

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHAWN GOWDER,) Docket No. 11 C 1304
)
Plaintiff,)
) Chicago, Illinois
vs.) October 18, 2011
) 9:00 o'clock a.m.
CITY OF CHICAGO, a municipal)
corporation, et al.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE SAMUEL DER-YEGHIAYAN

APPEARANCES:

For the Plaintiff: FORD & BRITTON PC
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For the Defendants: CITY OF CHICAGO
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1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 11 C 1304, Gowder versus City of
3 Chicago.

4 MR. KOLODZIEJ: Good morning, your Honor. Stephen
5 Kolodziej, K-o-l-o-d-z-i-e-j, for the plaintiff.

6 THE COURT: Good morning.

7 MS. HIRSCH: Good morning, your Honor. Rebecca
8 Hirsch on behalf of the defendants.

9 THE COURT: Good morning. Thanks for waiting
10 patiently. I set your case at the end because I wanted to
11 have a little discussion with you about the filings.

12 I was reviewing the plaintiff's motion and it has
13 three parts, that the DOAH's decision was erroneous, the
14 administrative law, that the denial of the, whatever, based
15 on misdemeanor violates 2nd and 14th Amendment and the
16 Illinois Constitution. And then, thirdly, you're asking that
17 defendant should not be allowed to introduce evidence outside
18 the administrative record since it was not considered by DOH.
19 Correct?

20 MR. KOLODZIEJ: With respect to the administrative
21 law claim, yes.

22 THE COURT: Yeah.

23 MR. KOLODZIEJ: And then I have an argument that
24 that would similarly apply to the constitutional claim if we
25 get there.

1 THE COURT: Yeah.

2 MR. KOLODZIEJ: Because it's --

3 THE COURT: I understand.

4 MR. KOLODZIEJ: Right.

5 THE COURT: Now the defendants in their filings,
6 they are saying because of the stay of discovery, defendants
7 have not been afforded the time and opportunity basically
8 relating on the constitutional issues, correct?

9 MS. HIRSCH: Correct.

10 THE COURT: So this is like a motion for judgment on
11 the pleadings, counsel, right?

12 MR. KOLODZIEJ: Yes.

13 THE COURT: And -- but it also addresses the
14 constitutional -- constitutionality of the regulations --

15 MR. KOLODZIEJ: Correct.

16 THE COURT: -- even as it applied to Mr. Gowder.

17 So I am at a situation where, you know, on one hand
18 I can rule on the judgment on the pleadings; on the other
19 hand, defendants are saying we haven't had sufficient time
20 for this issue.

21 Now what type of discovery will it be needed,
22 counsel for defendants?

23 MS. HIRSCH: I don't anticipate that it would be
24 very extensive. However, in light of the -- and this is
25 again only for the constitutional claims brought by

1 plaintiff, but I think that a few pieces might be key. I
2 think that it would necessarily entail at least one
3 deposition of the plaintiff.

4 THE COURT: What would that do to the deposition of
5 the plaintiff if I may ask because there is a -- and I'll get
6 to the issue of conviction. What would entail, like what
7 would that change, deposition of the plaintiff?

8 MS. HIRSCH: We believe that because it is an
9 as-applied challenge, that -- and even though these facts
10 were not in evidence at the administrative hearing, whether
11 he's been convicted of other crimes, what he was actually
12 doing during this conviction is probative for the as-applied
13 challenge to the constitutional claim and I think the -- I
14 think it was either -- it was Williams in the Seventh Circuit
15 said that the plaintiff -- the evidence of the bad acts of
16 the plaintiff was relevant to the decision on a --

17 THE COURT: Well, those are the facts before the
18 denial, right?

19 MS. HIRSCH: I'm sorry?

20 THE COURT: I mean, why would it be relevant if the
21 decision was based on you being convicted of unlawful use of
22 a weapon, period?

23 MS. HIRSCH: Well, that's for the -- that's for the
24 statutory claim but I think the constitutional claim of
25 whether, as applied to him and what he was doing, goes beyond

1 that. That's our position.

