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

Luke Woodard,

Plaintiff,

v. CIVIL ACTION FILE
NO. 4:08-CV-178-HLM

Tyler Durham Brown,
Alton Rabok Payne.

Defendants.

ORDER

This is a 42 U.S.C.A. § 1983 case seeking declaratory, injunctive, and monetary relief. Plaintiff alleges that Defendants violated his rights under the Constitution of the United States when they arrested and prosecuted him for carrying a concealed weapon and for disorderly conduct. The case is before the Court on Plaintiff's Motion for

Summary Judgment [15], and on Defendants' Motion for Summary Judgment [18].

I. Background

A. Factual Background

Keeping in mind that when deciding a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion, the Court provides the following statement of facts. See Optimum Techs., Inc. v. Henkel Consumer Adhesives, Inc., 496 F.3d 1231, 1241 (11th Cir. 2007) (observing that, in connection with summary judgment, court must review all facts and inferences in light most favorable to non-moving party). This statement does not represent actual findings of fact. In re Celotex Corp.,

487 F.3d 1320, 1328 (11th Cir. 2007). Instead, the Court has provided the statement simply to place the Court's legal analysis in the context of this particular case or controversy. Because both Plaintiff and Defendants have moved for summary judgment, the Court's statement of facts will focus on describing the facts that appear to be undisputed by the parties, and on highlighting the facts that are disputed.

In compliance with Local Rule 56.1 B.(1), Defendants submitted Defendants' Statement of Material Facts ("DSMF"). Plaintiff responded to DSMF ("PRDSMF"). Plaintiff submitted Plaintiff's Statement of Material Facts ("PSMF"). Defendants responded to PSMF ("DRPSMF"). Additionally, both Defendants and Plaintiff filed statements

of additional material facts with their responses ("DSAMF" and "PSAMF" respectively).

> Local Rule 56.1 B. (2) a. (2) states:
>
> The Court will deem each of the movant's facts as admitted unless the respondent (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1 B.(1).

N.D. Ga. L.R. 56.1B.(2)(a). Plaintiff objected to nearly all of DSMF as being based on unauthenticated documents, containing inadmissible hearsay, or both. The Court can consider evidence in an inadmissible form at the summary judgment stage if the evidence can be reduced to

admissible form at trial. McMillian v. Johnson, 88 F. 3d 1573, 1583-1585 (11th Cir. 1996) (collecting cases and noting that, if court is satisfied that inadmissible hearsay evidence would become admissible through direct testimony of persons with first hand knowledge, it can consider inadmissible hearsay in connection with motion for summary judgment); accord Offshore Aviation v. Transcon Lines, Inc., 831 F.2d 1013, 1017 (11th Cir. 1987).

Plaintiff acknowledges that evidence can be submitted in an inadmissible form at the summary judgment stage if the evidence can be made admissible at trial, but argues that it would be error for the Court to consider hearsay evidence that is contained within a document that is not authenticated. This argument overstates the rule applied by

courts when confronted with inadmissible evidence used to support a motion for summary judgment. As noted above, the Court can consider inadmissible evidence in connection with a motion for summary judgment if the Court concludes that the evidence could be made admissible at trial. This is true regardless of whether the evidence would be inadmissible because it contains hearsay, is not authenticated, or both. The only relevant inquiry is whether the evidence could be made admissible at trial.

Admittedly, it would have been better practice for Defendants to provide affidavits attesting to the authenticity of their exhibits and affidavits from the witnesses rather than their signed, but not sworn, statements. However, it also would have been better practice for Plaintiff to lodge his

objections to the admissibility of Defendants' evidence, and also to provide an admission or denial of the evidence that Plaintiff anticipated could have been made admissible at trial. Under the current circumstances, the Court will consider the objections lodged by Plaintiff regarding the admissibility of the evidence that supports DSMF. If the Court concludes that the evidence can be reduced to admissible form at trial, and that the evidence supports the particular fact in question, the Court will deem the fact admitted for the purposes of these Motions. If the Court concludes that the evidence can not be made admissible at trial, or that the evidence does not support the fact in question, then the Court will not consider that fact.

Additionally, both Plaintiff and Defendants have denied entire factual statements even though they actually disputed only a portion of those statements. Also, in many instances, Defendants failed to state why they were denying a factual statement, and instead merely provided a citation to the record. Thus, both Plaintiff and Defendants have failed to meet the expectations of the Court regarding their filings in connection with these Motions for Summary Judgment. In short, the parties' factual statements have neither reduced the Court's burden associated with reviewing the factual record in this case nor narrowed the issues before the Court. To the extent possible, the Court has attempted to fashion a factual statement entirely out of the admissions of the parties and the agreed-upon facts.

1. The Parties

Plaintiff is a Georgia resident, who, as of February 23, 2009, lived in Cartersville, Georgia. (Dep. of Luke Woodard, Feb. 23, 2009, at 5.) Defendants Brown and Payne are both employed as deputies by the Paulding County Sheriff's Department. (PSMF ¶ 2; DRPSMF ¶ 2.)

2. The Events of May 12, 2008

On May 12, 2008, Plaintiff left his home and drove to Woodstock, Georgia, to drop his children off with their grandmother. (Woodard Dep. at 23.) Around one p.m., Plaintiff purchased some lottery tickets and won $1000. (Id. at 25.) Afterward, Plaintiff visited with a friend for several hours. (Id.) At approximately five p.m., Plaintiff left his friend's house and drove to Scott's Country Store ("Scott's")

on Highway 101 in Paulding County. (Id. at 26.) Plaintiff parked his Trans-Am close to the front door of Scott's.[1] (Id. at 27.) Plaintiff entered the store, purchased lottery tickets, exited the store, sat in his car, and scratched off the tickets. (Id. at 34-38.) Plaintiff entered and exited the store to buy tickets at least four, and possibly, five times.[2] (Id. at 38.)

While entering and exiting the store, Plaintiff was wearing "black jeans, boots, no shirt, and a belt," and was carrying a .45 mm EAA Witness handgun tucked into the waistband of his jeans in the small of his back. (Woodard

---

[1]The Court notes that the parties dispute whether Plaintiff's car was parked on a curb in front of Scott's and whether Plaintiff's car was blocking the entrance to the store. This dispute, however, is not material.

[2]According to Plaintiff, he was having a "lucky day" and had won close to $1,400.00 from lottery tickets. (Woodard Dep. at 36.)

Dep. at 28-29.) Because the gun was tucked into Plaintiff's waistband, and not in a holster or other retention device, Plaintiff had to readjust the weapon as he climbed in and out of the Trans-Am. (Id. at 38-41.) Plaintiff stated that he would pull up his pants and at least reach toward the gun in order to ensure that it was secure in his waistband. (Id. at 40.) Defendants contend that Plaintiff adjusted the gun while in the store as well; Plaintiff can not remember whether he handled the gun in the store, but could not rule out the possibility that he had.[3] (Id. at 43-44.)

