distress claims, these are significant not because what the ultimate result was but because the special verdict slips show the following. Checking off the boxes now. Did Johnson intend to inflict emotional distress, yes. Would a reasonable person have suffered emotional distress, yes. Was his conduct extreme, yes. Outrageous, yes. Beyond the bounds of decency, yes. Was it intolerable in a civilized society, yes. So, these are findings that, this is a discerning jury, okay, and to somehow suggest that, and I

don't criticize counsel for raising the point obviously, but to somehow suggest that the jury blew it, that they missed it, I think just is contrary to the facts. The key point that of course is left out by counsel is the fact that a big part of the case involved establishing Mr. Frei's freedom of expression basis for his claim, for his civil rights claim. He was a blogger, he had been a blogger, he had been critical of Mr. Johnson, Mr. Johnson's other family members, critical of the Town, et cetera, and Mr. Johnson had responded to that through a series of increasingly worrisome, I'll use that term, acts. He found that, there were phone calls, irate phone calls, there were vulgar physical confrontations that occurred in the clerk's office if you may recall, and there were several other things that led up to this. And then when you get to the day in question, you have a significant, now again, the jury was free to agree with counsel and

say no, they were just fishing, they were just fishing, they were free to do that, but they were also free to find that this man had a civil right, there was evidence of that. That he was expressing those rights and had been directly confronted to knock it off, that's a fact, that was in the testimony. You know, I'm not sure what else that you need. I respect threats, intimidation and coercion and those definitions. I thought that the Hoffler v. Zotos case, which was a Supreme Judicial Court case in 2006, which we cited in our brief, addressed that well. The Civil Rights Statute requires the coercion or the attempt to do so or the threat or the attempt to do so. So it's not a fate a comple. I think that the Court can draw and I think more importantly the jury could draw a reasonable inference that Johnson was part of a group. The evidence was that there were other, that he was the highway supervisor, that other members, other

employees of that department were present, that they drank, none of this is evil within itself by any means, but they drank beer all day long and urinated all over his property. They had a sign pointing at his house with a vulgarity on it. So, and then of course you have the confrontation, the jury was free to believe Mr. Frei's account of being knocked to the ground, of Mr. Johnson coming to him as if he were to kick him and so on and so forth. There was evidence of that. Now whether they felt that evidence was sufficient for assault or assault and battery, particularly in light of our convoluted joint venture instructions that we're all obligated by, that was a jury call. But if you look at those verdicts, particularly the special slips, I think the jury made the right call. I'll close by this, Judge, again, it is not for the Court, the standard is not for the Court to second guess the jury. The Judge's view of the weight of the evidence or the credibility of

witnesses does not trump the jury verdict. This is an objective finding, is there some evidence and that's it. So with that, Your Honor, I think the motion should be denied.

THE COURT: Thank you. Thank you both very much. Did you want to say something else? You look like you do.

MS. SAPIRSTEIN: Just a couple minutes, Your Honor, I'm sorry.

THE COURT: That's okay.

MS. SAPIRSTEIN: Mr. Rigali asked the rhetorical question of what else do you need and what else you need is you need something beyond an intentional infliction of emotional distress case because if you didn't then this would just be an intentional infliction of emotional distress case. The statute doesn't read intentional conduct intended to inflict emotional distress beyond all decency. That's not what this case, that's not what the civil rights case is about. What the jury had to have in order, and it's also not a

credibility issue because assuming, credibility doesn't play into a JNOV motion.

THE COURT: Oh, I would have to believe all of the evidence...

MS. SAPIRSTEIN: You have to believe Mr. Frei's...

THE COURT: Yeah.

MS. SAPIRSTEIN: Right. So if you believe Mr. Frei's version of the facts, then Mr. Johnson didn't do anything that day that rises to the level, quite frankly, during any day that rises to the level of a threat as defined by the Supreme Judicial Court under this statute, coercion or intimidation. And although Mr. Frei's credibility is key, the standard is an objective person, not Mr. Frei's frame of mind, but an objective, reasonable person. So the question Your Honor has to ask yourself is whether this jury heard any evidence at all that would make an objective person fear some conduct by Mr. Johnson, not by Mr. Johnson's friends, not by Mr.

Johnson's father-in-law, not by, unless there's proof that he authorized or approved that and there was absolutely no evidence of that. So in order for them to find on this count in favor of Mr. Frei and against Mr. Johnson there had to be evidence, and again, credibility is not the issue, there had to be evidence that Mr. Johnson engaged in threatening, intimidating or coercive conduct as has been defined more times by the Supreme Judicial Court than most statutes, that would put an objective person in fear of being deprived of their constitutional rights.

