

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

ERNEST TAYLOR

Plaintiff,

VS.

THE CITY OF BATON ROUGE, ET AL.

Defendants.

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CIVIL ACTION

NO. 13-579-BAJ-RLB

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ POST-HEARING MEMORANDUM**

**I. Introduction**

On June 30, 2014, Defendants filed a Post-Hearing Memorandum as directed by the Court in its June 18, 2014 Order. [Doc. 33]. The following day, the Court struck the Memorandum filed by the Defendants for failing to provide certain information referenced therein, and set a new deadline on July 3, 2014 to re-file the document with the missing information. [Doc. 35]. On July 2, 2014, Defendants re-filed their corrected Post-Hearing Memorandum (hereinafter “Memorandum”). [Doc. 36]. Plaintiff Ernest Taylor (“Taylor”) files the present brief in response to Defendants’ July 2<sup>nd</sup> Memorandum.

As set forth below, Defendants’ Memorandum makes great effort to avoid the issues that are central to this case. Initially, Defendants make factual assertions that are not only unsupported, but which are in fact contradicted by the record before the Court. Based on these faulty assertions, Defendants proceed to avoid numerous relevant issues through a meritless assertion that Mr. Taylor does not have standing to challenge certain portions of §13:95.3 of the Baton Rouge Code of Ordinances (hereinafter “the Ordinance”). In pursuing this argument,

Defendants fail to perform any semblance of a constitutional analysis, opting instead to make half-hearted attempts at distinguishing clearly relevant case law. Abandoning any argument that the Ordinance is subject to any level of review other than strict scrutiny, Defendants also incorrectly assert that there exists a presumption that the law is valid. Finally, Defendants' Memorandum completely fails to provide any justification for the failure to return Mr. Taylor's firearms once the criminal charges against him had been dismissed. For the reasons set forth below, Plaintiff respectfully requests that the Court proceed with entering a default judgment in favor of Plaintiff and issue an Order declaring §13:95.3 of the Baton Rouge Code of Ordinances unconstitutional, and enjoining Defendants from further enforcement of the Ordinance or prosecution of individuals who violate its provisions.

## **II. Factual Issues**

In their Memorandum, Defendants make certain factual assertions for which no evidentiary support is provided. Specifically, without citation, Defendants assert that Taylor "was leaving the parking lot of a bar at the time of his arrest;" and that "there was probable cause to stop [Taylor's] vehicle for a headlight violation." *See* [Doc. 36] at 4, 7. The only evidence that supports Defendants' version of the facts are documents authored by Defendants Thomas and Wenneman. *See* Documents related to criminal prosecution, attached hereto as Exhibit A.<sup>1</sup> As shown below, however, the representations appearing in the arresting officer's documents are clearly unreliable.

### **A. Representations of Officers Wennemann and Thomas**

In a non-notarized affidavit of probable cause, Defendant Wennemann provided the

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<sup>1</sup> These documents were provided to Plaintiff's counsel by the Louisiana Attorney General's Office in January, 2014, in response to a request for discovery made in connection with the criminal proceedings then pending in Baton Rouge City Court.

following “synopsis of probable cause:”

Affiant advises that on the above stated offenses did occur within the city limits of Baton Rouge and the State of Louisiana. On the above state date at approximately 0145 hours Affiant did observe the Defendant pull from the parking lot of the Boss Lady Lounge (3827 Plank Rd.) without headlights on. Affiant initiated a traffic stop upon the Defendant and personally contacted him. After contact with the Defendant affiant and assisting officers observed in plainview two rifles inside the vehicle. The Defendant was then placed under arrest. As the Defendant was being escorted by an assisting officer he pulled from the officer’s grasp and refused to be handcuffed. The Defendant was able to be cuffed with the help of another officer. Affiant advised that during a warrant check of the Defendant it was found he was wanted by BRSO for misdemeanor aggravated assault. Affiant booked the defendant into Parish Prison.

Ex. A at 3 (errors in original).

In the “Narrative” portion of the officers’ report, the following representations appear:

On 10/13/12 at approximately 0135 hours Ofcs. J. Thomas and P. Wennemann were patrolling the 4000 block of Plank Rd. when they observed a gray Cadillac Brougham (La. Tag WHT127) leave the parking lot of Romeo’s Old School Lounge (formally The Boss Lady) (3827 Plank Rd.) without any lights on.

...

The officer’s [sic] asked Ernest if he had someone who could come get his car, if he wanted it towed, or parked at 1<sup>st</sup> District. Ernest elected to have his car parked at 1<sup>st</sup> District. Ernest was informed that his car had to be inventoried before it was parked. He was asked if there were any other guns or anything of value in the car that the officers needed to know about. He stated NO. When the officers opened the trunk they found an SKS 7.62 cal. assault rifle.

*Id.* at 13.