---

[3]For the purposes of this Motion, all parties agree that Plaintiff manipulated the gun while climbing in and out of the car. (Woodard Dep. at 38-41 (Plaintiff agrees that he adjusted his pants and handled the gun in order to make certain that the gun was secure in the back of his pants).) The Court concludes that the dispute concerning whether Plaintiff touched or handled the gun while in the store is not material.

While in the store, Plaintiff only spoke to, and interacted with, the clerks. (Woodard Dep. at 35.) Plaintiff contends that he noticed only one other store patron, and that he did not notice anything else going on around him. (Id. at 37.)

While Plaintiff may have been oblivious to his surroundings, several persons in and around Scott's noticed, and were startled by, Plaintiff's behavior. Jackie Green, who works at her family's nursery located next door to Scott's, was in Scott's when Plaintiff arrived. (Aff. of Jackie Green ¶ 3.) Ms. Green saw Plaintiff park his car close to the entrance and enter the store while "fidgeting" with something in his pants. (Id. ¶¶ 3-4.) Ms. Green could see the handle of Plaintiff's gun protruding from Plaintiff's waistband, and assumed that Plaintiff was manipulating a

pistol. (Id. ¶ 5.) Ms. Green told the Scott's staff that Plaintiff was carrying a gun, and then quickly left the store to return to the nursery. (Id. ¶¶ 10, 13.) At the nursery, she alerted her family members to what she had witnessed, and her mother, Glenda Miller, called 911. (Id. ¶ 14.) Ms. Green continued to watch Plaintiff from the nursery, and saw him enter and leave Scott's four or five times. (Id. ¶ 15.) Ms. Green states that even though she was unsure of what Plaintiff intended to do, "his behavior was so erratic that [she] feared for [her] personal safety." (Id. ¶ 17.) When the police arrived on the scene, Ms. Green relayed the above information to an officer. (Id. ¶ 18.)

After Ms. Miller called 911, Paulding County Dispatch notified Defendant Brown that a person had called 911

complaining that a white Trans-Am had driven up on the curb in front of Scott's, that the driver was a white male with tattoos, and was possibly armed with an unknown type of weapon. (DSMF ¶ 2; PRSMF ¶2; PSMF ¶2; DSMF ¶2.)[4] [5]

---

[4]Plaintiff objected to DSMF ¶ 2 for several reasons. First, he objected that DSMF ¶ 2 was supported by an unauthenticated recording that contained inadmissible hearsay. This objection is not valid for several reasons. First, while Defendants did not provide an affidavit attesting to the authenticity of the document, the Court concludes that the recording could easily be reduced to admissible form at trial, and therefore can be considered. Second, Plaintiff's hearsay objection is not valid, because, as Defendants point out, the recording is not being submitted to prove the underlying facts (which are essentially admitted by Plaintiff), but instead to illustrate the information possessed by Defendants when they decided to arrest Plaintiff.

In addition to objecting to DSMF ¶ 2,Plaintiff also denies DSMF ¶ 2. The Court notes that this denial also is flawed for several reasons. First, PSMF ¶ 2 essentially contains the same allegations as DSMF ¶ 2–that Defendant Brown was notified by dispatch that a person was armed at Scott's. Second, Plaintiff denies this fact by referencing Defendant Brown's statement during his deposition that he could not remember what he had heard about the situation at Scott's, or whether he had spoken with any witnesses on the scene prior to arriving. While the Court will not weigh credibility issues, Plaintiff can not create a dispute of fact by

Defendant Brown called Ms. Miller, confirmed the details of her 911 call, and determined that Plaintiff was carrying a handgun. (DSMF ¶ 3; PDSMF ¶3 (denying DSMF ¶ 3

---

merely asserting that the clear audio of the recording is incorrect. Defendant Brown testified that he could not remember all of the details regarding what he knew before he arrived at Scott's. The audio recording makes it clear that Defendant Brown was informed that Plaintiff was parked on the curb, was carrying a weapon, and was going in and out of the store. The audio recording also makes it clear that Defendant Brown did indeed speak to Ms. Miller, and that she herself told him this information before he arrived at Scott's.

[5]In addition to Ms. Miller, at least three other people called Paulding County 911 to report concerns with Plaintiff's behavior. (DSMF ¶ 5; PRDSMF ¶ 5.) The Court notes that it is considering this evidence over Plaintiff's objection that the evidence underlying DSMF ¶ 5 is unauthenticated and contains inadmissible hearsay. The Court concludes that the CAD sheet listing the 911 calls could easily be authenticated at trial by a Paulding County document custodian, and that Plaintiff's hearsay objection is misplaced because Defendants have not proffered the calls to prove Plaintiff's behavior, but instead to show the effect that Plaintiff's behavior had on others. Because the evidence can be made admissible at trial, the Court can consider the evidence.

because Defendant Brown could not remember speaking to Ms. Miller, see supra n.4).)

A police officer who happened to be close to Scott's–Johnny Shirley, the Hiram City Chief of Police–heard the dispatch related to Plaintiff, and decided to respond to Scott's to observe the situation. (Aff. of Johnny Shirley ¶ 7.) Mr. Shirley pulled into the parking lot at Scott's, observed Plaintiff's Trans-Am parked close to the front door of the store, and observed Plaintiff enter and exit the store on several occasions. (Id. ¶ 11.) Mr. Shirley observed Plaintiff get into his car and begin to leave the Scott's parking lot. (Id. ¶ 12.)

Before Plaintiff could exit the parking lot, Defendant Brown arrived on the scene and pulled in behind Plaintiff's

car with his siren and lights activated. (PSMF ¶ 4; DRPSMF ¶ 4.) Plaintiff stopped his car when Defendant Brown pulled in behind him. (Woodard Dep. at 75.) Defendant Brown exited his car, and ordered Plaintiff to place his hands outside the window. (PSMF ¶ 7; DRPSMF ¶ 7.) Officer Shirley, who was still on the scene, provided cover for Defendant Brown. (Shirley Aff. ¶ 15.) Plaintiff complied with Defendant Brown's order. (PSMF ¶ 7; DRPSMF ¶ 7.) Defendant Brown then asked Plaintiff where the gun was. (PSMF ¶ 8; DRPSMF ¶ 8.) Plaintiff replied that the gun was on his back or hip and leaned forward to reveal the weapon. (PSMF ¶ 8; DRPSMF ¶ 8.) Defendant Brown reached into the window of Plaintiff's car and retrieved the loaded .45 mm handgun from Plaintiff's back. (PSMF ¶ 10; DRPSMF ¶ 10.)

Defendant Brown asked for Plaintiff's identification, and Plaintiff provided his driver's license and his valid Georgia Firearms License. (PSMF ¶ 11, DRPSMF ¶ 11.)

