

IN THE SUPERIOR COURT OF COWETA COUNTY
STATE OF GEORGIA

CRAIG MOORE,)
)
Plaintiff,)
)
v.) Civil Action
) File No. 06-V-589
MARY T. CRANFORD, Judge of the)
Coweta County Probate Court,)
)
Defendant.)

**PLAINTIFF'S SURREBUTTAL REPLY BRIEF IN SUPPORT OF HIS
MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Craig Moore files this surrebuttal reply brief in support of his motion for summary judgment and in opposition to Defendant's motion for summary judgment. Plaintiff files this brief for the very limited purpose of addressing arguments raised by Defendant for the first time in her Response to Plaintiff's Reply Brief in Support of His Motion for Summary Judgment.

**DEFENDANT CONFUSES O.C.G.A § 16-11-129(d)(1)
WITH O.C.G.A. § 16-11-129(d)(4)**

Defendant points to the requirement for a "fingerprint based criminal history records check" in O.C.G.A. § 16-11-129(d)(1) as the basis for her refusal to comply with the requirements of O.C.G.A. § 16-11-129(d)(4), but she fails to point to anything in the text of section 129 that would authorize her to wait for a return of a fingerprint based

background check. That is because there is no legal authority for what Defendant is suggesting.

Section (d)(4) requires issuance of a Georgia Firearms License ("GFL") within 60 days of application. It permits Defendant to wait up to 50 days for local law enforcement's "instant" background check. The only "law enforcement agency" contemplated in (d)(4) is the "law enforcement agency" of (d)(2). The fingerprint based check is not contemplated in (d)(4), which is why it begins with the words, "The law enforcement agency" and adds that "a report shall not be required." After the fifty days expire, the statute clearly provides that Defendant has 10 more days to issue the GFL.

Originally, what is now subsection (d)(4) stated "Each law enforcement agency," but there was only one law enforcement agency contemplated in the original statute, and that was "each" local law enforcement agency obtaining the applications and fingerprints (see historical statute attached to reply brief). When the General Assembly later amended the statute to add references to the fingerprint based check by the GBI and FBI, it failed to change the word "each" in what is now 129(d)(4). This month, the General Assembly made it abundantly clear that only the local check is contemplated in (d)(4) by substituting "The" for "each." In every iteration of the statute, the report in (d)(4), or lack thereof if no derogatory information is

discovered, referred only to the local law enforcement check of "records to which it had access" or, as is the case today, NICS.

Section (d)(1) does require Defendant to direct a request of a fingerprint based criminal background check. That section does not, however, modify or abrogate the requirement in Section (d)(4) to issue a GFL within 60 days. To reach that conclusion would be to read the 60-day requirement right out of the statute.

DEFENDANT SECOND-GUESSES THE LEGISLATURE

Defendant posits a hypothetical situation in which a renewal applicant such as Plaintiff uses counterfeit identification to obtain a renewal GFL. In Defendant's scenario, the applicant "easily acquire[s] a firearm and use[s] it to commit a crime." The GFL is issued to permit the "carry" of a firearm, not the acquisition of a firearm, for which no license is required. Defendant suggests that, because of her hypothetical situation, she must ignore the clear dictates of the law and wait, forever if necessary, for the fingerprint based criminal background check report. This is substituting Defendant's policy preference for the express public policy of this State as expressed by the General Assembly in O.C.G.A. § 16-11-129.

In her brief, Defendant intentionally overlooks O.C.G.A. § 16-11-129(i)(2), which requires her to issue a temporary renewal

GFL to a renewal GFL applicant "**at the time of application**" unless she "knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license." (emphasis added). Surely Defendant is not contending that she may ignore the clear dictates of subsection 129(i)(2). Despite the fact that the General Assembly clearly intended for Defendant to issue temporary renewal GFLs to renewal applicants "at the time of application," upon payment of \$1.00, Defendant has decided she must wait for the fingerprint based report to issue anything. As justification, she relies merely on her personal policy assessment that to obey the law would be "too dangerous to the public."

Defendant is not empowered to overrule the General Assembly on matters of public policy. She is required by statute to issue temporary renewal GFLs at the time of application for a renewal, and she is required by statute to issue all GFLs within 60 days. If she believes the system is dangerous, she should address her concerns to her legislators.

DEFENDANT'S HYPOTHETICAL SCENARIO IS FLAWED

One final aspect of Defendant's hypothetical scenario should be addressed, because it leaves a false impression. In Defendant's imaginary scenario, the fraudulent GFL applicant (who apparently is concerned about scrupulously complying with laws regulating the carry of firearms but is not concerned about

proscriptions against violent crimes) uses his GFL to "acquire" a firearm and then commit other crimes using the firearm.

Defendant seriously misunderstands the process involved in buying a gun. A person wishing to buy a gun from a dealer must undergo an instant background check (NICS - the exact same instant background check used for GFL applicants by local law enforcement in 129 (d)(2)). There is no fingerprint based background check required to buy a gun. Thus, Defendant's fictitious GFL applicant is going through extra steps to apply for a GFL, when all he has to do is take his hypothetical false ID to a gun store and buy a firearm on the spot.

The only way a GFL can come into play in buying a firearm is that under current federal law it can be used as a *substitute* for the NICS instant background check. But, in Defendant's scenario, there would be no need for the would-be criminal to go to the time and trouble to try to obtain a GFL, when he can just go buy the gun with the same fake ID to which Defendant refers.

CONCLUSION

Defendant's policy preference relating to the issuance of firearms cannot overrule the clear dictates of O.C.G.A. §§ 16-11-129(d)(4) and 129(i)(2). Defendant's multiple briefs have not pointed to any statutory authority for waiting beyond 60 days in the statute that states, "60 days," but her briefs repeatedly declare her intention to continue delaying the

issuance of licenses beyond the 60 day time limit in the statute. Given the clear text of the statute, Plaintiff is entitled to summary judgment against Defendant.

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