Scott v. Costco, et al.

Eighth Judicial District Court, Clark County, Nevada Case No. A-12-663162-C

The family of Erik Scott has filed a lawsuit against Costco for Negligence and Wrongful Death. When Costco employee Shai Lierley called the Las Vegas Metropolitan Police Department, Lierley completely misrepresented and completely exaggerated what was occurring in Costco that day. Lierley told LVMPD that Erik Scott was being erratic, throwing stuff around, stumbling, looked high on drugs, and was brandishing his gun. LVMPD was also told that Erik refused to leave the store. In reality, however, Erik was never asked to leave the store! Costco, and their employee, Lierley, created a situation where Metro's response was to arrive at the store, guns drawn, prepared for a confrontation, with the potential of gunfire. However, the true facts show that Erik was merely shopping, and although he may have been agitated that the Costco employees were accosting him solely for the reason being that he was lawfully carrying a registered concealed handgun, he was not acting erratic, not being aggressive, and in fact, did not threaten or endanger anyone that day. Erik Scott did nothing to warrant Lierley's complete overreaction and exaggerated report to 9-1-1.

Costco employees told LVMPD investigators that they did not ask Erik to leave the store. One employee said they just allowed him to keep shopping. However, Officer William Mosher stated the following in his voluntary statement to LVMPD investigators in regards to what he was told was going on:

"[T]here was a person with a gun inside the Costco business located on Pavilion Center and Charleston. [...]Uh, the details further indicated that the subject, ah, was armed with a black 9 millimeter semi-auto handgun, and had the handgun, uh, in his waistband, uh, in plain view. Uh, further details indi-from, from security and, ah, persons of the business indicated that the subject, uh, was causing a disturbance inside the building and was possibly under the influence of narcotics. Uh, employees had asked the subject to leave the business several times. Ah, the individual refused, and according to a person of the business was, ah, tearing things up [.]"

Further, Officer Mosher stated that "based on the details of the call, and based on the situation with an individual with a handgun inside the business, and the threat to public safety that he posed, uh, officer began evacuating, uh, quietly evacuating citizens from the business." Officer Thomas Mendiola told investigators that they were informed that there was an armed subject in the store "brandishing" a gun, acting erratic, etc. Mendiola also stated that he had his gun drawn upon arrival. Officer Josh Stark basically said the same thing about being told that there was a subject in the store brandishing a gun.

The following is Shai Lierley's testimony at the Coroner's Inquest in regards to what was happening *after* Erik spoke to a manager (and got help from him in regards to the merchandise he was inspecting) and while Shai was making the 9-1-1 call:

- Q. What are Mr. Scott and his girlfriend doing at this time?
- A. At this time they're just walking up and down an aisle.

- Q. Are they walking with a shopping cart?
- A. Yes, sir.
- Q. What had what had they done, if anything, with the bottles and the cooler?
- A. Vince actually cleaned up most of the articles, because when Vince was actually talking to him, he (Vince) was actually picking up the stuff that he was kind of throwing around.

 $[\ldots]$

- Q. With regards to um—them walking up and down the aisles, are they talking to one another?
- A. Yes, sir.
- Q. Are they animated in anyway?
- A. Uh no, sir.
- Q. Do you see Mr. Scott make any threatening moves to anyone in the in there?
- A. No, sir.
- Q. Is he acting aggressive towards anybody?
- A. No, sir.

[...]

- Q. Let me ask you, as you're passing the registers up at the front, do you see him stumble or fall into anything?
- A. No, sir, at this time she's she's got her arm around him, so just walking together.

Clearly, Erik was not being threatening, not being animated, not being aggressive, and not stumbling around... which leads to the question, *WHY* did Shai tell dispatch that he was acting erratic, looked like he was high on drugs, and was grabbing the gun?

Additional testimony from Shai Lierley from the Inquest:

- Q. Is Erik posing any threat to customers leaving Costco?
- A. No, sir.
- Q. Had Erik Scott committed any crime?
- A. No, sir.
- Q. After the confrontation with you and Vince, Erik was calm and just interacting with his girlfriend; is this correct?
- A. Um Yes, sir.
- Q. Did Erik Scott ever threaten actually threaten you, Vince, or anyone?
- A. Uh no.