THE COURT: Does the statute say, I haven't read it probably since then, but does it say attempt to, either threat or attempt to?

MR. RIGALI: Yes.

THE COURT: Because as Attorney Rigali pointed out, I believe Mr. Frei did testify that he thought Mr. Johnson came at him or was coming at him with, about to kick him.



So if the statute says, obviously I'm going to read all this in the cases, but if the statute says attempt to, would that not be something the jury could have found as an attempt?

MS. SAPIRSTEIN: Well what it says is, what the statute says, I'm not reading from the statute itself, I'm reading from a case.

THE COURT: Okay.

MS. SAPIRSTEIN: That any person whose exercise or enjoyment of rights secured by the Constitution or laws of the United States or the rights secured by the Constitution or the laws of the Commonwealth has been interfered with or attempted to be interfered with by any person, the plaintiff must prove the defendant used, used threats, intimidation or coercion to interfere with or attempt to interfere with rights secured by the Constitution. But the conduct itself has to fall within the definitions of threat, intimidation and coercion.

THE COURT: Okay.

MS. SAPIRSTEIN: I guess the objective has to be to either interfere with or attempt to interfere with the constitutional rights.

THE COURT: Okay.

MS. SAPIRSTEIN: But I don't think...

THE COURT: So it's not attempt to threaten or attempt to coerce?

MS. SAPIRSTEIN: Exactly. It's attempt to interfere with by those three methods. And then again, if you want to boot strap and go to the third parties, there has to be something which showed that Mr. Johnson approved or authorized. I don't think anybody, I don't think there was any testimony to that effect at all. So as I said, credibility is not an issue and we do know that JNOV is not used often but it used when in fact the jury does get it wrong and when they make a ruling that there's no evidence, to rule in favor of somebody that there's no evidence to support. The inferences that they can draw from the

evidence in order to uphold this verdict have to be based on probabilities rather than possibilities and cannot be the result of mere speculation and conjecture, and that's out of the Macavoy Travel Bureau case which I think we both cited. So that's what we have and I, and the Huffer case I think goes way farther than anything Mr. Johnson did.

THE COURT: Okay. I'll obviously read all of the cases that you cited. Do you want to say anything else, Attorney Rigali?

MR. RIGALI: Just two things, Your Honor.

THE COURT: Alright.

MR. RIGALI: The key point of this, I think, is what the jury heard on the tape and what this man told the police, how he out and out lied. I mean, everybody heard that, and so could they infer as a result of that, that he was aware of what was going on. I mean, it's not an unreasonable inference. And again, counsel keeps on

harping well there was no evidence of this, I haven't had too many trials in which there was direct evidence of state of mind type issues, I mean, you know, it's circumstantial, you do it by inference. So my suggestion to the Court is that, again, the jury could reasonably infer not only the attempt to, the interference or the attempt to interference or based on this culmination of conduct over a period of time, the remoteness of the location, et cetera, et cetera, the escalating nature of this, what they said and did to this man's girlfriend, which is unspeakably vulgar after she, you know, went out on the ice and they did call the police and so forth, and the specificity of the verdict slips I think were very clear showing that the jury paid attention to the law which was instructed as exactly as counsel has argued today. The only other point I have is I guess where we go from here. There, you know, obviously I don't want to second guess this, the Court's

decision...

THE COURT: Well, assuming that it's denied, I'll just make that assumption for now for purposes of scheduling, obviously if it's allowed then whatever we schedule in the future won't be necessary or at least part of it won't be, but you both have claims for attorney's fees.

MR. RIGALI: Right, so there's going to be, if you allow the motion and Mr. Frei's civil rights case goes out then we still have a hearing on the motion for fees for the wire tap case.

THE COURT: Right, so let's mark that up and do you want to pick a date for that?

MR. RIGALI: Well, I wonder how much time, I know you're out straight, so.

THE COURT: Well, let's give thirty days I would say.

MR. RIGALI: That's fine.

THE COURT: I'll try to do it before then but these things are kind of involved, you know.

MR. RIGALI: Right, I'm not trying to...

THE COURT: No, that's fine, and I may have it done in a week. It depends on where I'm sitting and how much down time I can have and I tend to look at them at night.

MR. RIGALI: Well, whatever the Court schedules is fine.

THE COURT: No more than thirty days, that's fine. So if you want to pick a hearing date on the motions for attorney's fees thirty days out.

