

1 A L S O P R E S E N T:

2 HOAGLAND, LONGO, MORAN, DUNST & DOUKAS
3 BY: JACK MIDDOUGH, ESQUIRE
4 40 Paterson Street
5 New Brunswick, New Jersey 08903
6 For the Defendants

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1 (PROCEEDINGS held in person before The
2 HONORABLE JAMEL K. SEMPER, United States
3 District Judge at 4:09 p.m.)

4 THE COURT: On the record.
5 Good afternoon.

6 We are here in the matter of Wildey versus Salamone,
7 et al. This is on for a TRO.

8 Can I have the appearances of the party beginning
9 with plaintiff's counsel.

10 MR. RANDAZZA: Good afternoon, Your Honor. Marc
11 Randazza, Randazza Legal Group for the plaintiff.

12 MR. VERDIRAMO: Good afternoon, Your Honor. Vincent
13 Verdiramo, Verdiramo Verdiramo of Jersey city; co-counsel with
14 Mr. Randazza.

15 MR. RICHERT: Good afternoon, your Honor. Theodore
16 Richert of Verdiramo Verdiramo, Jersey city.

17 THE COURT: Good afternoon.

18 MR. VERDIRAMO: Thank you, Judge.

19 THE COURT: For the defense.

20 MR. MIDDOUGH: Good afternoon, Your Honor. Jack
21 Middough from Hoagland Longo on behalf of defendant.

22 THE COURT: All right. So what I want to do is to
23 focus on the prongs of what it would take to grant this motion
24 and so I want to start off with the likelihood of success on
25 the merits. And I just have some background questions that I

1 want to pose to you first.

2 Can you come join me at counsel.

3 MR. MIDDOUGH: Of course, Your Honor.

4 THE COURT: So here I understand that this was the
5 scene of a fatal car accident; is that correct?

6 MR. MIDDOUGH: Correct. Yes.

7 THE COURT: At the time when this occurred, was the
8 decedent on the scene?

9 MR. MIDDOUGH: At the time this occurred I do not
10 believe so.

11 THE COURT: You do not believe so.

12 Do you know when the plaintiff might have arrived
13 prior to when the decedent was taken to the scene?

14 MR. MIDDOUGH: That I do not know. I know that
15 plaintiff's counsel argued in the papers -- they said this was
16 shortly after the police arrived. In the verified complaint
17 it differed slightly and since after the decedent left.

18 THE COURT: The plaintiff is a fireman, is that
19 correct?

20 MR. MIDDOUGH: I believe is a volunteer fireman.

21 THE COURT: A volunteer fireman. Is that within the
22 town in question?

23 MR. MIDDOUGH: It may be for a neighboring town, Your
24 Honor. I believe he identified himself just as a volunteer
25 fireman.

1 THE COURT: Now in your papers -- give me one moment.
2 The request for -- you had argued in your papers that
3 there was no seizure of his phone. Do you recall saying that
4 in your papers?

5 MR. MIDDOUGH: I do believe so.

6 THE COURT: Expand that part.

7 What do you mean by that?

8 MR. MIDDOUGH: Well, there wasn't a seizure in the
9 sense that plaintiff was in control of his phone the entire
10 time.

11 THE COURT: Your view is that plaintiff was in
12 control of his phone, that's your argument?

13 MR. MIDDOUGH: I know plaintiff's argument is
14 constructively that the plaintiff and potentially his phone
15 were seized. But my recollection of the video, Your Honor,
16 and everything having to do with this case is the phone
17 remained in place the entire time.

18 THE COURT: Okay. Now, wasn't there a portion on the
19 video where specifically 35 seconds in, on Exhibit A, the
20 plaintiff was told the following: "Give me your phone, it's
21 going to be seized for evidence," did that occur?

22 MR. MIDDOUGH: I do, Your Honor. Yes.

23 THE COURT: Is it still your view that when a police
24 officer in full uniform goes up to someone on the streets and
25 demands their phone and tells them it's going to be seized for

1 evidence, it's your view that that possession of the phone is
2 still the person who's subject to that demand and not the
3 officer requesting it?