At this point, Defendant Payne arrived on the scene, approached the passenger window of Plaintiff's car, and asked Plaintiff whether he had any other weapons. (PSMF ¶ 12; DRPSMF ¶ 12; Woodard Dep. at 76.) Plaintiff told Defendant Payne that there was a Browning .9 mm in a grey case on the front seat. (PSMF ¶ 12; DRPSMF ¶ 12; Woodard Dep. at 76.) Defendant Payne then seized the weapon and secured it. (PSMF ¶ 12; DRPSMF ¶ 12.) Plaintiff then was asked to step out of the car and to wait by the back of the vehicle. (Woodard Dep. at 76.)

While Defendant Brown spoke with Plaintiff, Defendant Payne and the other officers on the scene spoke with several of the witnesses and complainants. (PSMF ¶ 14, DRPSMF ¶ 14; Dep. of Tyler Durham Brown, Jan. 22, 2009, at 16.) Defendant Payne and the other officers collected multiple witness statements, and then relayed that information to Defendant Brown. (PSMF ¶ 17; DRPSMF ¶ 17 (disputing fact that Brown did not speak to witnesses directly); Brown Dep. at 31.)[6] According to affidavits provided to Defendants' counsel, several of the witnesses

[6]The content of the witness statements, which are not introduced to prove the truth of the matter asserted, are not hearsay and can be considered for the effect that they had on Defendants' decision to arrest Plaintiff. The statements describe Plaintiff as carrying a gun in plain view to others, parking close to the front door of Scott's, going in and out of the store multiple times, and adjusting the weapon as he got in and out of the car. (Witness Statements, attached as Ex. B to Defs.' Mot. Summ. J.)

feared for their personal safety because of Plaintiff's behavior, and relayed that information to the officers on the scene. (Green Aff. ¶¶ 17, 18; Aff. of Vera Tenney ¶¶ 11, 12; see also DSMF ¶ 9; PRDSMF ¶ 9.) Defendant Brown and the other officers discussed the witness statements, and looked at the relevant code sections. (Brown Dep. at 31.) Defendant Brown then made the decision to arrest Plaintiff for Disorderly Conduct and for Carrying a Concealed Weapon. (Id.)

Plaintiff was placed into custody and transported to the Paulding County Jail. (DSMF ¶ 28; PRDSMF ¶ 28.) Both firearms were retained in an evidence locker, and Defendants had no contact with the weapons once they were turned over at the Jail. (DSMF ¶ 29; PRDSMF ¶ 29;

DSMF ¶ 30; PRDSMF ¶ 30.) After Plaintiff was released from jail, he and his wife attempted to pick up the .9 mm handgun, and were told that the firearm was being retained as evidence. (PSMF ¶ 33; DRPSMF ¶ 33 (not denying PSMF ¶ 33 but stating, that fact was not material).)

After transporting Plaintiff to the Paulding County Jail, Defendant Brown signed two arrest warrant applications against Plaintiff. (PSMF ¶ 18; DRPSMF ¶ 18; PSMF ¶ 19; DRPSMF ¶ 19.) In the application for a warrant for Plaintiff's arrest for disorderly conduct, Defendant Brown stated that Plaintiff "did commit offense of disorderly conduct when his actions placed others in fear of receiving injury." (PSMF ¶ 18; DRPSMF ¶ 18.) In the application for a warrant for Plaintiff's arrest for

carrying a concealed weapon, Defendant Brown stated that Plaintiff "did commit the offense of carrying a concealed weapon by concealing a pistol in his waist band not in any type of holster or retention device." (PSMF ¶ 19; DRPSMF ¶ 19.)

3. Plaintiff's Prosecution and Dismissal

Plaintiff was never indicted for, or charged in an information with, disorderly conduct or carrying a concealed weapon. (PSMF ¶ 22; DRPSMF ¶ 22;[7] Notice of Dismissal

[7]For some inexplicable reason, Defendants denied PSMF ¶ 22, stating that the Plaintiff entered into a plea agreement and pre-trial diversion. While that very well may be true, it says nothing about whether the warrants were dismissed prior to an indictment or information. It is clear from the Dismissal of Warrant document that Defendants attached to **their own** Motion for Summary Judgment that Plaintiff was not indicted or formally accused, and the Court is at a loss to explain why Defendants would deny this fact. Regardless, the Court deems this fact to be true based on Defendants' own exhibits.

of Warrant, Attached as Ex. B, Defs.' Mot. Summ. J. (stating that warrant was dismissed prior to "being accused or presented to the grand jury").) Plaintiff's attorney negotiated an agreement whereby, in exchange for a full dismissal of both warrants, Plaintiff agreed to attend a gun safety course and to perform ten hours of community service.[8] On October 27, 2008, the Paulding County District Attorney

[8]Defendants contend that in addition to the community service and the gun safety course, Plaintiff also was required to serve six months' probation--a fact that Plaintiff vehemently denies. For the purpose of these Motions, however, whether Plaintiff served probation, in addition to the other requirements of the agreement, is not a material dispute. Under the Court's analysis infra Part III.A., even if Plaintiff was required to serve probation, the Court would still conclude that Plaintiff had not waived his rights to sue under § 1983 by entering into the pre-trial agreement. Because the dispute over whether Plaintiff was required to serve probation does not affect the Court's analysis, it is not material.

dismissed the warrants against Plaintiff. (PSMF ¶ 23; DRPSMF ¶ 23.)

B. Procedural Background

On May 19, 2009, Plaintiff filed Plaintiff's Motion for Summary Judgment. (Docket Entry No. 15.) On June 3, 2009, Defendants filed Defendants' Motion for Summary Judgment. (Docket Entry No. 18.) On June 11, 2009, Defendants filed Defendants' response to Plaintiff's Motion for Summary Judgment. (Docket Entry No. 21.) On June 25, 2009, Plaintiff filed Plaintiff's response to Defendants' Motion for Summary Judgment and Plaintiff's reply in support of his summary judgment motion. (Docket Entry Nos. 24-25.) On July 13, 2009, Defendants filed

Defendants' reply in support of their summary judgment motion. (Docket Entry No. 30.)

The briefing schedule for these Motions is now complete, and the Court concludes that the issues are ripe for resolution.

II. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) authorizes summary judgment when "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the initial burden of showing the Court that summary judgment is appropriate, and may satisfy this burden by pointing to materials in the record. Reese v. Herbert, 527 F.3d 1253, 1269 (11th Cir.

2008) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)); Allen v. Bd. of Public Educ. for Bibb County, 495 F.3d 1306, 1313 (11th Cir. 2007). Once the moving party has supported its motion adequately, the non-movant has the burden of showing summary judgment is improper by coming forward with specific facts that demonstrate the existence of a genuine issue for trial. Allen, 495 F.3d at 1314.