#### **B. The October 13, 2012 Arrest Video**

The dash-cam videos taken from Defendants Wennemann and Thomas’ police cruisers on the night of October 13, 2012 show a different version of the events than attested to by the defendants in their affidavit and report. *See* Video, submitted conventionally as Exhibit A to Plaintiff’s Motion for Default Judgment. In fact, the video not only fails to corroborate the

statements made by Officers Wennemann and Thomas, but clearly establishes that many of these statements are simply false.

### **1. The Officers Did Not Observe Taylor Leaving The Boss Lady Lounge**

The video taken from Officer Wennemann's dashcam begins with Wennemann traveling northbound on Plank Road in Baton Rouge at approximately 1:31 in the morning on October 13, 2012. *See id.*; DVR P426; 2012-10-13 01:31:42.0. At approximately 1:32 A.M., Thomas and Wennemann perform a stop on a vehicle other than Taylor's. *Id.* The GPS coordinates appearing on the video establish that, at that point, both Wennemann and Thomas were already north of 3827 Plank Road, the location of The Boss Lady Lounge. *See* Map showing locations of the events of October 13, 2012, attached as Exhibit B; Louisiana ATC Permit Information for The Boss Lady & Co., attached as Exhibit C. Upon leaving the site of this traffic stop, Officer Wennemann radios to Officer Thomas that there is a "car up ahead without its lights on," and both officers continue proceeding northbound on Plank Road, away from the location of the Boss Lady Lounge. Wennemann Video at 1:33:49. The video does not show Mr. Taylor's vehicle passing the officers when they are engaged in the unrelated traffic stop, as would necessarily have occurred if he had been leaving The Boss Lady Lounge. The video goes on to show Officer Thomas effectuate the stop of Mr. Taylor. *Id.*

Later in the videos from both Wennemann and Thomas' cameras, the officers question Mr. Taylor about where he had been before they pulled him over. *See* Wennemann and Thomas Videos at 1:48:06 – 1:51:14. Initially, Officer Wennemann asks what club Mr. Taylor had been leaving before he was pulled over. *Id.* When Taylor responded that he had been "right down the street," but could not recall the name of the establishment, Wennemann inquired whether it was

“the one down there by Mohican?” *Id.* Taylor responded negatively, and indicated that he had instead been “in the same block right here.” *Id.* Taylor then stated that he had his lights on when he was stopped by the officers and that he “had just pulled out” before being stopped. *Id.* Officer Thomas then stated, “yeah, but you were driving a little ways without your lights on, I seen you... **He said, ‘hey, get that guy that ain’t got no lights on, and I couldn’t even see you...’**” *Id.* The following exchange then occurred between Wennemann and Taylor:

Wennemann: Where’d you park over there?

Taylor: I had parked in the back.

Wennemann: In the back of the club?

Taylor: Yeah

Wennemann: On the club’s property?

Taylor: Huh?

Wennemann: You parked on the club’s property, right?

Taylor: I don’t know whose property it was.

Wennemann: I can’t hear you.

Taylor: I said, “I don’t know whose property...”

Wennemann: Yeah, you were on the property?

*Id.* The video then appears to show Taylor attempting to describe the location where he was parked, but the discussion is obscured by background noise. *Id.* After Taylor finished speaking, Officer Wennemann stated, “it’s illegal to have a firearm on the premises where alcohol is sold.” *Id.* Taylor then stated, “I was by the street...,” to which Wennemann responded, “you said you were on the property of the club.” *Id.* Officer Thomas can later be seen stating that he would

pass by the location “if he does ride” so that the establishment’s name could be determined. *Id.*

## 2. Other Inaccuracies

In addition to establishing that neither Officer Wennemann nor Officer Thomas actually observed Taylor leaving an establishment that sold alcohol, the video also contradicts other representations made by these Defendants. For instance, despite Officer Wennemann’s statement in the unsworn affidavit that Taylor was placed under arrest *before* Officers Wennemann and Thomas forcibly placed him in handcuffs, the video in fact clearly shows Thomas explicitly stating, “[l]ook dude, come take a seat in the back of my vehicle – ***you’re not under arrest,***” immediately before the officers used force on Taylor. *See* Thomas video at 1:36:10.

The representation in the report that Romeo’s Old School Lounge was “formally The Boss Lady” is also incorrect. That establishment, where Taylor had in fact been on the evening of October 13, 2012, is an entirely separate entity from The Boss Lady, and is not located at 3827 Plank Road, but rather at 4115 Plank Road. *See* Romeo’s Old School Lounge ATC license, attached as Exhibit D. As stated in Plaintiff’s verified complaint, on the night in question, Mr. Taylor attended Romeo’s Old School Lounge, after first parking his vehicle across the street in the parking lot of a Dollar General store. [Doc. 1] at ¶15. The representation of Officers Wennemann and Thomas that Taylor was asked whether there were any guns in the car, and that he responded, “NO” is also clearly contradicted by the video. When Officer Wennemann originally shouted at Taylor for possessing weapons inside his car in open view, Taylor stated, “I got one in the trunk too, I got papers on them.” *See* Thomas Video at 1:35:18. Later, in discussing leaving Taylor’s vehicle at the precinct, Officer Wennemann asked Taylor whether

there was anything in his vehicle that the officers needed to know about. *See* Thomas Video at 1:53:45. When Taylor began to respond, Wenneman interrupted him and stated, “hang on, hang on... I’m not talking about – I’m not talking about get you done bad. I’m talking about anything that’s personal, whether phones, stereo, shoes, or something like that.” *Id.* The officers clearly do not ask Taylor whether he has any other guns in his vehicle, as stated in their report.