2 THE COURT: Counsel?

3 MR. KOLODZIEJ: Well, this is an issue that we
4 raised at the time we filed the motion for judgment on the
5 pleadings when we simultaneously filed a motion for
6 protective order on discovery because as I pointed out at
7 that time, your Honor, it's not germane because the statute
8 itself doesn't look at any of the underlying facts. It's
9 simply categorically banned you from having a CFP if you have
10 an unlawful use conviction.

11 THE COURT: In any jurisdiction.

12 MR. KOLODZIEJ: In any jurisdiction. And it was not
13 relevant at the administrative hearing, it wasn't relevant at
14 the time the police department denied the application, and it
15 didn't become relevant until they decided in this case that
16 they need this -- for whatever purpose because they keep
17 saying I have an as-applied challenge which, as I pointed out
18 in my motion papers, this is really a hybrid type of claim
19 because, yes, it was applied to Mr. Gowder but on its face,
20 that ordinance is a categorical ban on a misdemeanor --

21 THE COURT: Did you like address that? Are you
22 claiming that the ordinance itself should be found
23 unconstitutional or as applied to your client?

24 MR. KOLODZIEJ: Well, as I -- I pointed it out in my
25 reply brief, Judge. I addressed this. It is

1 unconstitutional to the extent if the court agrees with the
2 interpretation given by the DOAH that unlawful use
3 encompasses carrying and possessing, then --

4 THE COURT: Okay. Let's assuming arguendo that --

5 MR. KOLODZIEJ: Right.

6 THE COURT: -- I agree that they properly applied if
7 the ordinance is constitutional.

8 MR. KOLODZIEJ: And my point is, if you do decide
9 that, then on its face that is at least a partially invalid
10 ordinance because it is a categorical ban on misdemeanors
11 that is not -- that are otherwise qualified under federal and
12 state law to have firearms.

13 THE COURT: But are you going -- I mean, this is --
14 this is -- constitutional issues are very serious. I don't
15 like to just, you know, on a couple motions rule on
16 constitutionality unless it's so slam-dunk black and white.
17 Maybe it is; maybe it's not. I'm not saying. But defense
18 has raised an issue that, look, we're going to be prejudiced,
19 you know, and maybe it's best to give a little time for
20 defense to do whatever discovery they need even if I find
21 that it doesn't -- it's not material relating to what
22 happened here. Then you'll file a summary judgment motion
23 fully briefing the constitutional issue even if you like,
24 like you're saying, claiming that this regulation itself is
25 unconstitutional. I mean, you could do so on top of whether

1 it's applied. And then they could answer, you could reply
2 and I could have a full decision on all aspects. It might
3 make more sense. And also since the briefing, there is a new
4 decision from D.C. I don't know if you've seen it.

5 MS. HIRSCH: In *Heller*.

6 THE COURT: You might -- *Heller*.

7 MS. HIRSCH: *Heller*, too, yeah. That's what we
8 found.

9 THE COURT: Yeah. You might want to look at it.
10 It's got lots of language both by the majority and by the
11 dissent and you might want to look at that and it might make
12 more sense.

13 I could tell you right now that I have one other
14 factual concern -- when I say concern, looking into the
15 conviction, I don't know what happened. And I don't like to
16 guess what happened in my decisions when I'm talking about
17 facts. And if you guys could help me, maybe -- you know, I
18 have the conviction that was attached, certification of
19 record, and I'm looking here -- I don't know if you guys have
20 a copy of the -- and you probably are experts in this in
21 state court. It says 720 dash 5 slash 24 dash 1 capital A in
22 parentheses and 10, 1. Then it says F4. Does that mean
23 felony four?

24 MR. KOLODZIEJ: He was originally charged with a
25 felony. At that time the statute -- it was deemed a felony

1 until there was an appellate court decision that came out
2 that ruled -- invalidated the statute and so his conviction
3 was then reduced to a misdemeanor.

4 THE COURT: Okay. So at the time he was convicted
5 in 1995, right, or -- let's see. The exact date of
6 conviction is when?