4 MR. MIDDOUGH: I believe that he certainly had been
5 stopped and he's not free to leave at that point.

6 THE COURT: Was his phone free to leave?

7 MR. MIDDOUGH: His phone at that point was not free
8 to leave.

9 THE COURT: Was his phone seized -- wait a minute.

10 If he was seized, and he wasn't free to leave and his
11 phone wasn't free to leave, is it still your view the phone
12 wasn't seized, yes or no, sir?

13 MR. MIDDOUGH: The phone was seized.

14 THE COURT: I just want to be clear. I just want to
15 be clear.

16 MR. MIDDOUGH: I'm not trying to be difficult.

17 THE COURT: I want clarity.

18 Now, you mentioned in your papers and I want to quote
19 you correctly. You said that there was a potential violation
20 of Cathy's Law, okay, did that occur?

21 MR. MIDDOUGH: Yes.

22 THE COURT: Now, was he there in his capacity as a
23 first responder, yes or no?

24 MR. MIDDOUGH: I do not believe so, no.

25 THE COURT: Okay. What does Cathy's Law say about

1 the applicability of people not being able to take
2 photographs; does that apply to people who are not working in
3 their first responder capacity?

4 MR. MIDDOUGH: They must be, Your Honor.

5 THE COURT: I'm sorry.

6 MR. MIDDOUGH: I apologize, Your Honor. They must be
7 there in their first responder capacity.

8 THE COURT: You know that?

9 MR. MIDDOUGH: I know that, yes.

10 THE COURT: Why did your papers suggest that was not
11 the case?

12 MR. MIDDOUGH: Whether or not Corporal Ellman and
13 Sergeant Salamone knew that he was working in his official
14 capacity at the time they approached him.

15 THE COURT: They were confused about it?

16 MR. MIDDOUGH: Potentially.

17 THE COURT: Potentially.

18 MR. MIDDOUGH: I don't know.

19 THE COURT: Was he wearing a fireman's uniform at the
20 time?

21 MR. MIDDOUGH: He was not, Your Honor.

22 THE COURT: Was he in a fireman's vehicle at the
23 time?

24 MR. MIDDOUGH: He was not, no.

25 THE COURT: Was he near the first responder's that

1 was there or was he approached by first responders?

2 Meaning at the video, I saw the officers walk towards
3 him, looked like couple hundred yards, he was behind some
4 cones, and he was near a Ford Expedition that was marked.

5 MR. MIDDOUGH: I agree.

6 THE COURT: Was that a first responder vehicle?

7 MR. MIDDOUGH: I do not believe so, Your Honor.

8 THE COURT: And it's your contention that the
9 officers who approached him and demanded his phones were
10 confused about whether or not he was working as a first
11 responder in that moment? Is that what you're arguing to me,
12 sir?

13 MR. MIDDOUGH: Yes, your Honor.

14 THE COURT: Based on what?

15 MR. MIDDOUGH: They did not know when he arrived; how
16 long he had been at the scene. Again, Your Honor, as a
17 volunteer fireman --

18 THE COURT: So just to be clear, your argument to me
19 was that the first responders who were working with each other
20 talking to one another -- actually, there was some talk about
21 "get the phone if he pulls it out again," they didn't know if
22 this person whose phone that they were demanding and told him
23 it was seized as evidence is one of them or not? Is that what
24 you're telling me, sir?

25 MR. MIDDOUGH: Yes, Your Honor.

1 THE COURT: That is unsupported by any reasonable
2 reading of the facts. Now, the seizure of the phone -- well,
3 let me ask you this: When an officer comes up to someone and
4 says, give me your phone it will be seized as evidence, could
5 a reasonable person find that the officers making that demand
6 under the color of their authority as an officer?

7 MR. MIDDOUGH: I believe so, yeah.

8 THE COURT: Okay. So if he was not there working as
9 a first responder in the moment, do we have a violation of
10 Cathy's Law?