As shown above, there are serious inconsistencies between the events of October 13, 2012, and the description provided by Defendants Wennemann and Thomas in their report and unsworn affidavit. With such clear self-serving inaccuracies present throughout the documents authored by Thomas and Wennemann, the representations contained within clearly cannot be relied upon to establish the facts asserted in Defendants’ Response.

### **C. Baton Rouge Police Department’s Stance**

On July 7, 2014, the Baton Rouge television station WAFB aired an investigative report regarding Taylor’s arrest on October 13, 2012. *See* “I-Team: Are guns allowed in vehicles in parking lots where alcohol is sold?” attached hereto as Exhibit E.<sup>2</sup> The report states that the Baton Rouge Police Department (“BRPD”) was “asked about the ordinance and its use of it.” *Id.* In response to the inquiry, Sgt. Mary Ann Godawa was quoted as stating, “**[t]he officers acted in good faith when this ordinance was enforced and we will continue to use it as long as it is a law on the books.**” *Id.* The BRPD has made the decision to continue enforcing §13:95.3 in spite of clear indication from the Parish Attorney’s Office that the ordinance is unconstitutional and should no longer be enforced. *See* [Doc. 44] at 14-17 (discussing Parish Attorney’s Office presentation to the Baton Rouge Metropolitan Council on June 25, 2014); *see also* June 24, 2014

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<sup>2</sup> Also available with video at <http://www.wafb.com/story/25960977/i-team-are-guns-allowed-in-vehicles-in-parking-lots-where-alcohol-is-sold>

E-mail, attached as Exhibit F (containing draft letter from Parish Attorney’s Office to Chief of BRPD indicating that §13:95.3 suffers from constitutional infirmities, and recommending that it no longer be enforced).

### **III. Law and Argument**

#### **A. The 2012 Amendments to the Louisiana Constitution**

Initially, it must be pointed out that the premise cited by Defendants in the opening of their Memorandum misstates the applicable law. Namely, Defendants aver that “[t]he Louisiana Constitution was amended two months after [Taylor’s] arrest to make the right to keep and bear arms in Louisiana a “fundamental” right and any restriction upon this right subject to strict scrutiny.” [Doc. 36] at 1. Defendants’ statement illustrates their misunderstanding of the nature of “fundamental rights.” In particular Defendants are mistaken that the amendments to the Louisiana Constitution somehow transformed the right to keep and bear arms into a “fundamental right” whereas it was not one before the amendments. As stated by the Louisiana Supreme Court:

From this, we conclude **the right to bear arms was always fundamental**; the amendment to the constitutional provision merely sought to ensure that the review standard of an alleged infringement of this fundamental right was in keeping with the refinements made to constitutional analysis which developed since our decision in *Amos*.

*State v. Draughter*, 130 So.3d 855, 863 (La. 2013) (emphasis added). This interpretation of the meaning of “fundamental right” comports with the definition established by more than a century’s worth of jurisprudence from the United States Supreme Court, and cannot be reconciled with the characterization given by Defendants. *See McDonald v. City of Chicago*, 130 S. Ct. 3020, 3028 (2010); quoting *The Slaughter-House Cases*, 83 U.S. 36 (1873) (defining fundamental rights as “rights that predated the creation of the Federal Government and that ‘the

State governments were created to establish and secure”’).

Similarly, Defendants are also incorrect that prior to 2012 it had not been established that laws restricting fundamental rights would be subject to a strict scrutiny analysis. As stated in *Draughter*, the stated intention for the 2012 amendments to the Louisiana Constitution “was to secure a *continued individual right to bear arms* by Louisiana citizens under the Louisiana Constitution, protected from possible future judicial or legislative erosion.” *Draughter*, 130 So.3d at 861. As noted by the *Draughter* court, at the time of its enactment, the previous version of Article I, Section 11 of the Louisiana Constitution provided for “the highest standard of review the court accorded to an alleged infringement of a constitutional right for that time.” *Id.* at 832-863. As shown above, the 2012 amendments sought only to reinforce the fact that the highest level of scrutiny should be provided to laws abridging a citizen’s fundamental right to keep and bear arms, it did not increase the protections afforded by the Louisiana Constitution. *Id.* at 863-864. In discussing the issue, the *Draughter* court cited to *Hondroulis v. Schuhmacher*, 553 So.2d 398, 415 (La. 1988) for the proposition that “government action imposing a burden on a fundamental right may be justified only by a compelling state interest, narrowly confined so as to further that compelling interest, i.e. strict scrutiny”’).