When evaluating a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Optimum Techs., Inc., 496 F.3d at 1241. The Court also must "'resolve all reasonable doubts about the facts in favor of the non-movant.'" Rioux v. City of Atlanta, Ga., 520 F.3d

1269, 1274 (11th Cir. 2008) (quoting United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am., 894 F.2d 1555, 1558 (11th Cir. 1990)). Further, the Court may not make credibility determinations, weigh conflicting evidence to resolve disputed factual issues, or assess the quality of the evidence presented. Reese, 527 F.3d at 1271; Skop v. City of Atlanta, Ga., 485 F.3d 1130, 1140 (11th Cir. 2007). Finally, the Court does not make factual determinations. In re Celotex Corp., 487 F.3d at 1328.

The standard for a motion for summary judgment differs depending on whether the party moving for summary judgment also bears the burden of proof on the relevant issue. As the United States Court of Appeals for the Sixth Circuit has noted:

> "When the moving party does not have the burden of proof on the issue, he need show only that the opponent cannot sustain his burden at trial. But where the moving party has the burden–the plaintiff on a claim for relief or the defendant on an affirmative defense–his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party."

Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986) (quoting William W. Schwarzer, Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465, 487-88 (1984)). "Where the movant also bears the burden of proof on the claims at trial, it 'must do more than put the issue into genuine doubt; indeed, [it] must remove genuine doubt from the issue altogether.'" Franklin v. Montgomery County, Md., No. DKC 2005-0489, 2006 WL 2632298, at *5 (D. Md. Sept. 13,

2006) (quoting Hoover Color Corp. v. Bayer Corp., 199 F.3d 160, 164 (4th Cir. 1999)) (alteration in original).

III. Defendants' Motion for Summary Judgment

Defendants contend they are entitled to summary judgment for the following reasons: (1) Plaintiff waived any § 1983 claims by participating in the pretrial diversion program; (2) Plaintiff's arrest and the seizure of his weapons were supported by probable cause;(3) Defendants are entitled to qualified immunity; and (4) Plaintiff's claim related to the seizure of his firearms is barred because the state provides an adequate postdeprivation remedy for allegedly illegal seizures of property. The Court will discuss each of Defendant's arguments in turn.

A. Waiver

Defendants contend that Plaintiff's cause of action is akin to a case for malicious prosecution, and that, in order to proceed on a malicious prosecution claim, Plaintiff must show that his criminal case terminated in his favor. Defendants contend that Plaintiff's entry into a pretrial diversion program is not a termination in Plaintiff's favor, and that Plaintiff therefore waived any § 1983 action based on his arrest. For the following reasons, the Court rejects Defendants' waiver argument.

First, even though the United States Court of Appeals for the Eleventh Circuit has accepted the viability of malicious prosecution as a cause of action under § 1983,[9]

[9]See Uboh v. Reno, 141 F.3d 1000 (11th Cir. 1998).

Plaintiff's claims are not for malicious prosecution. As noted above, Plaintiff was arrested without an arrest warrant, and before an indictment or criminal information had been filed. As the Eleventh Circuit noted in Whiting v. Traylor, 85 F.3d 581, 584 (11th Cir. 1996):

> An arrest following the issuance of an information is an arrest as part of a prosecution. See Erp v. Carroll, 438 So.2d 31, 40 (Fla. App. 1983) (observing that "criminal prosecutions are commenced with the filing of an information . . . or at least an arrest pursuant to a[n] ... arrest warrant"). Where an arrest is made after the filing of an information and the arrest is the basis of a Fourth Amendment section 1983 claim, we think the tort of malicious prosecution is the most analogous tort to the section 1983 claim. . . In contrast, where an arrest is made before the commencement of a criminal proceeding, the most analogous tort might be that of "false arrest." At common law, false arrest actions accrue before the termination of the proceeding. Also, false arrest actions provide recovery for injuries suffered between the time of the arrest and the issuance of

> legal process. See Heck v. Humphrey, 512 U.S. 477, 484 (1994).

Id. at 1585 n.7-8. Because Plaintiff was arrested without a warrant, his claim is more closely akin to a case for false arrest than to a malicious prosecution claim.

Second, even if Plaintiff's claim can be interpreted as one for malicious prosecution, the Eleventh Circuit has specifically held that a termination of a criminal case that results from a pretrial diversion agreement does not necessarily bar future § 1983 claims related to that case. McClish v. Nugent, 483 F.3d 1231, 1250-1252 (11th Cir. 2007). In McClish, the plaintiff sued under § 1983, alleging false arrest and malicious prosecution. The district court dismissed the plaintiff's claim based on the plaintiff's participation in a pretrial diversion program that had resulted

in the state dropping the criminal charges against him. Id. at 1250. The Eleventh Circuit reversed the district court, holding that the plaintiff's entry into a pretrial diversion program did not bar his subsequent § 1983 claims because the plaintiff had never been convicted of any crime. Id. at 1254. The court reasoned that, unlike a case where a plaintiff pleads guilty, and then alleges false arrest, a determination by the court that the plaintiff was falsely arrested would not undermine the criminal conviction because there was no conviction to undermine. Id.

The facts of this case perfectly illustrate the holding in McClish. Plaintiff's counsel spoke with the District Attorney's office after the warrants were issued, but before the county sought an indictment or information against

Plaintiff. Someone in the District Attorney's office told Plaintiff's counsel that, if Plaintiff agreed to attend a gun safety course and performed ten hours of community service, the charges against him would be dropped.[10] After Plaintiff completed those requirements by attending a gun safety course offered by his attorney and by working at a farmer's market and gun show, the District Attorney dismissed the warrants without ever having sought an information or indictment against Plaintiff.

The Court concludes that Plaintiff never appeared before a judge, never signed or verbally agreed to waive his rights, and never acknowledged in writing or verbally

[10]As discussed supra note 8, Defendants also contend that Plaintiff was required to serve six months probation. The Court notes that even if Plaintiff was required to serve probation, the Court's analysis of this issue would not change.

accepted his guilt for the charges against him. The case against Plaintiff was dismissed very early in the proceedings and before the District Attorney's office sought an indictment or to file an information.[11] Under those circumstances, the Court concludes that a decision regarding probable cause to arrest Plaintiff would not undermine the state criminal proceedings against him because Plaintiff was never convicted of, and never pleaded guilty to, any crime. McClish, 483 F.3d at 1250-1252. Under those circumstances, the Court cannot determine that Plaintiff has

---

[11] The Court notes that the case against Plaintiff was dismissed at such an early stage that jeopardy has not attached against Plaintiff, and the Paulding County District Attorney therefore could still seek to reinstate the criminal charges against him. See United States v. Nyhuis, 8 F.3d 731, 735 n.2 (11th Cir. 1993) (noting that jeopardy does not attach to a dismissed charge).

waived his § 1983 claim, and cannot dismiss this case. The Court therefore rejects Defendants' first argument.