7 MR. KOLODZIEJ: I believe it was '95, the
8 original.

9 THE COURT: Yeah, I know, '95 but I'm trying to see
10 the exact date of conviction. 8-21-95, defendant sentenced
11 to probation one year.

12 MR. KOLODZIEJ: Right.

13 THE COURT: Okay. Can you be sentenced to probation
14 if you've been convicted of a felony in Illinois state court?

15 MR. KOLODZIEJ: Judge, I apologize. I haven't read
16 the case in a while. But there was an issue on this and
17 that's -- I could submit the case to the Court if you like
18 but this -- it was addressed, I believe, in that decision.

19 THE COURT: What I'd like to know is what happened
20 to his case. I appreciate the decision if you give it to me
21 but I see here that he was charged felony four and then he
22 was convicted August 21, 1995, judgment on finding, verdict
23 slash plea, defendant sentenced to probation one year. So I
24 need to know first whether he was convicted of a felony.

25 MR. KOLODZIEJ: Well, the initial conviction was.

1 It was subsequently changed.

2 THE COURT: No. Forget subsequently. Initial
3 conviction, was he convicted of a felony?

4 MR. KOLODZIEJ: According to that -- according to
5 that record, Judge, it was a felony.

6 THE COURT: Can you be sentenced to probation if you
7 were convicted of a felony?

8 MR. KOLODZIEJ: Apparently so.

9 THE COURT: Okay.

10 MR. KOLODZIEJ: At that time under that statute.
11 And I apologize, Judge, you're taking me a bit off guard here
12 because it's been awhile --

13 THE COURT: That's okay. I'm just addressing it
14 now. Not definitive but I --

15 MR. KOLODZIEJ: I understand.

16 THE COURT: -- need to know about this. I'm just
17 telling you this.

18 And then at one point, which you're going to
19 provide, the Appellate Court said that statute that he was
20 convicted under was what?

21 MR. KOLODZIEJ: I have to -- I don't want to
22 misspeak here but I'd be happy to put a quick little brief
23 together if you'd like but the ruling invalidated his
24 conviction and so it was reduced -- it was changed to a
25 misdemeanor.

1 THE COURT: The ruling invalidated his conviction
2 based on his facts or based on everybody?

3 MR. KOLODZIEJ: No. It was a different case but it
4 affected all similar cases.

5 THE COURT: Similar, okay. So then he was
6 terminated probation, it says, on August 7th, 1996,
7 satisfactorily. But then April 8th, 2003, it says a special
8 order, vacate felony conviction.

9 MR. KOLODZIEJ: Right.

10 THE COURT: So vacate felony conviction on April 8,
11 2003, would have been based, according to your recollection,
12 on that change in the law?

13 MR. KOLODZIEJ: On the Illinois Appellate Court
14 decision, correct.

15 THE COURT: Okay. So if there was a vacation of a
16 conviction -- vacate means vacation like to vacate, gone --
17 was he then convicted again?

18 MR. KOLODZIEJ: No.

19 THE COURT: Well, how can you then have a statement
20 April 21, 2003, is reduced from felony to misdemeanor? I
21 just don't understand. I'm reading -- I like -- I do
22 criminal cases in federal court and I sentence people, I
23 state this is the sentence, this is the judgment. I'm unable
24 to read this.

25 MR. KOLODZIEJ: I understand, Judge, and I think

1 that's simply that that record that you have there is
2 confusing but I think what really happened was the felony was
3 vacated and reduced to a misdemeanor.

4 THE COURT: No, no. It doesn't say that. It says
5 special order on April 8, 2003, vacate felony conviction. He
6 was convicted of felony in 1995. 2003, they vacated his
7 felony conviction so that means there's no conviction right
8 now. When your conviction has been vacated, then did the
9 government charge him again? Did he have another trial? Was
10 there another plea by him? Did he agree to plead to
11 something else?