MS. SAPIRSTEIN: Do you know when Your Honor's going to be here?

THE COURT: I don't in October, but I can have myself scheduled here purposely. I'll just let them know ahead of time I need to be here on a certain day. So whatever's convenient.

MR. RIGALI: Monday the 14th, Judge, is Columbus Day. The rest of my week looks good. I don't know how that is for counsel.

MS. SAPIRSTEIN: I'm actually taking some vacation time that week, I haven't done

that, but I'll be around the week of the 21st.

MR. RIGALI: I'm good that week other than Wednesday morning.

THE COURT: Do you do civil motions I guess, any afternoon?

THE CLERK: Yeah.

THE COURT: Is the afternoon better?

MR. RIGALI: Two o'clock is great, yeah.

THE CLERK: Any day but Thursday then.

THE COURT: Okay. October...

MR. RIGALI: The 22nd, which would be a Tuesday, Your Honor?

THE COURT: Fine, oh, wait a minute, no, that is not fine. That afternoon I do have a medical appointment, I just remembered, so that's the one day I'm not available.

Twenty-first or twenty-fifth?

MR. RIGALI: Twenty-fifth is fine.

THE COURT: Friday the 25th?

MS. SAPIRSTEIN: That's fine.

THE COURT: Alright. So that will be for the motion for attorney's fees.

MR. RIGALI: Now, Your Honor, let me just jot that in here please. You recall that one of the issues that has come up in the motions we filed so far was Mr. Frei's objection to Mr. Johnson's request for attorney's fees based on the fact that he doesn't have any attorney's fees, that the Town of Holland is paying them and we've raised, you know, serious, what we think are serious issues, ethical and otherwise about that. Unless there is to be a stipulation to that effect, that counsel agrees that that's the facts, then we'd want to be able to conduct some discovery to make sure that that fact is established in the record here.

THE COURT: Well, somebody subpoenaed some records here...

MS. SAPIRSTEIN: Right, and I think that was already done, wasn't it, Mr. Rigali?

THE COURT: Have you seen those?

MR. RIGALI: If they came, yes, I have seen those.

THE COURT: They came here in April and



they, well, I think they're all here, they've got amounts and names written next to them so I don't know if that's, I don't know what that is but you can either stipulate to it or not, but there's records here.

MR. RIGALI: Okay, alright. I'll talk with counsel then about whether or not we need, I assume that the subpoena is self authenticating that I won't need to bring in a record keeper to authenticate that they're bona fide records that came in under a subpoena.

THE COURT: On a motion for attorney's fees, I mean, I wouldn't think so. You can argue that but they are signed by, I looked at them earlier today, yeah, they're signed by Kristen Laplante, the Clerk, indicating that on oath they're the records that are maintained by the office.

MR. RIGALI: The only other issue I wanted to raise was whether or not, I've had no objection to this, I mean, the Town

Counsel for Holland and Attorney Sapirstein are aware that these records are before the Court. They don't affect me personally but I'm not adverse to them being impounded. They do include information which is generally considered to be confidential between counsel and client. I have no problem so long as the Court sees them that the public not, but that's up to counsel.

MS. SAPIRSTEIN: I have to look at them. I actually wasn't given the opportunity to look at them, nor have I seen the subpoena. I probably won't do it today, I'll come by the clerk's office sometime.

THE COURT: Okay, they're here. I didn't know they were here either. Like I said, they came in way back in April. I didn't know they were here until today, when I was reading over everything I saw them so obviously look at them.

MR. RIGALI: I'm assuming that counsel can make arrangements to see those records, they're a matter of record before the Court.

THE COURT: Do you want to file, I mean, if anyone wants to file a motion to impound them that's fine.

MS. SAPIRSTEIN: I have to also check with Town Counsel but I haven't seen them yet.

THE COURT: Okay, alright, well, they're here.

MR. RIGALI: Thank you, Your Honor.

THE COURT: Alright. So October 25th at 2:00. So we're not going to probably send out any notices, just remember. Somebody will contact you though if there's a problem with that and the case is going to be handled out of this clerk's office, it's not going back to Palmer, okay.

MR. RIGALI: Thank you, Your Honor.

MS. SAPIRSTEIN: Thank you, Your Honor.

THE COURT: You're welcome.

(HEARING CONCLUDED)

I, Roxanne C. Costigan, Registered Professional Reporter, do hereby certify that the foregoing testimony prepared from designated portions of cassettes furnished by the parties herein is true and accurate to the best of my knowledge and belief.

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Date

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Roxanne C. Costigan