B. Probable Cause

Defendants next argue that they are entitled to summary judgment because Plaintiff's arrest, and the seizure of his weapons, were based on probable cause.[12] Plaintiff was arrested for carrying a concealed weapon and for disorderly conduct. The Court will consider whether probable cause was present for each charge in turn.

---

[12]The Court notes that Defendants do not make any arguments regarding whether Defendants had the requisite reasonable articulable suspicion to stop Plaintiff's car, but instead focused their arguments on whether probable cause existed for Plaintiff's arrest. Plaintiff's Complaint, however, seeks damages for the initial stop, the arrest, and the seizure of his weapons. Plaintiff argues in his Motion for Summary Judgment that his initial stop was not supported by reasonable articulable suspicion. The Court therefore considers the legality of Plaintiff's stop in connection with its discussion of Plaintiff's Motion for Summary Judgment.

1. Probable Cause Generally

"Under the Fourth Amendment, an individual has a right to be free from 'unreasonable searches and seizures.'" Skop v. City of Atlanta, Inc., 485 F.3d 1130, 1137 (11th Cir. 2007). "In Fourth Amendment terminology, an arrest is a seizure of the person. . . and the reasonableness of an arrest is, in turn, determined by the presence or absence of probable cause for the arrest." Id. (quotation marks and citation omitted). "Probable cause to arrest exists when an arrest is objectively reasonable based on the totality of the circumstances." Kingsland v. City of Miami, 382 F.3d 1220, 1226 (11th Cir. 2004) (quotation marks and citation omitted). "This standard is met when the facts and circumstances within the officer's knowledge, of which he or

she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Id. "Th[e] probable cause standard is practical and non-technical, applied in a specific factual context and evaluated using the totality of the circumstances." Skop, 485 F. 3d at 1137.

In cases seeking damages for false arrest, the officer need not show that probable cause was present for each offense, but instead simply must demonstrate that probable cause existed to arrest the person for at least one offense. Skop, 485 F.3d 1138 ("If [o]fficer. . .possessed probable cause or arguable probable cause to arrest [defendant] for either [charge], he is entitled to qualified immunity.");

Stachel v. City of Cape Canaveral, 51 F. Supp. 2d 1326, 1331 (M.D. Fla. 1999) ("The claim for false arrest does not cast its primary focus on the validity of each individual charge; instead we focus on the validity of the arrest. If there is probable cause for any of the charges made. . . then the arrest was supported by probable cause, and the claim for false arrest fails.") (quoting Wells v. Bonner, 45 F.3d 90, 95 (5th Cir. 1995)).

2. Carrying a Concealed Weapon

a. Applicable Law

Under Georgia law, a person commits the offense of carrying a concealed weapon when:

> such person knowingly has or carries about his or her person, unless in an open manner and fully exposed to view, any bludgeon, knuckles, whether

> made from metal, thermoplastic, wood, or other similar material, firearm, knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character outside of his or her home or place of business, except as permitted under this Code section.

O.C.G.A. § 16-11-126(a). Despite the seemingly clear language of the statute requiring that a weapon be "fully exposed to view," Georgia courts have consistently held that when a person carries a handgun in such a way that it only is partially exposed, yet is still recognizable as a weapon, that person is not guilty of carrying a concealed weapon. For example, in Stockdale v. State, 32 Ga. 225 (1861), the Supreme Court of Georgia held that the legislature's ban on the carrying of concealed weapons only required that "persons who carried those weapons . . . so wear them

about their persons, that others, who might come in contact with them, might see that they were armed . . . ." Id. (reversing conviction and ordering that court give jury charge stating that defendant was not guilty if defendant carried gun in a way that would allow other persons to "see and know that it was a pistol"). Similarly, in Goss v. State, 165 Ga. App. 448 (1983), the Georgia Court of Appeals stated: "Does the carrying of a pistol in a pants pocket with the handle exposed such that all witnesses recognize it as a pistol constitute carrying a concealed weapon under [Georgia law]? We think not." Id. at 450 (reversing conviction where "evidence in the case at bar show[ed] that the witness and the arresting officer both clearly saw the handle of the pistol and immediately recognized it as a

pistol"); accord Ross v. State, 255 Ga. App. 462, 463, 566 S.E.2d 47, 49 (2002) ("'[L]aw forbidding the carrying of concealed weapons was designed to put those dealing with such persons on notice so that they could govern themselves accordingly.'") (quoting Moody v. State, 184 Ga. App. 768, 769 (1987)); McCroy v. State, 155 Ga. App. 777, 272 S.E. 2d 747 (1980) (holding that person could not be guilty of carrying concealed weapon when "there is no indication that the arresting law enforcement officer or anyone else failed to immediately recognize upon approaching defendant that he carried a pistol . . . .").

Additionally, Georgia courts draw a distinction between partially exposed firearms that are carried on the person and those being transported in an automobile. Unlike

handguns carried on the person, when a gun is only partially exposed in an automobile, the driver is guilty of carrying a concealed weapon. See Summerlin v. State, 295 Ga. App. 748, 673 S.E.2d 118 (2009) (upholding conviction for carrying concealed weapon where gun was partially exposed between seats of automobile);Ross, 255 Ga. App. at 463, 566 S.E.2d at 49 (same); Moody, 184 Ga. App. at 769, 362 S.E.2d at 499 (same).

b. Analysis

For the following reasons, the Court concludes that Defendants lacked probable cause to arrest Plaintiff for carrying a concealed weapon. It is undisputed that it was apparent to everyone at the scene that Plaintiff was carrying a handgun in the small of his back. Witnesses stated that

they saw Plaintiff adjusting the gun as he walked in an out of Scott's. Additionally, Defendant Brown stated in his deposition that he had no knowledge that any of the witnesses failed to see Plaintiff's handgun. (Brown Dep. at 26.)

Defendant Brown stated that he arrested Plaintiff because he was openly carrying a handgun and was not using a holster or retention device. (PSMF ¶19; DRPSMF ¶ 19 (quoting arrest warrant affidavit which stated Plaintiff "did commit the offense of carrying a concealed weapon by concealing a pistol in his waist band not in any type of holster or retention device").) As noted above, a person is not guilty of carrying a concealed weapon under Georgia law if the weapon is exposed and immediately identifiable,

regardless of how the gun is being carried or whether the gun is in a holster. Defendant Brown thus was clearly mistaken about the law related to carrying a concealed firearm. This mistake of law, however, does not excuse the probable cause requirement, or provide probable cause for Plaintiff's arrest. See United States v. Chanthasouxat, 342 F.3d 1271, 1280 (11th Cir. 2003) ("[M]istake of law cannot provide the objective basis for reasonable suspicion or probable cause. . . .") It is obvious to the Court, and should have been obvious to Defendants, that Plaintiff's gun was carried openly and was easily identifiable to those around him. Plaintiff therefore did not violate the law against carrying a concealed weapon.