12 It just goes into next thing from April 8, there's a
13 case assignment, there's a lawyer. And April 21, 2003, it
14 says Attorney Peters in court, draft order entered, d-e space
15 t, period, convicted. Then there's a judge's name. And then
16 the next line says April 21, 2003, special order of 8-21,
17 1995, is reduced from a felony to a misdemeanor off call, so.

18 MR. KOLODZIEJ: Could I suggest something, Judge?

19 THE COURT: Yes.

20 MR. KOLODZIEJ: I have the criminal file documents
21 in my office. I will be happy to file a short memorandum
22 that attaches these documents and explains to you what my
23 understanding is of what happened. And if there's any
24 position from the defendants, you know, certainly --

25 THE COURT: I think it should be done jointly, it

1 should be done jointly because I don't know what the state
2 did in this case or what your position is but I need to make
3 sure that we have the facts right about the conviction.

4 MR. KOLODZIEJ: Okay.

5 THE COURT: Maybe he's not convicted anymore. Maybe
6 it was vacated. I don't know.

7 MR. KOLODZIEJ: Okay. I'd be happy to do that. And
8 if I could suggest, I do -- with respect to the discovery
9 issue and I think it would make sense to get this nailed down
10 first before we proceed with any discovery.

11 THE COURT: Yes, definitely.

12 MR. KOLODZIEJ: Okay. Because I do have objections
13 to it and I would like to articulate those at the appropriate
14 time, so.

15 THE COURT: The what, objections?

16 MR. KOLODZIEJ: I do have objections to discovery.
17 The principal one being, Judge, that -- to get back to the
18 question you initially asked is I have never heard what it is
19 they're trying to discover that would be germane to -- I
20 mean, they can depose my client but what does he have to tell
21 them that they don't know that would -- I mean, he was
22 convicted --

23 THE COURT: Let me put it this way: I've been doing
24 this for some time now and any time that the record is not
25 fully developed and parties claim they were prejudiced, it

1 might come back. It only delays further and I am not going
2 to take a guess how much further. For me to accommodate
3 defendant's request to give them some period of discovery --
4 and I might agree with you that whatever they discovered has
5 nothing to do with the issue that you're raising but that
6 would be on a summary judgment motion instead of judgment on
7 the pleadings without the discovery and without giving a
8 chance to brief the constitutional issues. There is this
9 thing hanging in there that ordinance says if you've been
10 convicted under any jurisdiction. Maybe their discovery
11 might show that all jurisdictions are the same as Illinois.
12 I don't know.

13 MR. KOLODZIEJ: Well, but it didn't matter to them I
14 guess is my point. When they denied his application, none of
15 the circumstances surrounding the conviction matter at all so
16 why do they --

17 THE COURT: Then you'll be coming with summary
18 judgment on that point and they might not be able to
19 respond.

20 MR. KOLODZIEJ: No; I understand that. But I guess
21 my point is, I think they're boot-strapping now because
22 they're trying to --

23 THE COURT: I don't think so. I think like a short
24 discovery is not boot-strapping. It just completes the
25 record. It would be exhaustive. And, trust me, I am very,

1 very knowledgeable about the history of the cases, the
2 Supreme Court decisions, I've read them and, you know, and
3 Circuit Court decisions and I want to do a fully exhaustive
4 opinion when I do one.

5 MS. HIRSCH: Thank you, your Honor.

6 MR. KOLODZIEJ: What would you propose with this,
7 Judge, would you like us to --

8 THE COURT: I think that it does not entail too much
9 discovery. It might not even be, you know, requiring the
10 plaintiff's deposition but, you know, if they want to depose
11 the plaintiff briefly, that's fine with me, but I don't think
12 that anything you get out of the plaintiff will be relevant
13 or material or, you know -- but, you know, I'll give that one
14 brief opportunity.