Thus, the inescapable conclusion, contrary to Defendants characterization, is that the right to keep and bear arms has *always* been a fundamental right of citizens of Louisiana and the United States of America, and that the Louisiana law has demanded that any burdens upon this right be subject to strict scrutiny since at least 1988.

## **B. Standing**

Defendants are correct that before the constitutionality of a law may be considered by the

Court, Plaintiff must establish that he has standing to challenge its provisions. Defendants are incorrect, however, in their argument that Plaintiff lacks standing to challenge certain portions of §13:95.3. The "irreducible constitutional minimum of standing contains three elements." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, Plaintiff "must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical.'" *Id.* (internal citations omitted) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). Second, Plaintiff must demonstrate "a causal connection between the injury and the conduct complained of — the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.'" *Id.* (alteration in original) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). "Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* (quoting *Simon*, 426 U.S. at 38, 43). Still, "the injury required for standing need not be actualized. A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008).

**1. Taylor Has Standing to Challenge §13:95.3's Constitutionality as a Result of the October 13, 2012 Arrest**

Defendants' Memorandum asserts that §13:95.3(b), set forth below, "is not the provision which is applicable to the circumstances of this case, and it was not applied to Mr. Taylor." [Doc. 36] at 6. Thus, according to Defendants, Taylor does not have standing to challenge its provisions. *Id.* Tellingly, the Defendant opts not to provide the text of §13:95.3(b), which states:

Any sheriff, deputy sheriff, state police, city police, constables, town marshals, or persons vested with police power, may search any person found in any place

where alcoholic beverages are sold and/or consumed on the premises, ***and shall confiscate any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon which such peace officer may find***; this search shall be limited to only weapons, unless there is probable cause for a wider search. Any person who enters a place where alcoholic beverages are sold and/or consumed on the premises does, by the mere fact of entering, consent to a search of his person for any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon while on said premises, by any sheriff, deputy sheriff, state police, constable, town marshal, or persons vested with police power, without a warrant.

(emphasis added). Even a cursory review of 13:95.3(b) reveals that Defendants' argument that this provision was not applied to Mr. Taylor is plainly absurd. Subsection (b) mandates the confiscation of firearms possessed by individuals located on the premises where alcoholic beverages are sold and/or consumed. Furthermore, Defendants' representation that subsection (b) was not implicated because Plaintiff "was not searched based upon implied consent" since "weapons were found in his car in plain view" is similarly misplaced. *See* [Doc. 36] at 7. As can be seen from Officer Wennemann and Thomas' report, and the video of the October 13, 2012 arrest, the officers clearly searched the trunk of Taylor's vehicle, where they found a firearm. *See* Exhibit A at 13 ("[w]hen the officers opened the trunk they found an SKS 7.62 cal. assault rifle"); Thomas Video at 1:55:20. In all, Defendants searched Taylor's vehicle and confiscated three of his lawfully held firearms pursuant to §13:95.39(b). Taylor clearly has standing to challenge this provision.

## **2. Taylor Has Standing to Challenge the Provisions of §13:95.3 Based Upon a Potential for Prospective Injury That Is Real, Immediate, and Direct**

As stated above, in order to establish standing it is not necessary for Plaintiff to show that he has already suffered injury by the operation of an unconstitutional law. *See Davis, supra*. Rather, a plaintiff has standing to seek *prospective* relief where there exists a real, immediate, and direct threat to his constitutional rights. *Id.* The result is that Taylor also has standing to

challenge the provisions of the ordinance that pertain to establishments that only sell, but do not serve alcohol. This is due to the fact that Taylor has chosen to exercise his rights afforded him by both State and Federal law to keep arms in his vehicle for the purpose of self-defense. *See e.g.* La. R.S. 32:292.1 (providing that “a person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or designated parking area).

As Plaintiff has previously argued, any individual who decides to exercise their right to keep a firearm in their vehicle will at some point violate the provisions of §13:95.3 when refueling at an establishment that also sells alcoholic beverages. Given the BRPD’s statement that they will continue to enforce the ordinance “as long as the law is on the books,” the threat to Mr. Taylor’s constitutional rights (along with the rights of every other person keeping lawfully-held firearms in their vehicle) is real, immediate, and direct. Plaintiff therefore has standing to challenge each of the provisions of §13:95.3.

### **C. Standard of Law and Burden of Proof**

#### **1. Defendants Have Abandoned Any Argument That A More Lenient Standard Than Strict Scrutiny Should Apply**

Defendant’s Memorandum correctly acknowledges that the Louisiana Constitution and binding precedent have established that laws which burden a Louisiana citizen’s right to keep and bear arms will be subjected to strict scrutiny. *See* [Doc. 36] at 2; citing *Draughter, supra*. While Plaintiff has acknowledged that it is unclear whether the same level of scrutiny would apply when considering burdens on the rights guaranteed by the U.S. Constitution, Defendants have not argued for a more lenient standard, and have therefore abandoned the argument. *See* [Doc. 26-1] at 21 (discussing differing analyses under strict and intermediate scrutiny).