In sum, based on the facts of this case and the Georgia courts' unambiguous interpretation of the concealed carry statute, the Court has no choice except to conclude that Defendants lacked probable cause to arrest Plaintiff for carrying a concealed weapon.

3. Disorderly Conduct

a. Applicable Law

Under Georgia law, a person commits the offense of disorderly conduct when "such person. . . acts in a violent or tumultuous manner toward another person whereby such person is placed in reasonable fear of the safety of such person's life, limb, or health. . . ." O.C.G.A. § 16-11-39(a)(1). There is very little case law interpreting § 16-11-39(a)(1). The Court therefore must interpret the plain

language of the text in order to understand its meaning.[13] See Nguyen v. United States, 556 F. 3d 1244, 1250 (11th Cir. 2009). ("When interpreting a statute, we always begin with its plain language."). The Court therefore concludes that in order to have probable cause to arrest Plaintiff for disorderly conduct, the following elements must have been present at the time of his arrest: (1) Plaintiff acted in a violent or tumultuous manner; (2) toward another person;

---

[13]The Court notes that the words "violent" and "tumultuous" are not defined in the statute. The Court therefore will attempt to give those words their ordinary meanings. "Violent" is defined as "marked by extreme force or sudden intense activity," or "notably furious or vehement." See Merriam Webster Dictionary OnLine, available at http://www.merriam-webster.com/dictionary/violent. "Tumultuous" is defined as marked by having a "violent agitation of mind or feelings." Merriam Webster Dictionary OnLine, available at http://www.merriam-webster.com/dictionary/tumultuous; Merriam Webster Dictionary OnLine, available at http://www.merriam-webster.com/dictionary/tumult.

(3) in such a way as to place that person in a reasonable fear of their safety.

b. Analysis

Defendants argue that they had probable cause to arrest Plaintiff for disorderly conduct because his actions in and around Scott's caused people in the area to be placed in reasonable fear for their safety. Plaintiff contends that he did not act in a violent or tumultuous manner, and that his actions were not directed at any other person. Plaintiff also argues that even though other persons were put in fear because of Plaintiff's behavior, any such fear for their personal safety was not reasonable because Plaintiff was acting in accordance with the law.

Regarding the first element–a violent or tumultuous act– Defendants argue that Plaintiff committed several acts that, when combined, constitute violent and tumultuous behavior. The parties agree that: (1) Plaintiff parked his car near the entrance to Scott's; (2) that Plaintiff entered and exited the store several times; (3) that Plaintiff was carrying a gun tucked into his pants in the small of his back; (4) that Plaintiff was not wearing a shirt and therefore the gun was visible to other store patrons and people in the area; and (5) while entering and exiting the store, Plaintiff manipulated the gun on several occasions to ensure that it remained in place. Defendants argue that the behavior described above constitutes violent and tumultuous actions.

The Court agrees with Defendants that, when combined, the behavior described above constitutes tumultuous behavior under the statute. Taken individually, each of Plaintiff's actions would not be tumultuous behavior. Clearly, if Plaintiff had merely parked close to the door of Scott's and entered and exited several times, he would not have acted in a tumultuous manner. Likewise, if Plaintiff had merely entered the store while legally carrying a gun in the small of his back, he would not have acted in a tumultuous way. When taken together, however, Plaintiff's actions were tumultuous, i.e., he was acting in a state of violent agitation. Specifically, the fact that Plaintiff entered and exited the store several times in such a way that made him fear that he would potentially drop his firearm, causing

him to readjust his gun frequently, shows that Plaintiff was acting in a state of violent agitation. Indeed, Plaintiff himself stated that he was going in and out of Scott's to purchase lottery tickets, and that he had won several hundred dollars at the time. It also is clear to the Court that Plaintiff was not paying attention to the effect that his behavior was having on those around him. The Court concludes that Plaintiff's reckless and inconsiderate behavior constituted tumultuous action as required under the statute. The first element of disorderly conduct was therefore present in this case.

With regard to the second element–acting toward another person–Defendants argue that the fact that so many people complained about Plaintiff's behavior shows that he clearly was acting toward the people in and around

Scott's. Plaintiff contends that Defendants had no evidence that he acted "toward" any of the persons who complained that Plaintiff's behavior put them in fear.

The Court agrees with Plaintiff that Defendants have failed to produce any evidence that Plaintiff acted toward any of the persons who complained that they were placed in fear by Plaintiff's behavior. Plaintiff's counsel specifically asked Defendant Brown whether he had any information that Plaintiff directed any violent or tumultuous actions toward any particular person.

Plaintiff's Counsel:	Did you receive any information that Mr. Woodard made any violent actions towards anyone?
Def. Brown:	No.
Plaintiff's Counsel:	Did you receive any information that Mr. Woodard made any

	tumultuous actions toward any person?
Def. Brown:	Tumultuous form towards any single person, no.
Plaintiff's Counsel:	What about towards a group of people?
Def. Brown:	Directly toward a specific entity, I would say no.

(Brown Dep. at 22-23.) The affidavits and witness statements attached to Defendants' Motion for Summary Judgment also are bereft of any statements showing that Plaintiff specifically directed his tumultuous activities at the complaining witnesses. The Court therefore concludes that Defendants had no evidence that Plaintiff acted toward another person when they made the decision to arrest Plaintiff for disorderly conduct. The second element of disorderly conduct was therefore not present.

Finally, the third element of disorderly conduct–that persons were placed in reasonable fear of their safety–is clearly present under the circumstances of this case. Several of the witnesses called the police and were placed in fear because of Plaintiff's actions. Additionally, based on the Court's previous analysis of Plaintiff's behavior, it follows that a fearful reaction to Plaintiff's tumultuous behavior is reasonable under the circumstances. Plaintiff was acting erratically–moving in and out of the store while manipulating his handgun–and the persons witnessing his actions were placed in a reasonable fear for their safety. The Court therefore concludes that the third element of disorderly conduct was present in this case.

In sum, the Court concludes that the first and third elements of disorderly conduct were present, but that the second element was lacking because Defendants had no evidence that Plaintiff directed his actions at another person. Because Defendants lacked evidence that Plaintiff violated all of the elements of the disorderly conduct statute, Defendants lacked actual probable cause to arrest Plaintiff for that offense.

In sum, the Court concludes that Defendants lacked probable cause to arrest Plaintiff for carrying a concealed weapon and for disorderly conduct. Defendants' second argument in favor of their Motion for Summary Judgment therefore fails.

C. Qualified Immunity

Defendants' third argument in favor of summary judgment is that Defendants possessed arguable probable cause to arrest Plaintiff, and, therefore, are entitled to qualified immunity.[14] For the following reasons, the Court concludes that arguable probable cause existed to arrest Plaintiff for disorderly conduct, and that Defendants therefore are entitled to qualified immunity.