11 MR. MIDDOUGH: No, your Honor.

12 THE COURT: So if we don't have a violation of
13 Cathy's Law, what would then be the basis for an officer to go
14 up to a citizen and to demand their phone? What provision in
15 the Fourth Amendment that you're aware of allows for that?

16 MR. MIDDOUGH: It would only be, Your Honor, to the
17 extent that he was interfering with the police at the scene
18 and --

19 THE COURT: Was he doing that, sir?

20 MR. MIDDOUGH: There was a prior conversation that
21 was not captured by the body camera, Your Honor, that is made
22 reference. As soon as Sergeant Salamone's body camera kicks
23 on he makes reference to it.

24 THE COURT: Is there any video or any other evidence
25 other than what you're telling me in court that he was

1 interfering with the police who left where they were from the
2 video couple hundred feet and approached him?

3 Was he approaching them through telepathy?

4 Was that how he was interfering with them?

5 Did he have some ability to interfere with an
6 investigation that he was couple hundred feet away from?

7 MR. MIDDOUGH: No, I believe he was shouting out and
8 requesting information as to other responding units from the
9 police department.

10 THE COURT: Okay. So you believe he was doing what
11 with responding units? What was he doing? Say what you just
12 said again.

13 MR. MIDDOUGH: He was just asking about them.

14 THE COURT: He was just asking about them.

15 MR. MIDDOUGH: That's my understanding.

16 THE COURT: So if he was asking them questions, is it
17 still your view that those officers reasonably believed he was
18 one of the first responders in his own marked car, in his
19 t-shirt? The officer believed he was one of them?

20 MR. MIDDOUGH: I mean, Your Honor, I can't speak to
21 what the officer specifically thought in that moment. I do
22 know that Sergeant Salamone appeared to be upset in the first
23 two sentences that we hear in the audio.

24 THE COURT: And is that somehow the Petitioner's
25 fault that an officer at the scene is upset and demanding for

1 someone's phone even though there is no Fourth Amendment basis
2 to do so? That's the petitioner's fault?

3 MR. MIDDOUGH: I would not say that's the
4 petitioner's fault, Your Honor. I just believe it was a
5 reaction in the moment.

6 THE COURT: What's the legal basis for the seizure of
7 the phone? What was it?

8 MR. MIDDOUGH: The legal basis I believe would be
9 interfering with police at the scene of the incident.

10 THE COURT: You said it was Cathy's Law in your
11 paper. Now you're saying it's interference. Why did your
12 position switch in the middle of your argument?

13 MR. MIDDOUGH: I believe I argued both in the paper
14 Your Honor, that Cathy's Law would have been potentially the
15 legal violation, but then as the AG guideline, I put it on my
16 papers.

17 THE COURT: So if they were interfering if he was
18 doing that, what would have been the basis for the seizure of
19 the phone as opposed to saying, hey, you're interfering, I'll
20 give you a citation for that? How did we then get to the
21 authority that would allow for the seizure of the phone in
22 that moment?

23 For instance, what I mean specifically: Probable
24 cause. Probable cause is the principle that you have to have
25 a low round of belief that a crime took place and that a

1 person or item is subject of that crime. So here, is the
2 interference taking photos, is that the crime?

3 MR. MIDDOUGH: I believe it's combined with the
4 calling out, Your Honor.

5 THE COURT: How does that interference of taking
6 photos square with the Attorney's General mandate that said
7 citizens can take photos of police activity? Didn't that also
8 come out?

9 MR. MIDDOUGH: Of course, Your Honor.

10 THE COURT: How would you square those two things?
11 And I just want to be clear. We don't have -- at least you
12 have not given me a Cathy's Law violation. You're telling me
13 that there was interference by this individual, and that could
14 have been the basis for the police encounter, and let's say I
15 accept that proposition.

16 We then get to the next step which involves the phone
17 and there has to be probable cause for that phone.

18 How do we get there in light of the fact that there
19 is an Attorney General guideline that allows for the very same
20 conduct that you're before me suggesting it's illegal?