- Q. You said Erik was throwing merchandise around. How far was he throwing it?
- A. It wasn't throwing, throwing it. Was like picking up the items, tossing it off the next pallet[.] He would pick up from behind, toss it over to like the next one [.] So it wasn't like throwing it across the whole entire room, or anything like that.
- Q. Its not like a foot or two?
- A. No.
- $[\ldots]$
- Q. Not even that far?
- A. No. It's it's just like picking them up from up from the back, and just tossing it over, picking up another one, tossing it over, and then mumbling to himself, trying to reach them over.
- $[\ldots]$
- Q. Did anyone ask Mr. Scott to specifically leave the building, or the police would be called?
- A. Uh No, sir.

The above snippets were taken from Shai Lierley's testimony during the Corner's Inquest. Attached is the transcript from Lierley's 9-1-1 call to LVMPD, which paints a completely different picture, showing why the police arrived expecting a gun-fight. The conduct of Costco and Lierley misrepresented and exaggerated Erik's actions to the point where the situation was escalated to its tragic ending, the premature death of Erik Scott.

This is a very brief compilation of information related to what was occurring at Costco on July 10, 2010. We have begun the process of creating a more detailed summation of events that will be available in the near future.

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CALL #1	
RECORDING:	July 10, 2010, 12 hours, 47 minutes, 55 seconds
DISPATCH.	Hello, Metro police.
CALLER:	Hi, this is Shai, Loss Prevention over here at 801 S. Pavilion, Costco
	wholesale. I have a gentleman here that we have suspicion that
	was starting to shoplift and real erratic. Ah, we just approached him
	because he had firearms on himself, and we're telling him he can't
	have a fireman inside our store(both talking).
DISPATCH.	Right, is this Costco?
CALLER.	Yes, ma'am.
DISPATCH.	Okay, and he's inside the store?
CALLER.	Yes.
DISPATCH.	You have him in custody?
CALLER.	No, we're (unintelligible) telling him he
	can't have a firearm, and he's just acting a little erratic about it, telling
·	me he's a green beret, he has a right to carry.
DISPATCH.	Oh, okay, so he's inside, where at inside.
CALLER.	Ah, back in the back aisle. Ah, aisle 126, talking to a
	manager right now.
DISPATCH.	Okay. But this is Costco, right?

CALLER.	Yes.
DISPATCH.	Where does he actually have it that you see it?
CALLER.	Ah, it's on the back end of him, because he is bending over. We
	approached him and told him he can't have it in here.
DISPATCH.	What do you mean back end, like tucked in the back of his pants?
CALLER.	Yes, back of his pants. Even with a concealed weapon we don't
	allow firearms inside the building.
DISPATCH.	Right. And he didn't threaten anybody with it or anything like that?
CALLER.	No. It's just he's acting real erratic, and then, uh, just like ripping
	open out product, and really acting erratic.
DISPATCH.	How is he acting erratic?
CALLER.	He's taken our lunch pails and he's throwing our lunch pails all over
	the place certain thermos, and he's stuffing the
	thermos into one single bag
DISPATCH	Do you think he's high or mentally ill in any way?
CALLER	He, he may be high. I mean he's just real fast when he talks to me.
DISPATCH.	Okay, hold one second. Hold on one second.
CALLER.	Okay.
DISPATCH.	I already made up the call, just so you know.
CALLER.	Okay.

DISPATCH.	Um, he's not removing clothing or anything?
CALLER.	No.
DISPATCH.	So would you say he's being violent to merchandise?
CALLER.	Ah, yes, just throwing it around, and trying to put all these canteens
	into one small bag. And when a couple managers approached him
	and asked him if they could help, he starts saying no, he wants a
	certain type, and taking certain products and just throwing it all over
	the place
DISPATCH.	Is he alone?
CALLER.	Yeah.
DISPATCH.	Okay. Okay. Is this guy white, black, Hispanic?
CALLER.	White, red hair, wearing blue jeans.
DISPATCH.	Wait a minute, hold on,
CALLER.	Ah, about 32, 35.
DISPATCH.	How tall?
CALLER.	About 5'8".
DISPATCH.	Do you have somebody in the front that can direct us to this guy?
CALLER.	Ah, yeah.
DISPATCH.	Okay
CALLER.	Ah, medium.

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DISPATCH. And you said red hair, right? CALLER. Yes, red hair. DISPATCH. Any facial hair, moustache, goatee, beard? CALLER. No. DISPATCH. Okay. What is he wearing _____? What kind of shirt? CALLER. A grayish shirt. DISPATCH. Is it like a tee shirt? CALLER. Yeah, like a tee shirt. DISPATCH. And what color pants? CALLER. Blue jeans with white shoes. Believe he's finally met up with a female here now. She just came over and met up with him now. DISPATCH. Okay, what kind of gun is it? CALLER. Ah, looked like a 9 millimeter. DISPATCH. Black? CALLER. (Hey, meet up front so when Metro gets here.) DISPATCH. Black? CALLER. (Can you meet up front?) Ah, ah, yeah, it's black. (Can you move up front, can you meet up front so when Metro gets here guide them back here?)