---

[14] In response, Plaintiff argues that qualified immunity will not bar his claims for declaratory and injunctive relief. Defendants did not address any issues related to declaratory and injunctive relief in their initial Motion for Summary Judgment, and only addressed those issues in their reply brief. Arguments raised for the first time in a reply brief are waived. Wright v. United States, 139 F.3d 551, 553 (7th Cir. 1994); International Telecomm. Exch. Corp. v. MCI Telecomms. Corp., 892 F. Supp. 1520, 1531 (N.D. Ga. 1995). Additionally, Plaintiff did not address any of the issues related to declaratory or injunctive relief in his initial Motion for Summary Judgment. The Court therefore concludes that the issue of declaratory and injunctive relief is not properly before the Court at this time. The Court can address this issue at a later date.

1. Applicable Law

"Qualified immunity shields a § 1983 defendant from liability for harms arising from discretionary acts, so long as these acts do not violate clearly established federal statutory or constitutional rights of which a reasonable person would have known." Jones v. Cannon, 174 F.3d 1271, 1282 (11th Cir. 1999). "'Thus, a police officer is entitled to qualified immunity if a reasonable police officer could have believed his or her actions were lawful in light of clearly established law and the information possessed by the officer at the time the conduct occurred.'" Scarborough v. Myles, 245 F.3d 1299, 1302 (11th Cir. 2001) (quoting Jackson v. Sauls, 206 F.3d 1156, 1165 (11th Cir. 2000)). Once a defendant asserts that he or she was acting in a

discretionary function, the burden then shifts to the plaintiff to show that qualified immunity should not apply. Estate of Garcyznski v. Bradshaw, --- F.3d ----, 2009 WL 1929191 (11th Cir. July 7, 2009) (per curiam).

In cases alleging a false arrest, "[a]n arrest without probable cause is unconstitutional, but officers who make such an arrest are entitled to qualified immunity if there was arguable probable cause for the arrest." Jones, 174 F.3dat 1282. "[W]here reasonable officers in the same circumstances and possessing the same knowledge as the [d]efendants could have believed that probable case existed to arrest the plaintiff," arguable probable cause is present and the officers are entitled to qualified immunity. Scarborough, 245 F.3d at 1302 (quotation marks omitted).

The arguable probable cause standard "recognizes that law enforcement officers may make reasonable but mistaken judgments regarding probable cause but does not shield officers who unreasonably conclude that probable cause exists." Skop, 485 F.3d at 1137.

In evaluating whether arguable probable cause existed the Court "appl[ies] an objective standard, asking whether the officer's actions are objectively reasonable. . . regardless of the officer's underlying intent or motivation." Lee v. Ferraro, 284 F.3d 1188, 1195 (11th Cir. 2002) (quotation omitted). Finally, "[a]rguable probable cause does not require an arresting officer to prove every element of a crime or to obtain a confession before making an arrest, which would negate the concept of probable cause

and transform arresting officers into prosecutors." Scarbrough, 245 F.3d at 1302-03.

2. Analysis

For the following reasons, the Court concludes that arguable probable cause to arrest Plaintiff for carrying a concealed weapon did not exist, but that arguable probable cause existed to arrest Plaintiff for disorderly conduct.

First, the Court concludes that arguable probable cause did not exist to arrest Plaintiff for carrying a concealed weapon. As discussed above, it appears that Defendants based their decision to arrest Plaintiff for carrying a concealed weapon on a misunderstanding of O.C.G.A. § 16-11-126(a). Defendants knew that Plaintiff was carrying the gun in plain sight, but mistakenly thought

that Plaintiff was required to use a holster. As also noted above, a mistake of law can not provide arguable probable cause. See Chanthasouxat, 342 F.3d at 1280 ("[M]istake of law cannot provide the objective basis for reasonable suspicion or probable cause. . . ."). The Court concludes that a reasonable officer with an adequate understanding of the law would not have concluded that Plaintiff had violated O.C.G.A. § 16-11-126 (a). Under those circumstances, Defendants did not have arguable probable cause to arrest Plaintiff for carrying a concealed weapon.

Second, as noted above, two of the three required elements necessary for disorderly conduct were present in this case, and the Court's decision that the second element

was not present was a close call with the benefit of hindsight and a detailed legal analysis. When Defendants arrested Plaintiff, they were confronted with a group of people who were placed in reasonable fear based on Plaintiff's actions. The sheer number of complaining witnesses shows that Plaintiff's actions had a serious effect on those around him. Under the circumstances of this case, and based on the severe reaction provoked by Plaintiff's behavior, a reasonable officer could have concluded that Plaintiff directed his actions at those people who were placed in fear by Plaintiff's actions. Because a reasonable officer could have concluded that probable cause existed to arrest Plaintiff for disorderly conduct, Defendants had arguable probable cause as to that charge.

As discussed above, Defendants had arguable probable cause to arrest Plaintiff for at least one of the charges against him. Defendants therefore are entitled to qualified immunity. The Court consequently grants Defendants' Motion for Summary Judgment related to Plaintiff's claims for monetary relief, and dismisses those claims.

D. Seizure of Plaintiff's Firearms

Plaintiff appears to seek damages for the seizure of his firearms, and for Defendants' retention of those firearms. Defendants argue that Plaintiff cannot assert § 1983 claims for property seizure. For the following reasons, the Court grants Defendants' Motion with regard to Plaintiff's illegal property seizure claims.

Eleventh Circuit law is clear that, where adequate state law remedies exist for wrongful taking of personal property, a plaintiff can not assert claims under § 1983 for the wrongful taking of personal property. As the Eleventh Circuit has noted, "[e]ven assuming the continued retention of plaintiffs' personal property is wrongful, no procedural due process violation has occurred if a meaningful post-deprivation remedy for the loss is available." Lindsey v. Storey, 936 F.2d 554, 561 (11th Cir. 1994) (internal quotation marks omitted). The Eleventh Circuit explained in Lindsey:

> The state of Georgia has created a civil cause of action for the wrongful conversion of personal property. See O.C.G.A. § 51-10-1 (1982). "This statutory provision covers the unauthorized seizure of personal property by police officers. Therefore, the state has provided an adequate

> postdeprivation remedy when a plaintiff claims that the state has retained his property without due process of law." Byrd v. Stewart, 811 F.2d 554, 555 n. 1 (11th Cir.1987) (citing Norred v. Dispain, 119 Ga. App. 29, 166 S.E. 2d 38 (1969) (trover action may be brought against police chief for seizure and retention of automobile)).

Id.

As previously discussed, Georgia law provides an adequate postdeprivation remedy for the wrongful retention of property–a civil action for the tort of conversion. Plaintiff therefore can not raise claims for the allegedly wrongful seizure and retention of his firearms under § 1983. The Court therefore grants Defendants' Motion for Summary Judgment as to those claims.

