IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

GEORGIACARRY.ORG, INC. and MICHAEL JUSTIN BELT,	)	
Plaintiffs,	)	
vs.	)	**CIVIL ACTION NO. CE13-00528-063**
CRAIG BROWN, HANK SCOTT, DAVID HANEY, and DAVID O'NEAL,	)	
Defendants.	)	

ORDER

INTRODUCTION

This case is before the Court on Defendants' motion for summary judgment. On motions for summary judgment, the evidence is viewed in the light most favorable to the parties opposing the motion. For purposes of the pending motion only, the Court finds that there is evidence in the record which supports the allegations of Plaintiffs' complaint, filed under 42 U.S.C. § 1983,[1] that are relevant to the pending

[1]Second Amended Complaint, ¶ 1.

motion. Plaintiff Belt "went shopping at the Colonial Mall."[2] He was "openly wearing a handgun in a waistband holster."[3] The Mall security officer who interacted with Mr. Belt is not a party to the case. The complaint alleges that Defendants violated Mr. Belt's constitutional rights by asking him to produce identification, asking him to produce his firearms license, arresting him for failing to provide identification, and maliciously prosecuting him for obstruction of an officer.[4] The criminal charge against Mr. Belt was voluntarily dismissed by the prosecuting authority. Plaintiffs allege that the actions of Defendants deprived Plaintiff Belt of his right to be free from unreasonable seizures guaranteed by the Fourth Amendment to the Constitution of the United States, and subjected him to a malicious prosecution. Plaintiffs further contend that Defendants' actions have had a chilling effect on the exercise of the rights of the corporate Plaintiff's other members. Plaintiff Belt seeks an award of money damages against Defendants, and Plaintiffs ask the Court to issue a declaratory judgment with respect to the authority of law enforcement officers who interact with persons who are carrying firearms.

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[2] Second Amended Complaint, ¶ 6.

[3] Second Amended Complaint, ¶ 7.

[4] Not all Defendants engaged in the same conduct but addressing them separately is not necessary at this stage in the proceedings.

CLAIMS RELATED TO ALLEGED WRONGFUL SEIZURE

The incident in question occurred on December 14, 2008. The criminal charges against Mr. Belt resulting from the incident were dismissed on August 27, 2012. The applicable statute of limitations for actions brought in Georgia courts under 42 U.S.C. § 1983 is two years. Day v. Brown, 207 Ga. App. 134 (1993). This action was filed on April 23, 2012. "The true test to determine when a cause of action accrues is to ascertain the time when the plaintiff could first have maintained [his or] her action to a successful result." Travis Pruitt & Assoc. v. Bowling, 238 Ga. App. 225, 226 (1999). Plaintiffs' argument that the two year limitations period for bringing Mr. Belt's claims for wrongful seizure[5] should be found to have commenced on August 27, 2012 rather than on December 14, 2008 is stated as follows:

> It is well-settled that federal law may not be used to interfere with a state criminal proceeding. *Younger v. Harris,* 401 U.S. 37 (19 71). It is also well-established that equity may not interfere with criminal proceedings. *Georgia Railway and Electric Co. v. Town of Oakland City*, 129 Ga. 576 (1907). It is clear, therefore, that Plaintiffs were not free to prosecute their present federal claims during any periods when the state court criminal proceedings against Belt were pending. In other words, the

[5] It is not clear whether the "seizure" of which Mr. Belt complains is his arrest, or his pre-arrest encounter with law enforcement officers which culminated with the request to produce identification and a firearms permit, or both. The Court will assume, for purposes of the pending motion, that "seizure" as used in the complaint encompasses the entire incident in question, rather than only the arrest, since the same statute of limitations applies to any wrongful seizure damages claim.

statue of limitations is tolled by operation of law that prevents Plaintiffs from prosecuting their claims.[6]

Under former precedent, Plaintiffs' contention may have arguably had merit. See Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). However, that decision's holding on when a claim brought under 42 U.S.C § 1983 may be pursued was clarified by the Supreme Court, with respect to false arrest claims, in Wallace v. Kato, 549 U.S. 384, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007).

> Reflective of the fact that false imprisonment consists of detention without legal process, a false imprisonment ends once the victim becomes held pursuant to such process—when, for example, he is bound over by a magistrate or arraigned on charges. Thereafter, unlawful detention forms part of the damages for the "entirely distinct" tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by wrongful institution of legal process. If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment, but not more. From that point on, any damages recoverable must be based on a malicious prosecution claim and on the wrongful use of judicial process rather than detention itself. Thus, petitioner's contention that his false imprisonment ended upon his release from custody, after the State dropped the charges against him, must be rejected. It ended much earlier, when legal process was initiated against him, and the statute would have begun to run from that date, but for its tolling by reason of petitioner's minority.