15 MS. HIRSCH: Thank you, your Honor.

16 MR. KOLODZIEJ: Well --

17 MS. HIRSCH: And putting aside the issue of
18 discovery of the plaintiff, I think as your Honor recognizes,
19 these are very new constitutional --

20 THE COURT: No. I don't recognize as to the
21 plaintiff. I think plaintiff's deposition would be a useless
22 one.

23 MR. KOLODZIEJ: Okay. But --

24 THE COURT: But on the discovery issue on the other
25 aspects.

1 MS. HIRSCH: We have a burden under the Supreme
2 Court and the Seventh Circuit -- I'm sorry, jurisprudence.
3 Excuse me, your Honor, I'm losing my voice -- and even if
4 it's not discovery that we are going to be seeking from
5 plaintiff, I think that rather than a judgment on the
6 pleadings, we may be relying on the legislative record from
7 City Council.

8 THE COURT: That's well taken, legislative record.
9 Let me point this, unless I'm persuaded that something from
10 the plaintiff is relevant, I don't think deposition of the
11 plaintiff, you know, has anything to do with the case right
12 now.

13 MR. KOLODZIEJ: Could I ask your Honor -- I mean,
14 our motion with respect to the administrative law claim,
15 however, it is clear that discovery is not permissible on
16 that.

17 THE COURT: Okay. Okay.

18 MR. KOLODZIEJ: And I guess --

19 THE COURT: I might find for you on that issue and
20 that might be over but I might not find for you on that issue
21 and then I have to go to the next step. And, you know, I
22 like to have one decision on all the points and right now I
23 think that it would be in your best interest also, as I told
24 you, to have that sooner than later.

25 MR. KOLODZIEJ: Well, respectfully, Judge, as I

1 pointed out in my papers, if you did rule for the plaintiff
2 on the administrative review claim, the constitutional claims
3 have been moot. And I guess that was my point in doing it
4 this way was that if the Court ruled for the plaintiff on
5 that claim, we're done.

6 THE COURT: Right now, I'm not persuaded that you
7 will succeed on that point, okay.

8 MR. KOLODZIEJ: Okay.

9 THE COURT: I'm not making a ruling but -- you know,
10 but I do have serious concerns about the constitutional issue
11 I could tell you right now, very serious concerns.

12 And, you know, read *Heller*. On regulations,
13 government may continue to impose regulations that are
14 traditional long-standing regulations in the United States
15 and, you know, in *McDonnell* also they address that. They say
16 that long-standing regulatory measures are permissible but
17 they cited examples and they cited maybe, you know, laws
18 about -- against concealed carry and laws prohibiting
19 possession of guns by felons. You could look at that
20 language carefully. Okay. And there has to be an analysis
21 on -- that's why I'm giving the right to do a little
22 discovery to brief this issue, you know, on whether gun
23 regulations are permissible, they must be based on basically
24 historical justifications that are long-standing so -- and
25 maybe on its face, the regulations or the ordinance might not

1 pass muster if, as counsel for the plaintiff has stated,
2 that, you know, it doesn't define, it just talks about in any
3 jurisdiction. What if *Montana* -- I think you cited another
4 state, I'm not sure which state it was but I'm just saying
5 what if another state --

6 MR. KOLODZIEJ: We cited them all.

7 THE COURT: -- says that, you know, unlawful use of
8 a weapon is if you possess it at your house and you're
9 convicted of a felony or misdemeanor.

10 Those are issues that I'd like to do an exhaustive
11 decision and give the parties to address them. And I think
12 that because the ordinance was passed by the City of
13 Chicago -- they're the masters of their ordinance, they
14 should know why they passed it -- it shouldn't take too much
15 discovery, even though they passed it the day after I think
16 the Supreme Court decision came but, you know, it shouldn't
17 take that much discovery why they did what they did. Whether
18 there's legislative that took place within like one day, it
19 shouldn't be hard to find.

20 MR. KOLODZIEJ: Well, they --

21 MS. HIRSCH: They were anticipating the ruling and
22 have been working on it for a while.

23 MR. KOLODZIEJ: And the defendants did produce all
24 of those transcripts to me in their 26(a) packet --

25 MS. HIRSCH: So we would like to be able to use

1 that; right.