## **2. There Is No Presumption of Validity When Applying Strict Scrutiny**

While conceding that the ordinance must pass a strict scrutiny analysis in order to be considered constitutional, Defendants simultaneously argue that the Court should apply a “presumption of validity” in order to salvage the provisions of §13:95.3. [Doc. 36] at 3. The presumption of validity that Defendants argue for, however, is not applied to laws that burden fundamental rights, and which are therefore subject to strict scrutiny:

Under the compelling state interest test, or strict scrutiny, the usual presumption of validity is not accorded to the state statute. Instead, the state “must carry a ‘heavy burden of justification;’” it must demonstrate that its statute has been “structured with ‘precision,’ and is ‘tailored’ narrowly to serve legitimate objectives and that it has selected the ‘less drastic means’ for effectuating its objectives.

*Boe v. Wright*, 648 F.2d 432, 437, n.6 (5<sup>th</sup> Cir. 1981); quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973). In this case, utilizing the presumption of validity applicable to properly enacted legislation would be particularly inappropriate given the stated beliefs of the Parish Attorney’s Office that the Ordinance was meant to be repealed upon the later enactment of 13:95.4, and that its continued existence is “simply a mistake.” See [Doc. 44] at 14-17; News Release, Ex. E; June 24, 2014 E-mail, Ex. F. The Court should not apply a presumption of validity to §13.95.3.

## **3. It Is Defendants’ Burden to Prove the Constitutionality of §13:95.3**

While initially acknowledging that they bear the burden of proving §13:95.3’s constitutionality, Defendants’ Memorandum later disclaims that they are the ones who bear the burden. Compare [Doc. 36] at 2 (“[s]trict scrutiny analysis requires that the government prove the constitutionality of the regulation...” with *id.* at 3 (“[t]he burden of proving a law to be unconstitutional usually rests upon the party challenging its validity”). In fact, Defendants are

correct on both counts. Initially, it is Plaintiff's burden to prove that the ordinance "imposes a substantial burden" on Taylor's fundamental right to keep and bear arms. *See Williams v. Champagne*, 2014 U.S. Dist. LEXIS 47753, 10 (E.D. La. Apr. 6, 2014). If Plaintiff establishes the existence of a "substantial burden," the burden of proof then shifts to Defendants to articulate how the ordinance (1) is the least restrictive means of (2) furthering a compelling government interest. *Id.* citing *Sossamon v. Lone Star St. of Tex.*, 560 F.3d 316, 335 (5<sup>th</sup> Cir. 2009).

As shown above, every individual who possesses a lawfully-held firearm within his vehicle will more likely than not violate the provisions of §13:95.3 at some point, such as when refueling at an establishment that sells both fuel and alcohol. This is clearly a "substantial burden" on the fundamental right to keep and bear arms, and therefore Defendants have the burden of showing that the Ordinance survives a strict scrutiny analysis.

#### **D. §13:95.3 Is Unconstitutional**

##### **1. Defendants Concede the Unconstitutionality of the Ordinance**

In their Memorandum, Defendants make certain concessions, effectively conceding the unconstitutionality of §13:95.3. *See* [Doc. 36] at 8 ("[e]xtending the prohibition of the law to the parking lot of an establishment where alcohol is only sold, but not consumed, may not be as narrowly tailored as it could be"); 9 ("... it is conceded that [§13:95.3] could be unconstitutional "as applied" to a person within the parking lot of a grocery store"). As shown above, Defendants' argument that the Court is not authorized to reach these issues because Plaintiff lacks standing is without merit. As a result, defendant's concession that the law prohibits constitutionally protected behavior is fatal to their argument that the law passes constitutional muster.

## **2. Defendants Have Failed to Establish the Existence of a Compelling Governmental Interest**

Defendants Memorandum conclusively asserts the existence of two purportedly compelling governmental interests justifying the continued existence of §13:95.3: (1) protecting the public from potential danger which could ensue when intoxicated persons have ready access to weapons; and (2) preventing the escalation of arguments brought on by inebriated patrons of establishments that sell alcohol for consumption on premises. [Doc. 36] at 5, 8. Defendants then point to circumstances illustrating the existence of these allegedly compelling interests. First, Defendants argue that “[t]he selling of alcohol is a highly regulated industry.” *Id.* at 5. Additionally, Defendants state that “it is well-known that parking lots of licensed premises where alcoholic beverages are consumed are where disputes by intoxicated persons often end up.” *Id.* at 8. Defendants cite to no evidence establishing the existence of these supposedly compelling governmental interests.

The result is that Defendants have failed to carry their burden to establish the existence of a compelling governmental interest. Courts have held that the existence of a compelling governmental interest must be established “by particularized findings in the record.” *See United States v. Wecht*, 537 F.3d 222, 235 (3<sup>rd</sup> Cir. 2008). Defendants have failed to provide any evidence that would permit the Court to make such findings, and have therefore failed to establish the existence of a compelling governmental interest.