21 MR. MIDDOUGH: Well, that's what I mean when I argued
22 both in my papers, Your Honor. And again, I'm not trying to
23 twist words or play games. I'm just trying to explain
24 directly. My understanding of probable cause is that it can
25 wax and it can wane based on the information known at the

1 time.

2 THE COURT: "Wax and wane."

3 What is the legal principle that allows for waxing
4 and waning probable cause? What case says that, Counsel?

5 MR. MIDDOUGH: Well, I believe the principle is just
6 more information comes to light then probable cause --

7 THE COURT: What information did they have to get the
8 phone in question, Counsel?

9 MR. MIDDOUGH: That would be his identification of
10 himself as a volunteer firefighter.

11 THE COURT: Oh, so we're back to Cathy's Law.

12 MR. MIDDOUGH: Your Honor, as we know now and by the
13 end of the interaction, clearly there was no Cathy's Law
14 violation.

15 THE COURT: If I accept what you're saying, counsel,
16 it stands for the proposition that those first responders
17 believed that this man was working as a first responder with
18 them. You don't know when the body was taken out. You don't
19 know when he arrived there.

20 I don't have a reason to believe that they believed
21 he was working with them. Certainly, the video doesn't
22 support that contention.

23 Why do you argue these things even though the video
24 don't support what you're saying? The record doesn't support
25 what you're saying? And the law doesn't support what you're

1 saying?

2 MR. MIDDOUGH: Your Honor, I believe --

3 THE COURT: Have a seat.

4 Join me.

5 What is the relief that you're asking for here? If I
6 were to grant this --

7 MR. RANDAZZA: Yeah.

8 THE COURT: -- request, I would have to find that
9 there is an immediate risk of irreparable harm. Tell me what
10 the irreparable harm would be.

11 MR. RANDAZZA: Your Honor, again, two part answer:
12 That, one, is Elrod versus Burns says that any infringement on
13 the First Amendment is pro se irreparable harm. But I always
14 find that answer kind of clear to what I'm saying because it's
15 like this case.

16 But in a real world setting, my client wishes to go
17 out and exercise his right to photograph the police. This
18 clearly established, right, in every circuit. He wants to be
19 left alone, just to make it very simple.

20 THE COURT: Sure. And so how would the granting of
21 this request -- well, let me ask it to you like this.

22 The case law says that this is an extraordinary
23 remedy --

24 MR. RANDAZZA: Yes.

25 THE COURT: -- that should not be taken lightly. It

1 seems to me that you're asking me to put in an injunction on
2 conduct that will occur in the future. Right? You're saying
3 he wants -- moving forward, he wants to respond to scenes,
4 take photos when he's not working as a first responder?

5 MR. RANDAZZA: Yes, sir. That is correct.

6 THE COURT: How will I know or what limiting
7 principles could I set out in this request that you have where
8 I would be able to lawfully impose a restriction on this
9 municipality for conduct that has not yet occurred?

10 MR. RANDAZZA: I think it would be proper to tell him
11 to follow the Attorney General's order if we introduce as
12 evidence. I think that would be -- I think that would be
13 sufficient, Your Honor.

14 THE COURT: I have a feeling that counsel will leave
15 here and talk to his client about how this Court feels about
16 the First Amendment, Cathy's Law, and the Fourth Amendment. I
17 have a sneaking suspicion that that will occur.

18 Let's talk about the remedy that you want. Again,
19 how --

20 MR. RANDAZZA: Yes.

21 THE COURT: -- how can I craft an injunction for a
22 conduct that has not occurred? How can I limit it and how can
23 I do that lawfully? Meaning, what is the authority? What is
24 the case law that allows me to put an injunction for conduct
25 that has not occurred yet?

1 MR. RANDAZZA: It is not -- I'm not going to -- I
2 have a case that --

3 THE COURT: I didn't think you did.

4 MR. RANDAZZA: I'm not going to flip through here
5 making you wait.

6 THE COURT: That's fine. I understand.

7 MR. RANDAZZA: But it is also -- in my experience
8 it's not unusual for a Court to say, don't do that again.
9 You've seen the video?