2 MR. KOLODZIEJ: -- although there's almost no
3 discussion of this. But my question, Judge, is with -- are
4 you allowing them then to take the plaintiff's deposition and
5 no further because my concern is we're going to --

6 THE COURT: I want to know what you'll get out of
7 the plaintiff's deposition, why would you need it because
8 there is an ordinance. It talks -- the ordinance doesn't
9 talk about plaintiff. It talks about individuals that fall
10 into a category. It has nothing to do with what the
11 plaintiff's name is, what his other backgrounds are, what his
12 skin color is, what his eye color is. It doesn't matter. It
13 applies to everybody that falls into a category. And based
14 on what the government had, they denied him the permit.

15 So you cannot now go expand beyond to say let me do
16 a fishing expedition and find out, okay, did you murder
17 somebody, ah-hah, I would have denied you because now you
18 have admitted that you murdered somebody. It's not going to
19 happen.

20 So unless you persuade me that plaintiff's
21 deposition is necessary based on the facts and claims in this
22 case, plaintiff's deposition is not going to take place,
23 okay.

24 On the other issues, I will grant that to you. You
25 could do your discovery.

1 MR. KOLODZIEJ: Well, your Honor, on the other
2 issues, that's kind of broad. I mean, they've -- in their
3 response to my motion, they talk about experts and studies.

4 THE COURT: That's fine. Experts, they might need
5 somebody who is the expert on the legislative history why
6 Chicago did this.

7 MR. KOLODZIEJ: Well, I guess procedurally, then I'm
8 wondering how we're going to do this because I have a motion
9 pending that -- I respect what you said, Judge, but I do have
10 the position that discovery isn't necessary for it to be
11 resolved. I understand what you said about wanting it for
12 the record and everything but are we now going to open up
13 discovery for all purposes, put my motion in abeyance and
14 allow them to just go start disclosing experts that I have to
15 go depose when I don't think any of this is relevant in the
16 first place.

17 I think it's incumbent on them to at least submit
18 some kind of supplemental response or something to tell the
19 Court what it is they want to do and why they need to do it.

20 THE COURT: Okay, okay. Since you put it that way,
21 on the constitutional issue --

22 MS. HIRSCH: Yes.

23 THE COURT: -- can you do it in two months? All it
24 would take is to talk to your Chicago's ordinance experts and
25 whatever, why --

1 MS. HIRSCH: I think that given -- I mean, it seems
2 a little short given the fact that we may be talking to -- we
3 know at least one expert study that we think relates directly
4 to this issue and we might want to talk to him if he knows,
5 if we're going to rely on him if he gets deposed, given the
6 holidays, I think two months might be a little short. I
7 don't think it's going to be extensive but I think that might
8 be a little --

9 THE COURT: Three months?

10 MS. HIRSCH: We can try three months.

11 THE COURT: Okay. Three months discovery. And
12 today is October 18th. By January 20. Of course, counsel,
13 you could discover things from them too but January 20. And
14 then plaintiff or defendant could file summary judgment
15 motion by February 17th. Answer by March 2nd. Reply by
16 March 9th. Two weeks; one week. And I will set a status
17 hearing for April 18th and I will have a decision by then.

18 And as for the pending motion about whether the
19 administrative hearing applied properly, I could tell you
20 orally right now that I don't believe that you will succeed
21 on that point. And if you like, I'll make a ruling right now
22 on that.

23 MR. KOLODZIEJ: Well, I guess, your Honor, what --
24 and I appreciate that but I guess for purpose -- you know,
25 for purposes of keeping our record in a good posture, I don't

1 know at this point. You've said no plaintiff's deposition.

2 THE COURT: Correct.

3 MR. KOLODZIEJ: Okay. I don't know what other
4 discovery they're going to --

5 THE COURT: Whatever it is.

6 MR. KOLODZIEJ: But -- I understand that but I guess
7 my point is, you know, I don't know what I'm going to -- what
8 I would say right now in the summary judgment motion that
9 would be different than what I've already said unless --

10 THE COURT: Maybe you might -- well, you haven't
11 said that the regulations are unconstitutional, period, not
12 only applied to your client but to anybody. Maybe you might
13 want to say that. I don't want to tell you what to say but,
14 you know, since they're going to do exhaustive on the
15 constitutionality arguments, you might want to do the same.