Is it tucked into his belt?

DISPATCH.

CALLER.	Yeah, it's tucked into the back end and with a concealed holster.
DISPATCH.	And he was argumentative with employees?
CALLER.	Yeah, with the manager, telling him that we don't allow firearms, and
	he's stating the fact that he's a green beret and has a right to carry it.
	• •
DISPATCH.	Hold on a minute. Could you let me know where he is in the store 'til
	somebody gets there?
CALLER.	Yeah. He's aisle 126 still, back in our camping aisle.
DISPATCH.	I'm just updating your information. Okay?
CALLER.	Okay. No problem.
DISPATCH.	And he was actually throwing merchandise around?
CALLER.	Correct.
DISPATCH.	Okay.
CALLER.	And other members were starting to complain about it, asking what's
	going on, why's he doing that?
DISPATCH.	So you don't know what kind of drugs he might be on?
CALLER.	No.
DISPATCH.	Okay.
CALLER.	But he may just be really hyperactive or
DISPATCH.	Well that's kinda bizarre behavior.

CALLER.	Yeah, exactly.
DISPATCH.	Is he still talking to your manager?
CALLER.	Ah, no, the manager's, ah, looking for something right now right next
,	to him.
DISPATCH.	And he's still in aisle 126, camping?
CALLER.	Yes, he's still in aisle 126, yeah.
	I'm on the phone with Metro.
DISPATCH.	Yeah, just let me know when you see Can I
	have your name?
CALLER.	Sure. Can you meet Metro up front. I'm gonna
DISPATCH.	And your secretary, uh, security, right?
CALLER.	Yes ma'am.
DISPATCH.	What's your call back number?
CALLER.	Ah, are code 206-915-0444.
DISPATCH.	Okay. Just let me know when you see them. Are you watching
	him on a camera?
CALLER.	No, through optivision.
DISPATCH.	Okay. How is he behaving right now?
CALLER.	Ah, the same. He's just like fidgety. Now he's kinda like talking to
	his girlfriend loud now, saying he has the right to carry a firearm.

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DISPATCH.

Okay, and a female's with him now?

CALLER.

Yes.

DISPATCH.

And the female, white, black or Hispanic, Asian?

CALLER.

Uh, maybe Hispanic.

DISPATCH.

How old did she look to you?

CALLER.

About 30.

DISPATCH.

And color hair?

CALLER.

Black.

DISPATCH.

Is it long or short?

CALLER.

Ah, long.

DISPATCH.

And what's she wearing, what color shirt and pants?

CALLER.

Black tank top, blue jeans.

DISPATCH.

Okay. Just let me know if he goes anywhere or he does anything.

CALLER.

Okay. Yeah, he's heading up, ah, the aisle now.

DISPATCH.

Okay, towards where?

CALLER.

He's walking with her. Well he hasn't turned yet, so I will tell

you in a second.

DISPATCH.

So he's leaving the camping site now?

CALLER.

Correct.

Yeah, he's heading up towards the front now, up the main aisle.

DISPATCH.	Just let me know
CALLER.	Yeah, he's on aisle 125 going down another aisle now.
DISPATCH.	Okay, so he isn't leaving the store?
CALLER.	No ma'am.
DISPATCH.	Okay. What section is aisle 125?
CALLER.	camping, next aisle over, still heading
	towards the front aisle.
DISPATCH.	Yeah, did you say something, or did I mis-hear you about shoplifting
	earlier?
CALLER.	yeah, because he was really weird because he was taking
	canteens that are sold in packages, and he was ripping them open.
DISPATCH.	Oh.
CALLER.	Basically like shoplifting.
DISPATCH.	So that's why you were watching him.
CALLER.	Correct. And the fact that he was just throwing merchandise around
	and starting to scare other people around.
DISPATCH.	Right.
CALLER.	And then when I saw the firearm, that was a different story, so.
DISPATCH.	Right. Like if you'd just let me know when he goes and
CALLER.	Yeah.