## **3. There Are Less Restrictive Means to Accomplish Defendants’ Stated Interest**

Even assuming that Defendants had successfully established the existence of a compelling governmental interest, §13:95.3 is not narrowly tailored to further those interests. For instance, the interests identified by Defendants both involve preventing “inebriated” or

“intoxicated” persons from having access to weapons. In fact, the City of Baton Rouge has already enacted an ordinance that provides less-restrictive means of furthering these interests.

Specifically, Baton Rouge Code of Ordinances §13:95.4, enacted in 1986, provides:

- (a) No person shall intentionally possess a firearm while on the premises of an alcoholic beverage outlet.
- (b) *Alcoholic beverage outlet* as used herein means any commercial establishment in which alcoholic beverages of either high or low alcoholic content are sold in individual serving for consumption on the premises, whether or not such sales are a primary or incidental purpose of the business of the establishment.
- (c) The provisions of this section shall not apply to the owner or lessee of an alcoholic beverage outlet, or to an employee of such owner or lessee, or to a law enforcement officer or other persons vested with law enforcement authority acting in the performance of his official duty.
- (d) Whoever violates the provisions of this section shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six (6) months or both.

Unlike §13:95.3, the later enacted ordinance does not cut a broad swath through constitutionally-protected activity in a manner that is not likely to further Defendants’ stated interests. For example, if Defendant’s compelling interest is in preventing violence between inebriated individuals, it makes no sense to extend the prohibition to package liquor stores or grocery stores which only sell alcohol but do not permit consumption on the premises. It is not the purchasing of alcoholic beverages that causes an individual to become inebriated or intoxicated, one must consume the alcohol before those conditions will manifest themselves. The result is that prohibiting weapons where alcoholic beverages are not consumed would not further the interests cited by Defendants.

Similarly, extending the prohibition on firearms to the parking lot of establishments that sell or serve alcohol would prevent individuals who were not even entering the establishment (and thus not likely to become inebriated or intoxicated) from keeping weapons in their vehicles.

A literal reading of the ordinance would also prevent an individual from keeping firearms in his car when visiting an establishment that shares a parking lot with an establishment that serves or sells alcohol, even if they only enter an establishment that does no alcohol-related business.

In short, a less-restrictive means available to the City of Baton Rouge to further the interests identified in Defendants' Memorandum are the provisions appearing in §13:95.4. Defendants' argument otherwise is severely hampered and contradicted by their admission that the later ordinance was passed in an effort to ameliorate the constitutional flaws evident in the older Ordinance. Defendants' attempts to justify the continued existence of an ordinance that the elected representatives of the people of Baton Rouge intended to repeal is confusing and counterproductive. Defendants have failed to carry their burden of showing that the provisions of §13:95.3 withstand a strict scrutiny analysis.

#### **E. The Return of Plaintiff's Firearms**

Although given explicit direction from the Court to brief the issue of "their continued failure to return Ernest Taylor's Firearms to him, despite the dismissal of all criminal charges against him," Defendants make absolutely no attempt to justify their actions. *See* [Doc. 36] at 10 (stating that the criminal charges filed against Plaintiff were dismissed on April 28, 2014, and that an order authorizing their return was signed June 20, 2014, but failing to address the reasons for the nearly two-month delay).

The reason that Defendants have chosen to skirt the issue is obvious – there was absolutely no justification for the continued willful withholding of Plaintiff's firearms once the criminal charges against Taylor had been dismissed. From the day the criminal charges against Mr. Taylor were dismissed, until the hearing before the Court on June 18, 2014, Defendants

maintained the position that they were not required to return Plaintiff's firearms unless Plaintiff first made certain filings in Baton Rouge City Court. *See* May 23, 2014 E-mail Chain, attached as Exhibit G. Defendants' position is clearly indefensible. *See Houston v. City of New Orleans*, 682 F.3d 361, 364 (5<sup>th</sup> Cir. 2012); La. R.S. §40:1798(D) (providing that law enforcement agencies "shall return" seized firearms not involved in a crime). Subsequent to the hearing before the Court on June 18, 2014, the Parish Attorney's Office retracted its previous position and obtained an Order for the release of Plaintiff's firearms. *See* Motion for Return of Weapons, attached as Exhibit H. While Plaintiff's request for an order directing Defendants to return his firearms has therefore been rendered moot, Plaintiff asserts that the lack of any justification for the continued withholding of Taylor's firearms remains relevant to the issue of damages, both compensatory and punitive.

#### **IV. Conclusion**

For the reasons appearing above, in addition to those appearing in Plaintiff's Motion for Default Judgment, Plaintiff respectfully requests that the Court issue an order declaring §13:95.3 of the Baton Rouge Code of Ordinances to be unconstitutional, and enjoining its enforcement or the prosecution of its violation by the City of Baton Rouge and its individual actors.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.  
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Terrence J. Donahue, Jr. #32126  
**MCGLYNN, GLISSON, & MOUTON**  
340 Florida Street  
Baton Rouge, Louisiana 70801  
(225) 344-3555

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice has been served on all counsel of record through a Notice of Electronic Filing generated by the Court's CM/ECF system, including those listed below, on this, the 10<sup>th</sup> day of July, 2014.