16 MR. KOLODZIEJ: All right. Well, I guess my
17 confusion is procedurally going forward, you're -- are you
18 just opening discovery except for the plaintiff's deposition,
19 is that --

20 THE COURT: No. Discovery is open right now on your
21 claims on the constitutionality, okay --

22 MR. KOLODZIEJ: Okay.

23 THE COURT: -- both as applied to your client and as
24 to anybody. And as far as the interpretation of the
25 administrative law judge, if the regulations are

1 constitutional, I find that that interpretation was correct,
2 okay. So your motion on judgment on the pleadings as far as
3 the interpretation is concerned is denied.

4 MR. KOLODZIEJ: Okay. And with respect --

5 THE COURT: Related to constitutionality, it's very,
6 very wide open. And you might want to -- I'm not going to
7 put ideas in your head, but since it's open on the summary
8 judgment, you are not precluded from claiming not only it
9 applied to your client is unconstitutional but it's
10 unconstitutional on its face, it's unconstitutional to apply
11 as to anybody.

12 MR. KOLODZIEJ: I understand, your Honor, but I
13 guess procedurally --

14 THE COURT: That's what you're saying in your briefs
15 but --

16 MR. KOLODZIEJ: Right. I guess I'm in a quandary,
17 though. Are you denying that portion of the motion or are
18 you converting it? I guess I'm confused as to --

19 THE COURT: On that portion of the motion that
20 you're --

21 MR. KOLODZIEJ: The constitutionality.

22 THE COURT: -- the constitutionality, I am holding
23 in abeyance at this time. I'll just strike it to give time
24 for discovery and then you can basically renew and add to it
25 in your summary judgment motion so that there is nothing out

1 there pending. Okay.

2 MR. KOLODZIEJ: All right.

3 MS. HIRSCH: Thank you.

4 MR. KOLODZIEJ: And I'm sorry, the new status date
5 was April --

6 THE COURT: April 18th.

7 MR. KOLODZIEJ: And that's at 9:00?

8 THE COURT: 9:00 o'clock.

9 MR. KOLODZIEJ: And the order will reflect, though,
10 that the plaintiffs -- the defendants are not allowed to take
11 the plaintiff's deposition?

12 THE COURT: I'm just telling them that right now.

13 MR. KOLODZIEJ: Okay.

14 THE COURT: It's in the record. It's on the
15 record.

16 MR. KOLODZIEJ: I appreciate that.

17 MS. HIRSCH: Thank you, your Honor.

18 MR. KOLODZIEJ: All right. Thank you very much.

19 MS. HIRSCH: Thank you.

20 THE COURT: And once again, on the issue of
21 conviction, please jointly submit something to me in the next
22 30 days or less. I need to know exactly what case vacated it
23 or changed the law or whatever based on case law and then
24 what's the procedure afterwards. I mean, when something is
25 vacated, to me it's vacated. Did they then recharge the

1 person or they revived the old arraignment or charges, what
2 happened.

3 You know, I know that the docket is like kind of
4 technical, you know, there's letters, dots, numbers. You
5 guys are the experts maybe or you could find out from your
6 systems what happened and then you could have a stipulated
7 joint order, joint document saying that these -- this is what
8 happened relating to the conviction.

9 MR. KOLODZIEJ: And you'd like that within 30 days?

10 THE COURT: If you can. I mean, right now we have
11 some time. Yeah.

12 MR. KOLODZIEJ: Okay. All right. Thank you.

13 MS. HIRSCH: Thank you, your Honor.

14 THE COURT: Thank you.

15 (Which concluded the proceedings in the above-entitled
16 matter.)

17 C E R T I F I C A T E

18 I hereby certify that the foregoing is a transcript
19 of proceedings before the Honorable Samuel Der-Yeghiayan on
20 October 18, 2011.

21

22 /s/Laura LaCien

23 _____
24 Laura LaCien
25 Official Court Reporter

April 27, 2012
Date