10 THE COURT: I have.

11 MR. RANDAZZA: Don't do that again.

12 THE COURT: Sure. Yeah, I get it, but --

13 MR. RANDAZZA: That seems like a limiting principle
14 --

15 THE COURT: But that's different from an order and
16 that's different from the sort of relief that you want. I
17 have a feeling again that counsel for the municipality will
18 leave here knowing how strongly the Court feels about the
19 Fourth Amendment, the First Amendment.

20 So, let's assume that occurs.

21 Beyond that, there's no case that supports the sort
22 of relief that you're asking me to give you. Future behavior
23 that has not occurred yet in putting an injunction on it,
24 correct?

25 MR. RANDAZZA: I will accept that for the --

1 THE COURT: I have a feeling you would.

2 MR. RANDAZZA: I'm going to obsessively go back and
3 look, Your Honor.

4 THE COURT: That's fine, that's fine.

5 MR. RANDAZZA: But I do believe that if we have an
6 interference, I believe this Court has the power to say don't
7 do it again.

8 THE COURT: That's one thing this Court enjoys is
9 obsessive lawyers. You can have a seat, Counsel.

10 MR. RANDAZZA: Thank you, Your Honor.

11 THE COURT: Injunction relief is an extraordinary
12 remedy and should be granted in only limited circumstances as
13 principles articulated in *Kos Pharmaceuticals versus Andrx*
14 *Corporation* 369 F.3d 700 708 Third Circuit 2004.

15 The Court may grant an injunction only if a party
16 shows a likelihood of successful merits.

17 From our discussion today, my reading of the papers,
18 it appears to be there is a colorful claim for a Fourth
19 Amendment violation here. This phone was seized without
20 authority given to it under Cathy's Law.

21 The plaintiff was not there or at least there's no
22 reasonable reading of the evidence that suggested he was there
23 in his capacity as a first responder.

24 He was approached by law enforcement -- and I'd also
25 say the Court saw no evidence -- although the record still

1 being developed, but at this point, the Court has seen no
2 evidence to show that this plaintiff was interfering with a
3 law enforcement.

4 And so the Court finds no cognizable basis within the
5 Fourth Amendment for the seizure of his phone. The Court
6 agrees with counsel for the defense that stated or essentially
7 agreed that there was -- you would need a Fourth Amendment.
8 But you would need a basis probable cause to get into that
9 phone.

10 There has been no connection between the police
11 demand that the plaintiff turned over his phone or delete text
12 messages from his phone. There was no probable cause that I
13 saw that related to that phone.

14 So, it appears that plaintiff might have a colorable
15 claim that could suggest that there is a likelihood of
16 success. Where this fails as counsel for plaintiff has
17 conceded is that that there is no authority, no precedent for
18 this Court to put an injunction on conduct that could have
19 occurred in the future, that could very well be distinct from
20 the conduct that occurred here. There is no basis to do that.

21 And there is no reason to use this extraordinary
22 authority that the Court has. It's the Court's hope that
23 moving forward that should another interaction occur that
24 everyone involved will remember the First Amendment, the
25 Fourth Amendment, the Attorney General Guidelines from the

1 State of New Jersey, that's it's confounding that the officers
2 at the scene sworn and bound by those guidelines didn't seem
3 to know them at the time.

4 But nonetheless the Court will not grant this
5 request, because there is no basis to do so in case law.

6 I would draft an order to that effect. We are off
7 the record. Thank you.

8 (Proceedings conclude at this time.)

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1 FEDERAL OFFICIAL COURT REPORTER' S CERTIFICATE

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3 I, Jenni fer Kohn, RPR, CRR, Official Court Reporter of

4 the United States District Court for the District of New

5 Jersey, do hereby certify that the foregoing proceedings are a

6 true and accurate transcript from the

7 record of proceedings in the above-entitled matter.

8

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10 /S/Jenni fer Kohn, RPR, CRR

11 Official U.S. District Court Reporter

12 District of New Jersey

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14 DATED this April 22, 2026

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