Office of the Parish Attorney  
East Baton Rouge Parish  
**Attn: Mr. Tedrick Knightshead**  
222 Saint Louis Street, Room 902  
Baton Rouge, LA 70821

s/ Terrence J. Donahue, Jr.  
Terrence J. Donahue, Jr.

State of Louisiana  
Parish of East Baton Rouge  
City of Baton Rouge  
**Misdemeanor Affidavit**

CITY OF BATON ROUGE

VS

TAYLOR, ERNEST  
[REDACTED]  
[REDACTED]

Arraignment Date: December 14, 2012

Case Number: 12-CR-106939S

Criminal Affidavit #: 12-CR-106939

RACE/SEX: BLACK / MALE

DOB: [REDACTED]

DL#: [REDACTED]

SSN: [REDACTED]

Personally came and appeared before the undersigned authority in and for said Parish and City, BARDIN, DEVON who did depose and say, based upon information and belief that

TAYLOR, ERNEST (defendant)

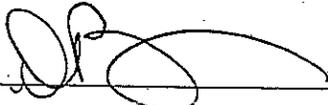
on or about the date(s) indicated below, within the limits of the City of Baton Rouge, La, did violate provisions of the Baton Rouge City Ordinance in the following particulars:

Counts: 1, Date: 10-13-12, Statute: [13:95.3] POSS OF WEAPONS WHERE ALC BEV SOLD/CONSUMED  
in that he/she did have in his possession a firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, in a premises where alcoholic beverages are sold and/or consumed on the premises,

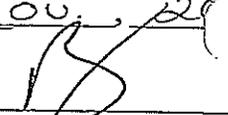
Counts: 2, Date: 10-13-12, Statute: [13:108] RESISTING AN OFFICER  
in that he/she did intentionally resist, oppose or obstruct OFC. J. THOMAS acting in his official capacity and authorized to make a lawful arrest, when ERNEST TAYLOR knew or had reason to know the officer was acting in his official capacity,

Counts: 3, Date: 10-13-12, Statute: [11:283] HEADLIGHTS REQ. (FAIL. TO DIM HEADLIGHT) -138  
in that he/she did operate a motor vehicle upon the streets of the city between sunset and sunrise, or at such times as atmospheric conditions requires without having headlights turned on as required by the highway regulatory laws of the state of Louisiana,

All of which is contrary to the Ordinances of the City of Baton Rouge, Louisiana, and against the peace and dignity of the same.

SIGNED   
\_\_\_\_\_

Sworn, to and subscribed before me this 29 day of Nov, 2012

  
\_\_\_\_\_  
Notary Public or Clerk of Court

VERSUS

Ernest L. Taylor  
Name of Defendant:

**Affidavit of Probable Cause**

Before me personally appeared the undersigned law enforcement officer(s) who depose that the following recited facts are true and correct to the best of his knowledge, information and belief, and that based upon these facts, he caused the arrest of the following listed defendant(s) for the listed offense(s).

106939-12  
BRPD File No.

Ernest L Taylor  
Defendant Name

Black  
Race

Male  
Sex

[Redacted]  
Date of Birth

[Redacted]  
Address

[Redacted]  
Social Security Number  
11:283, 13:95.3, 13:108

Headlight Required, Poss. of Firearm Where Alcohol Sold, Resisting an Officer, Fugitive EBRSO  
Charge(s)

Statute/City Code Number

**Synopsis of Probable Cause:**

Affiant advises that on the above stated offenses did occur within the city limits of Baton Rouge and the state of Louisiana. On the above state date at approximately 0145 hours Affiant did observe the Defendant pull from the parking lot of the Boss Lady Lounge (3827 Plank Rd.) without headlights on. Affiant initiated a traffic stop upon the Defendant and contacted personally contacted him. After contact with the Defendant Affiant and assisting officers observed in plainview two rifles inside the vehicle. The Defendant was then placed under arrest. As the Defendant was being escorted by an assisting officer he pulled from the officer's grasp and refused to be handcuffed. The Defendant was able to be cuffed with the help of another officer. Affiant advised that during a warrant check of the Defendant it was found that he was wanted by BRSO for misdemeanor Aggravated Assault. Affiant booked the Defendant into Parish Prison.

[Signature]  
Affiant

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

170-22120-2700  
W.M.

# Arrestee Information Form

10/13/12

City Police

State Police

Sheriff

Other

Subject's Name:

Taylor  
Last Name

Ernest  
First Name

L  
Middle Name

Also Known As:

Residence:

Number and Street

City

State

Zip Code

Race: m Sex: b D.O.B. [redacted]

Place of Birth

Baton Rouge

Hgt.