Id. at 389-390 [citations and punctuation omitted].[7] Mr. Belt was released from

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[6] Plaintiffs' Response in Opposition to Defendants' motion for summary judgment, Pg. 12-13.

[7] Georgia law is consistent with federal law on this point. An action for false imprisonment must be brought within two years of its accrual, O.C.G.A. § 9-3-33, which is from the release from imprisonment." Reese v. Clayton County, 185 Ga. App. 207, 208 (1987).

custody on December 14, 2008. The statute of limitations on his damages claims for illegal seizure began to run on that date, and expired before this action was brought.

CLAIMS RELATED TO ALLEGED MALICIOUS PROSECUTION

The statute of limitations on malicious prosecution claims begins to run when the prosecution is terminated. Valades v. Uslu, 301 Ga. App. 885 (2009). Therefore Plaintiff Belt's malicious prosecution claim is not time-barred.

The relevant Georgia law governing the respective rights of owners of private property and holders of firearms permits as of December 2008 was repealed in 2010. Ga. Laws 2008, Act 802, § 4, eff. July 1, 2008; Ga. Laws 2010, Act 643, § 1-3, eff. June 4, 2010. Unlike current law, which specifically protects the right of private property owners to determine if firearms may be carried on their premises,[8] the 2008 legislation did not address that issue. It dealt with the right of employees to have firearms in their vehicles while at work, and the right of holders of firearms licenses to carry firearms on some public property, under some circumstances. It did not purport to authorize holders of firearms permits to enter private property with a firearm against the wishes of the owner.

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[8]O.C.G.A. § 16-11-127(c).

Congress did not intend to abolish all common-law immunities and defenses in § 1983 litigation. Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 1217, 18 L.Ed.2d 288 (1967).

> Qualified immunity protects officials performing discretionary functions from individual claims brought pursuant to 42 U.S.C. § 1983, if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The test for determining entitlement to qualified immunity is applied by considering the objective reasonableness of the official's actions (irrespective of his subjective beliefs) in light of legal rules which were clearly established at the time the action was taken. The unlawfulness of the action must be apparent to a reasonable official.

Johnson v. Randolph County, 301 Ga. App. 265, 268 (2009). Under Georgia law at the relevant time, the right of the owner of private property to decide that firearms may not be carried there was unquestioned. The Court rejects the notion that the holder of a firearms license is entitled to enter private property with a firearm as often as he wishes, after he has been personally advised that the owner has banned persons carrying firearms from the premises, without adverse consequences, as long as he leaves when his violation of the property owner's rights has been detected. Because the right to control one's private property is a sacred right, statutes which purport to infringe on that right must be strictly construed. Prosecution for criminal trespass of persons who enter private property with firearms against the wishes of the owner on one occasion is not permissible, as long as such persons leave the premises when

directed to do so. However, property owners are entitled to pursue the civil remedy of injunctive relief against persons who abuse their firearms permits by repeatedly violating the owners' property rights. To hold otherwise would allow someone to disrupt the conduct of business on private property by provoking interventions by security officers which could distract customers, as often as the disruptive person chooses to do so. Our laws are not to be applied in a manner that produces "unreasonable or absurd consequences." City of Brunswick v. Atlanta Journal & Constitution, 214 Ga. App. 150 (1994). Holding that property owners have no remedy to prevent deliberate, repeated, malicious violations of property rights would be absurd. "If the law is reduced to this, as Mr. Bumble said in Oliver Twist, 'the law is an ass.'" Republic Nat. Bank of Dallas v. Hodgson, 124 Ga. App. 11, 14 (1971).

The Court has attempted, without success, to discern a means of preventing someone from violating private property rights in the manner described above that does not involve ascertaining the identity of persons who are ordered to leave premises when they are found to be in possession of a firearm against the wishes of the owner. There is no evidence that Mr. Belt is anything other than a responsible gun owner. However, assume that a firearms license holder has a grudge against a mall for some reason. If that person has to be directed to leave the mall every day for a month, how can the property owner get the injunctive relief it is entitled to under

such circumstances if, on each occasion, requests for identification can lawfully be refused?

There was no clearly established law in December of 2008 which held that persons who actually enter private property with firearms when that had been prohibited by the owner could not be required to identify themselves. Therefore, an officer who asked someone who entered a "no-firearms" location with a firearm would not be subject to suit under § 1983. However, there are unresolved questions of fact in this case. Under the evidence viewed in the light most favorable to Plaintiffs, Mr. Belt was in the process of returning his firearm to his vehicle when he was first encountered by a law enforcement officer. If the trier of fact concludes that the officers had no reasonable basis for believing that Mr. Belt had in fact entered private property with a firearm in violation of the owner's rights, and there was no other valid reason to request identification, then he would have had obligation to identify himself, and failing to do so would not subject him to prosecution for obstruction. Georgia law does not authorize law enforcement officers to request identification from citizens for no reason and charge them with obstruction if they fail to comply. That law was clearly established in 2008.

