IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

LUKE WOODARD	)	
	)	
Plaintiff	)	**CIVIL ACTION FILE NO.**
	)	
v.	)	**4:08-CV-178-HLM**
	)	
TYLER DURHAM BROWN et.al.,	)	
Defendants.	)	

PLAINTIFF'S REPLY IN SUPPORT OF HIS MOTION FOR RECONSIDERATION

I. Defendants' Suggested Standard Does Not Apply

Defendants claim the standard for deciding a motion for reconsideration of an interlocutory opinion, which is what Plaintiff's Motion is, is the same as for a Fed. R. Civ. Proc. 59 motion for new trial. The case cited by Defendants is *Arthur v. King,* 500 F.3d 1335 (11th Cir. 2007), a case in which a death row inmate filed a § 1983 civil rights claim seeking a stay of execution. The condemned man lost his case and filed a motion for a new trial. Defendants urge that the standard for a new trial pursuant to Rule 59 used in *Arthur* ought to apply to Plaintiff's instant Motion for Reconsideration, but they cite no case law supporting such an extension.

There is no Fed. R. Civ. Proc. rule governing motions for reconsideration. Denials of such motions are reviewed only for an abuse of discretion. *Florida Association of Rehabilitation Facilities, Inc. v. Florida Department of Health &*

Rehabilitation Services., 225 F.3d 1208, 1216 (11th Cir. 2000). In the instant case, Plaintiff brought his Motion because of the unique nature of the injury he suffered and the unjust result obtained from a routine application of the concept that arguable probable cause to arrest for one offense provides qualified immunity for all charges listed by the arresting officer.

Defendants cite to several cases that stand for the proposition that if an officer has arguable probable cause to arrest for any offense, the officer may make a full custodial arrest and the person cannot make a general claim for false arrest. This is correct as far as it goes. What Defendants overlook, however, is that Plaintiff made much more than a general "false arrest" claim.

First, Plaintiff had unique damages attributable to the arrest that would not have arisen in a normal arrest context. In Count 1 of the Complaint [Doc. 1, p. 7) Plaintiff did state that Defendants arrested him without probable cause in violation of his 4th Amendment right to be free from unreasonable seizures, in essence "false arrest." In the same Count, however, Plaintiff complained (Par. 38) that "By arresting Plaintiff Woodard without the existence of probable cause objectively to believe that Plaintiff Woodard had committed a crime, Defendants made it impossible for Plaintiff Woodard to obtain a renewal [firearms license], thereby depriving him of his ***Second and Fourteenth Amendment rights to self defense.***"

This aspect of Count 1 clearly is very different in kind from a "false arrest." The Second and Fourteenth Amendment rights to self defense are not generally implicated by a false arrest. Indeed, it is the unique nature of this claim that gives rise to the instant Motion. Even though Defendants in their Brief [Doc. 18-11] did not address Plaintiff's Second and Fourteenth Amendment self-defense claims (other than to recite their existence in passing), the Court in its Order [Doc. 31] nevertheless granted summary judgment on those claims against Plaintiff. Plaintiff pointed out in his Response to Defendants' Motion for Summary Judgment [Doc. 25, p. 15, FN 5] that arguable probable cause for only the disorderly conduct arrest would not be dispositive of the entire case.

II. Defendants' Misunderstand Plaintiff's Claim

IIA. Plaintiff Claims Damages Resulting From Being Unreasonably Seized

Defendants confuse the issue by claiming that Plaintiff does not have a federally protected right to possess a Georgia firearms license ("GFL"). This claim is not correct, but it also reveals a misunderstanding of Plaintiff's claim. While a GFL applicant cannot generally look to federal law as the basis for obtaining a GFL, it is not correct to say that federal law cannot protect one's ability to obtain one. Surely Defendants would agree that federal law would intervene if a GFL applicant were denied because of the applicant's race. Likewise, this Court has

determined that a person cannot be denied a GFL on account of the applicant's refusal to provide his social security number. *Camp v. Cason,* No. 1:06-CV-1586, U.S. District Court for the Northern District of Georgia, Doc. 13 (available via PACER and attached for the Court's convenience as Exhibit A).

The real issue, however, is not that Plaintiff does or does not have a federally protected right to a GFL. The issue is that Plaintiff has a federally protected right to be free from unreasonable searches, and Plaintiff further has a federally protected right to self defense. Defendants' actions interfered with both rights.

The right to be free from unreasonable seizures was violated when Defendants arrested Plaintiff without probable cause. This Court has found that Defendants had arguable probable cause to arrest Plaintiff for disorderly conduct, but not for carrying a concealed weapon. Because the injuries Plaintiff suffered as a result of the latter charge are unique, Plaintiff is not seeking only damages as one might expect from an ordinary arrest. Plaintiff also lost his GFL, which caused him unique damages, different from those one expects from a wrongful custodial arrest.

Plaintiff concedes that, as a result of the Court's ruling, he is not able to recover the "ordinary" damages of being arrested that flow from the concealed

weapons charge. He argues, however, that he should be able to recover the unique damages resulting from the concealed weapons charge (that arise out of the loss of his firearms license).

IIB. Plaintiff is Seeking Damages for Deprivation of His Right of Self-Defense

The right to self defense existed at common law, and "By the time of the founding, the right to have arms had become fundamental for English subjects." *District of Columbia v. Heller,* 128 S.Ct. 2798, 2798 (2008). The *Heller* court found that the right to "bear" arms meant the right to "carry" arms. *Id.* at 2793, 2804. The *Heller* court also found the handgun to be the "quintessential self-defense weapon." *Id.* at 2818. Thus, the *Heller* court found that the Second Amendment protects an individual's right to carry handguns.

While the right to carry handguns is not unlimited, *Id.* at 2799, it does exist and cannot be wholly abrogated. In Georgia, it is a crime to carry a pistol without a license outside one's home, automobile or place of business. O.C.G.A. § 16-11-128. In addition, a firearm cannot be carried in an automobile by someone who neither has a GFL nor is eligible to receive one unless it is carries in an open manner and fully exposed to view. As Defendants adequately demonstrated in their Motion for Summary Judgment, it is nearly impossible to carry a firearm in an automobile in an open manner and fully exposed to view, for to do so means

that persons who are encountered must be apprised of the firearm's presence. Doc. 31, p. 42 (*citing Moody v. State,* 184 Ga. App. 768, 769 (1987)).

A person who has a pending charge of carrying a concealed weapon is not eligible for a GFL. O.C.G.A. § 16-11-129(b)(2). Thus, by charging Plaintiff with carrying a concealed weapon (a charge for which this Court has ruled no probable cause, or even arguable probable cause existed), Defendants wrongfully made him ineligible for a GFL. When his then-current GFL expired, Plaintiff no longer could carry a firearm outside his home or place of business, and for all practical purposes could not carry a firearm in his automobile. Defendants thereby deprived Plaintiff of his federally-protected right to self-defense by carrying arms. This deprivation would not have occurred if Defendants had arrested Plaintiff only for disorderly conduct.

/s/ John R. Monroe
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Local Rule 7.1D Certification

The undersigned counsel certifies that the foregoing was prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

________/s/ John R. Monroe____________
John R. Monroe

CERTIFICATE OF SERVICE

I certify that on August 10, 2009, I filed the foregoing, together with accompanying documents, using the ECF system, which automatically will send a copy to:

G. Kevin Morris
kevin@tew-law.com

/s/ John R. Monroe
John R. Monroe