

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARTIN TRETOLA, MARBLES ENTERPRISES,  
INC. d/b/a T&T GUNNERY,

Plaintiffs,

-against-

COUNTY OF NASSAU, POLICE OFFICER  
FALTINGS,

Defendants.  
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A P P E A R A N C E S:

For Plaintiffs:

Friedman, Harfenist, Kraut  
& Perlstein LLP  
3000 Marcus Avenue  
Suite 2E1  
Lake Success, New York 11042  
By: Charles H. Horn, Esq.  
Steven J. Harfenist, Esq.

For Defendants:

Nassau County Attorney's Office  
One West Street  
Mineola, New York 11501  
By: Joseph Nocella, Esq.  
Ralph J. Reissman, Esq.

HURLEY, Senior District Judge

Martin Tretola, Marbles Enterprises, Inc. d/b/a T&T  
Gunnery, brought suit against the County of Nassau and "Police  
Officer Faltings," alleging that he was falsely arrested for  
reckless endangerment on June 1, 2007 and was thereafter  
maliciously prosecuted for that purported offense.<sup>1</sup> The case

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\*The caption of this opinion has been modified to name "County  
of Nassau" instead of "County of Suffolk" as a defendant.

<sup>1</sup> The amended complaint filed on December 2, 2011 contained a

was tried before a jury over a period of six days in August of 2012, at the conclusion of which the jury returned a verdict in plaintiffs' favor for \$5,000,000, consisting of \$2,000,000 in compensatory damages and \$3,000,000 in punitive damages.

Presently before the Court is defendants' motion, made pursuant to Fed. R. Civ. P. 50(b), seeking a vacatur of that judgment in toto as a matter of law or, in the alternative, for either a new trial pursuant to Rule 59 or a conditional order of remittitur to reduce as excessive the compensatory and punitive damage awards. For the reasons set forth below, defendants' Rule 50(b) and Rule 59 motions are denied. However, the application for a conditional order of remittitur is granted.

#### BACKGROUND

Martin Tretola ("plaintiff" or "Tretola")<sup>2</sup> is the owner and operator of Marbles Enterprises, Inc. d/b/a T&T Gunnery ("T&T Gunnery") which is in the business of selling and repairing firearms. It has two places of business, one being in Seaford and the other in Garden City, both in Nassau County, New York.

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number of additional claims asserted against both the County of Nassau as well as the individual officer. However, for reasons not presently germane, only the two above listed causes of action were pursued by plaintiffs and submitted to the jury. Tr. at 218.

<sup>2</sup> Although both Tretola and Marbles Enterprises, Inc. are listed in the caption as plaintiffs, I will use the singular term "plaintiff" henceforth throughout this decision referring to Tretola for simplicity sake since he, as distinct from the corporation, is the primary aggrieved party.

Given the nature of T&T Gunnery's business, its stores are subject to unannounced inspections being conducted by, inter alia, members of the Pistol Licensing Bureau of the Nassau County Police Department. Tr. at 136.

I. Facts Pertaining to Tretola's Arrest for Reckless Endangerment

"Police Officer Faltings," whose first name is Eric, (hereinafter "Faltings"), is a Nassau County police officer, assigned to the Pistol Licensing Bureau. On May 9, 2007 Faltings, as well as representatives from (a) the Nassau County Fire Marshal's Office, (b) the Federal Bureau of Alcohol Firearms and Tobacco ("ATF"), (c) the Hempstead Building Department and (d) the Nassau County Bomb Squad conducted a joint inspection of T&T Gunnery's Seaford facility. As a result of that inspection, a number of summonses were issued including one by Fire Marshal Szymanski charging Marbles Enterprises, Inc. with having "Numerous Portable Fire Extinguishers Throughout the Premises That Have not Been Serviced as Required." (Defs.' Ex. A at 3.) Marble Enterprises, Inc. pled guilty to a lesser included offense in the Hempstead District Court of Nassau County on June 26, 2007. (Defs.' Ex. B.) The disposition of the other summons issued on May 9th is unclear.

Principal among the observations made by Faltings on May 9th was the location of what appeared to be a gas heater - seemingly fueled by an active gas line - in close proximity and

on the same wall as two "bullet traps"<sup>3</sup> with surrounding indentations evidencing "bullet strikes." Tr. at 172. Faltings perceived that combination as "an extremely hazardous condition." Id. at 170. Based on that perception, considered in conjunction with Tretola's acknowledgment that he used the bullet traps in operating his business, id. at 179-81, Faltings believed he had probable cause to arrest plaintiff for reckless endangerment in the first degree in violation of New York Penal Law Section 120.25.<sup>4</sup> For some unexplained reason, the arrest was not made on the date of the inspection, i.e. May 9th, but rather three weeks thereafter on June 1st.

In making the arrest, Faltings assumed that the gas heater was operational. Tr. at 178-79. In fact, it was not. It had been disconnected from the outside gas meter more than a decade earlier. Tr. at 229. That fact, however, was not communicated verbally or otherwise to Faltings on or before May 9, 2007.

As to the period from the May 9th inspection to the June 1st arrest, defendants state that "there was never any

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<sup>3</sup> As explained by Tretola, a bullet trap is "about 16 inches square" and is used primarily "to shoot shotgun[s] and . . . handgun[s] into" it for test firing purposes. Tr. at 313-14.

<sup>4</sup> New York Penal Law § 120.25 provides: "A person is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person."

testimony at trial that Faltings was ever made aware [during that time frame] that the gas line may have been inactive, if indeed it was." (Defs.' Mem. in Supp. at 12.) However that statement, although not controverted by plaintiff, is incorrect. Tretola testified that when he was contacted while upstate by Faltings after May 9th and told to return to Nassau County by June 1st so that he could be arrested for reckless endangerment, plaintiff stated, albeit cryptically and to no avail, that the contemplated charge was bogus since "there is no gas in the pipe." Tr. at 353-54. Be that as it may, however, Faltings, based on his observations of May 9th at T&T Gunnery, arranged for Tretola to be arrested at the Seventh Precinct on that June 1st date absent any effort on his part to determine the validity of Tretola's assertion about the operational status of the heater.

The core of the background information thus far recited is largely undisputed. The same may not be said of the events triggering the May 9, 2007 multiple agency inspections.

Defendants produced evidence suggesting that (1) law enforcement's focus on T&T Gunnery started with Detective Loretta Brennan's ("Brennan") inspection of the business's "second hand dealers book" on April 10, 2007 during which she discovered certain bookkeeping errors regarding two weapons that Tretola had not "put into his long gun book" id. at 709; (2) since the "long gun book is what pistol licensing checks," id., she provided

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