> The cases upon which Harper bases his argument that Stanfield was not engaged in the lawful discharge of his official duties are distinguishable. For instance, *Holt v. State*, 227 Ga. App. 46 (1997) involved an officer

> asking for identification from passengers in a car after he completed the only tenable object of his investigation, which was issuing the driver a citation for driving with a cracked windshield. In that case, we noted that the officer's desire to keep names of suspicious persons in his notepad might have been a good practice, but where the practice was not supported by articulable suspicion of criminal activity, it was not constitutionally justified. In *In the Interest of J.T.*, 239 Ga .App. 756 (1999) the appellant was charged with obstruction for riding away on a bicycle and not stopping when ordered to do so by an officer, though the officer had no lawful basis for stopping him. In *Wagner v. State*, 206 Ga. App.. 180 (1992), there was no indication as to why the officer was called to a restaurant, or why he asked the defendant to step outside and identify himself. Finally, in *Duke v. State*, 257 Ga. App. 609 (2002) which involved the denial of a motion to suppress, an officer stopped a car based solely on a 911 dispatch generally alleging suspicion of drug activity.

Harper v. State, 285 Ga.App. 261, 264-265 (2007). A Georgia federal court observed that

> [I]t appears that, under Georgia case law dealing with the offense of obstruction, the standard for determining whether an officer was lawfully discharging his duties such that a refusal to provide identification would constitute obstruction is whether a reasonable suspicion existed to stop the individual charged with obstruction.

Gainor v. Douglas County, Georgia, 59 F.Supp.2d 1259, 1282 (N.D. Ga.1998.)

Conversely, if the trier of fact concludes that the officers had received a shoplifting report and had a reasonable basis for questioning Mr. Belt about it, then although he was ultimately not charged with shoplifting, his failure to identify himself could be deemed to establish reasonable suspicion sufficient to justify a

request for identification. Similarly, if it was reported to the officers that Mr. Belt did in fact enter the mall with a firearm, the lack of clearly established law prohibiting officers from requesting identification in such instances would preclude recovery under § 1983. The Court concludes that these unresolved questions of material fact preclude summary judgment on Mr. Belt's malicious prosecution claim.

DECLARATORY RELIEF

A declaratory judgment can be issued only to the extent required to resolve alleged uncertainly about the parties' respective rights and obligations concerning the actual controversy presented in the case before the Court. As stated above, the current Georgia statute which addresses the potential conflict between two constitutionally protected rights, the right to bear arms and the right to own and control private property, was enacted in 2010. The Court cannot grant declaratory relief by construing a statute that did not exist at the time the events involved in this case occurred. Doing so would constitute "blatant judicial activism." State v. Jackson, 287 Ga. 646, 663 (2010) (Hunstein, C.J., dissenting). There is no need for declaratory relief with respect to the rights of firearms owners under the predecessor statute, since no uncertainty exists as to its future application; it will not be applied in the future. Even if the law had not changed, since the statute of limitations had expired on Mr. Belt's wrongful seizure claims related to his encounters with law

enforcement officers, declaratory relief with respect to the propriety of the officers' conduct during those encounters would be improper because it would not relate to any issue presented in the case. A further barrier to granting the broad declaratory relief Plaintiffs request is that Mr. Belt was placed under arrest while in possession of a firearm. When a person is arrested while in possession of a firearm, it is beyond doubt that the arresting officers are entitled to ask the arrestee to produce his firearms license and to run a background check on him, to determine whether he should be charged with carrying a firearm without a license or with possession of a firearm by a convicted felon. Therefore, even if all these impediments to declaratory relief were absent, the Court would not be authorized to declare what firearms-related rights are possessed by persons who are not under arrest.

CONCLUSION

The Court concludes that there is no genuine issue of material fact, and that Defendants are entitled to judgment as a matter of law, with respect to Plaintiff Belt's claims related to his allegedly unlawful detention. Since there are unresolved questions of material fact with respect to Plaintiff Belt's claims for malicious prosecution, Defendants are not entitled to summary judgment thereon. As to the late Defendant O'Neal, the record reflects that the claims against him are also subject to dismissal pursuant to O.C.G.A. § 9-11-25. Plaintiffs are not entitled to declaratory

relief because there is no need for the Court to provide guidance on what constitutes permissible and impermissible conduct under a law which ceased to exist nearly four years ago. It is

ADJUDGED AND DECREED that Defendants' motion for summary judgment is GRANTED with respect to Plaintiff Belt's claims related to allegedly wrongful detention, and DENIED with respect to Plaintiff Belt's claims related to alleged malicious prosecution.

SO ORDERED, this 29th **day of** April **2014.**

STEPHEN G. SCARLETT, SR.
Judge, Superior Courts
Brunswick Judicial Circuit