DISPATCH.	Until we get the
CALLER.	Yeah, no problem.
DISPATCH.	That's certainly bizarre behavior, huh?
CALLER.	Yeah, exactly. Especially for a green beret or
	military.
DISPATCH.	Yeah, that's
CALLER.	Exactly. So someone argues with you about carrying a firearm in a
	public place. We get 'em all in here. So. He just walking up that
	aisle now.
DISPATCH.	Okay. Just let me know if he goes to leave, that'll be good. We
1	have a unit that's actually arriving, so let me know when you see
	them. And you have somebody waiting in front, right?
CALLER.	Yes.
DISPATCH.	Great. Just let me know when you see them, and then I can let you
	go, Shai.
CALLER.	Okay, no problem.
DISPATCH.	Do you see him yet, Shai?
CALLER.	Ah, no ma'am.
DISPATCH.	Yeah, they might be waiting for somebody else to get there.
	There's actually quite a few units that are coming. Okay?

CALLER.	Okay.
DISPATCH.	Just because of him being armed and his behavior.
CALLER.	Yeah, yeah, exactly. Yeah, we had one a while back the guy had
	hundreds of priors too.
DISPATCH.	Wow.
CALLER.	They had like six of the big boys come in. He has a big old knife on
	him.
DISPATCH.	Oh no.
CALLER.	Yeah, we were
DISPATCH.	Oh, heck yeah. You have to.
CALLER.	Yeah. He, he is breaking off from the female now and walking real
CALLER.	Yeah. He, he is breaking off from the female now and walking real fast up front.
CALLER. DISPATCH.	•
	fast up front.
DISPATCH.	fast up front. Which way is he walking?
DISPATCH. CALLER.	fast up front. Which way is he walking? Um, up towards the front.
DISPATCH. CALLER. DISPATCH.	fast up front. Which way is he walking? Um, up towards the front. And he's walking fast?
DISPATCH. CALLER. DISPATCH. CALLER.	fast up front. Which way is he walking? Um, up towards the front. And he's walking fast? Yeah, grabbing his pants and the firearm, pulling his pants up.
DISPATCH. CALLER. DISPATCH. CALLER. DISPATCH.	fast up front. Which way is he walking? Um, up towards the front. And he's walking fast? Yeah, grabbing his pants and the firearm, pulling his pants up. He's putting his hand on it?
DISPATCH. CALLER. DISPATCH. CALLER. DISPATCH. CALLER.	fast up front. Which way is he walking? Um, up towards the front. And he's walking fast? Yeah, grabbing his pants and the firearm, pulling his pants up. He's putting his hand on it? Yeah, he just took it back off. He was putting his hand on it.

DISPATCH.	Okay. Yeah, 'cause
CALLER.	Yeah. Okay. Yeah, he's walking towards the front.
DISPATCH.	•
CALLER.	No, he's, ah, trying to see if he walks right or left. Looks like he can'
	even walk straight.
DISPATCH.	Where is he exactly now?
CALLER.	He's registerbasket.
DISPATCH.	And where is he exactly?
CALLER.	he's walking back down to aisle 115 and
	back.
DISPATCH.	So he's walking towards the back of the store again?
CALLER.	Ah, there's a female here. She just met up with him,
	so I think they mighta made contact with her. She left all her
	groceries.
DISPATCH.	So is he walking back towards the back of the store?
CALLER.	No ma'am, they're, they're leaving right now. They're leaving
DISPATCH.	Are they walking out the door?

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CALLER. Ah, they're walking that way right now. He's, he's, yeah, he's exiting. He's getting ready to exit the building right now. Yeah, he's walking towards the exit now. DISPATCH. Is he walking out? CALLER. Yeah, we are evacuating the building. DISPATCH. Ah, they _____. Now are they, uh, is he walking outside now. CALLER. Yes, he's about ten feet away. The officer is standing at the door right now. DISPATCH. He is. CALLER. I see the officer right now. DISPATCH. Do you see them? CALLER. Yes. DISPATCH. And do they see him? CALLER. Ah, negative. DISPATCH. Have they walked out the door already? What is that guy doing right this minute? VOICE IN BACKGROUND SAYING "PUT YOUR HANDS WHERE I SEE THEM NOW, DROP IT, GET ON THE GROUND, GET ON THE GROUND."

(GUNSHOTS IN BACKGROUND)

DISPATCH.	Shai. Hello. Shai.
CALLER.	Yeah, I'm here, I'm here.
DISPATCH.	Where is he?
CALLER.	shots been fired. Shots have been fired.
DISPATCH.	You hear shots fired, Shai?
CALLER.	, shots have been fired.
DISPATCH.	Who, who fired them?
CALLER.	Officers.
(UNINTELLIGIBLE).	
DISPATCH.	Shai, I'm gonna disconnect. Okay?
CALLER.	Okay.
DISPATCH.	(unintelligible)
(END OF OALL)	