E. Conclusion

In sum, the Court finds that Defendants are entitled to qualified immunity for any claims for monetary damages related to Plaintiff's arrest. The Court also concludes that Plaintiff's § 1983 claims related to the allegedly wrongful seizure and retention of his firearms are barred by adequate state remedies. The Court, however, cannot address Plaintiff's claims for equitable relief at this time. Consequently, the Court grants in part and denies in part Defendants' Motion for Summary Judgment.

IV. Plaintiff's Motion For Summary Judgment

Plaintiff argues that he is entitled to summary judgment on the issue of Defendants' liability because: (1) Defendants lacked reasonable suspicion to stop his car;

and (2) Defendants lacked probable cause to arrest Plaintiff and seize his property. The Court addresses those arguments in turn.

A. Reasonable Suspicion to Stop Plaintiff

1. Applicable Law

The standard for performing an investigative stop is somewhat lower than probable cause. "A traffic stop. . . is constitutional if it is . . . justified by reasonable suspicion in accordance with [Terry v. Ohio, 392 U.S. 1 (1968)]." United States v. Harris, 526 F.3d 1334, 1337 (11th Cir. 2008). A brief investigatory stop is proper under the constitution if the officer, "'[has] a reasonable, articulable suspicion based on objective facts that an individual is engaged in criminal activity.'" Id. (quoting United States v. Powell, 222 F.3d

913, 917 (11th Cir. 2000)). "A determination of reasonable suspicion is based on the totality of the circumstances, and '[i]t does not require officers to catch the suspect in a crime. Instead, [a] reasonable suspicion may be formed by observing exclusively legal activity.'" Id. (quoting United States v. Acosta, 363 F.3d 1141, 1145 (11th Cir. 2004)) (alteration in original). Whether the officer involved "'actually and subjectively has the pertinent reasonable suspicion,'" is not the relevant inquiry; but instead, the Court asks whether "'given the circumstances, reasonable suspicion objectively existed to justify,'" the stop. United States v. Nunez, 455 F.3d 1223, 1226 (11th Cir. 2006) (quoting Hicks v. Moore, 422 F.3d 1246, 1252 (11th Cir. 2005)).

2. Analysis

Under the circumstances of this case, the Court determines that Defendants had reasonable articulable suspicion to stop Plaintiff's car to investigate possible disorderly conduct. A Georgia Court of Appeals case applying the reasonable articulable suspicion test to a stop related to disorderly conduct, State v. Melanson, 291 Ga. App. 853, 663 S.E. 2d 280 (2008), is illustrative. In Melanson, an officer received a call from dispatch that occupants of a specific car were causing a disturbance at a restaurant drive-through window. 291 Ga. App. at 853-854, 663 S.E. 2d at 281-82. The officer arrived on the scene, spoke with the employee who called 911, and was told that a car leaving the parking lot was the one involved

in the incident. 291 Ga. App. at 854, 663 S.E. 2d at 282. The officer stopped the car, and the driver was arrested for driving under the influence. 291 Ga. App. at 854, 663 S.E. 2d at 282. The Georgia Court of Appeals upheld the stop, stating that, because the officer had received specific information from dispatch that the occupants of the car had caused a disturbance that frightened an employee enough to call 911, and because the officer had confirmed the information with the witness, reasonable articulable suspicion existed to justify the stop. 291 Ga. App. at 854-855, 663 S.E. 2d at 282.

In this case, Defendant Brown received a call from dispatch that a shirtless white male had parked his white Trans-Am on the curb at Scott's, that the white male was

going in and out of the store while carrying a gun, and that the white male was grabbing the gun and moving it around as he got in and out of the car. Plaintiff's behavior was disturbing enough to cause at least one person to call 911 before Defendant Brown stopped Plaintiff's car, and Defendant Brown spoke with the caller and confirmed the details of the call before he arrived at Scott's. Officer Shirley, who was on the scene in an unmarked car and in communication with the dispatcher,observed Plaintiff going in and out of the store, and informed Defendant Brown that Plaintiff had started to pull out of the parking lot. Immediately afterward, Defendant Brown pulled into the Scott's parking lot, where he saw Plaintiff's white Trans-Am

about to exit the lot. At that point, Defendant Brown stopped Plaintiff's car.

Like the officer in Melanson, Defendant Brown received a dispatch about a disturbance that was causing at least one person to be afraid for her safety, and he spoke to the complaining witness and verified the information. Also like the officer in Melanson, as Defendant Brown arrived at the scene, he saw the car that was described as containing the person who caused the disturbance about to leave the scene. The Court concludes that under the facts of this case, Defendant Brown, like the officer in Melanson, had a reasonable articulable suspicion to justify conducting a brief investigative stop of Plaintiff's car.

Based on the foregoing analysis, the Court concludes that Defendants possessed reasonable articulable suspicion to stop Plaintiff's car. The Court therefore denies the portion of Plaintiff's Motion for Summary Judgment related to the stop of Plaintiff's car

B. Probable Cause

1. Arrest

The Court has already concluded that Defendants lacked actual probable cause to arrest Plaintiff. See supra Part III.B. However, based on the Court's conclusion in Part III.C. that Defendants are entitled to qualified immunity because they had arguable probable cause to arrest Plaintiff for disorderly conduct, the Court must deny Plaintiff's Motion for Summary Judgment as to any claims

for monetary damages. Because Plaintiff did not raise any arguments related to the equitable relief sought in Plaintiff's Complaint in his initial Motion, the Court will not address those issues in this Order.

2. Seizure of Property

The Court concluded supra Part III.D. that Plaintiff's § 1983 claims related to the seizure of his firearms are barred. The Court therefore denies this portion of Plaintiff's Motion for Summary Judgment.

V. Conclusion

ACCORDINGLY, Defendants' Motion for Summary Judgment is **DENIED IN PART AND GRANTED IN PART**. Defendants' Motion for Summary Judgment related to Plaintiff's equitable claims is **DENIED WITHOUT**

PREJUDICE. Defendants' Motion for Summary Judgment related to Plaintiff's claims for monetary damages is **GRANTED**. Plaintiff's Motion for Summary Judgment is **DENIED WITH PREJUDICE IN PART AND DENIED WITHOUT PREJUDICE IN PART**. Plaintiff's Motion for Summary Judgment on the issue of liability for monetary damages is **DENIED WITH PREJUDICE**. Plaintiff's Motion for Summary Judgment related to equitable relief is **DENIED WITHOUT PREJUDICE**. Defendants and Plaintiff may file Second Motions for Summary Judgment on the issue of equitable relief within twenty (20) days. This case remains pending.

IT IS SO ORDERED, this the 22nd day of July, 2009.

UNITED STATES DISTRICT JUDGE