5'08"

Wgt.

265

Eyes

brn

Hair

no

Marks, Scars, Tattoos, Amputations:

Driver's License

Number / State / Year

Social Security #

Other I.D. Number

Type / Number

No. I.D.

Occupation / Employer / Address

Spouse / Other Relative's Name

Address:

Other Relative's Name

Address:

Officer's I.D. P3956

Officer's Court Date

Officer's Name

P. Wennemann

Officer's I.D. P10385

Officer's Court Date

Officer's Name

J. Thomas

Date Arrested:

10/13/12

Time:

0155

Place:

4400 Plank Rd.

### CHARGE(S):

CODE: 01 - Probable Cause  
02 - Affiant Warrant  
03 - Dist Bench Warrant

04 - City Contempt Warrant  
05 - Remand by Surety  
06 - Remand District Court

07 - Remand City Court  
08 - Returned on Detainer  
09 - Returned Court Order

10 - Hold  
11 - Fugitive  
12 - Other (Specify):

File Number - Year	Code	Charge	Statute / Ordinance	Ticket Number
106939-12	01	Poss. of a Firearm Where Alcohol Sold/Consumed	13:95.3	
106939-12	01	Resisting an Officer	13:108	
106939-12	01	Headlights Required	11:283	
106939-12	11	FUGITIVE EBRSO		

A short recitation of the facts or events which caused the Defendant to be arrested:

The names of all other persons arrested as a result of the same event(s):

- 1 \_\_\_\_\_
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_
- 4 \_\_\_\_\_
- 5 \_\_\_\_\_
- 6 \_\_\_\_\_

- N.C.I.C.
- Local
- Printed
- Check for Add-On Charges

202 OCT 13 3:38

  
Supervisor

# Baton Rouge Police Department

Printed by: PC10023 - SMITH, ABLENELL

# Incident Report

## Administration Information

Report Number:  Report Type:

Report Date:  Time:  District/Zone:

Address:

Report Officer 1 -  WENNEMANN, PATRICK ✓ Assign Date:

Report Officer 2 -  THOMAS, JAMES ✓ Assign Date:

Investigator 1 -  DANIELS, JEFFERY ✓ Assign Date:

Investigator 2 -  Assign Date:

Assigned By:  Review Date:

UCR Status:  CLEARED BY ARREST Status Date:

Case Status:  Status Date:

## Primary Offense

Offense Type:  POSS WPN WHERE ALCOHOL SOLD/CC  Attempted  Completed

Address:

City:  State:  Zip:

District/Zone:  Location Type:

Begin Date:  Time:

End Date:  Time:

Lighting:  Weather:  Gang Activity:

Bias Motive:  Premises Enter:   Force Used  Home Inv

Point Entry:  Point Exit:  Means Entry:

Tools Used:  Entry Dir:  Exit Dir:

Consumed Alcohol  Photo/Video  Used Computer Equipment  Used Drugs  Prints Lifted

Weapons:

Comments:

- B-Buying Receiving
- C-Cultivation/Manufacturing/Publishing
- D-Distributing/Selling
- E-Exploiting Children
- O-Operating/Promoting/Assisting
- P-Possessing/Concealing
- T-Transporting/Transmitting/Importing
- U-Using/Consuming
- I-Pos With Intent To Sell
- X-Other

Report approved by Michael Cody on 10/18/2012

Offense

Offense Type: C.C.R.P. ART 575 FUGITIVE  Attempted  Completed

Address: 04400 PLANK RD

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

District/Zone: 1F1 Location Type: \_\_\_\_\_

Begin Date: 1 0 / 1 3 / 2 0 1 2 Time: 0 1 3 5

End Date: 1 0 / 1 3 / 2 0 1 2 Time: 0 1 3 5

Lighting: \_\_\_\_\_ Weather: \_\_\_\_\_ Gang Activity: \_\_\_\_\_

Bias Motive: \_\_\_\_\_ Premises Enter: \_\_\_\_\_  Force Used  Home Inv

Point Entry: \_\_\_\_\_ Point Exit: \_\_\_\_\_ Means Entry: \_\_\_\_\_

Tools Used: \_\_\_\_\_ Entry Dir: \_\_\_\_\_ Exit Dir: \_\_\_\_\_

Consumed Alcohol  Photo/Video  Used Computer Equipment  Used Drugs  Prints Lifted

Weapons: \_\_\_\_\_

Comments: \_\_\_\_\_

- B-Buying Receiving
- C-Cultivation/Manufacturing/Publishing
- D-Distributing/Selling
- E-Exploiting Children
- O-Operating/Promoting/Assisting
- P-Possessing/Concealing
- T-Transporting/Transmitting/Importing
- U-Using/Consuming
- I-Pos With Intent To Sell
- X-Other

Offense

Offense Type: 13:108 RESISTING AN OFFICER/CC  Attempted  Completed

Address: 04400 PLANK RD

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

District/Zone: 1F1 Location Type: \_\_\_\_\_

Begin Date: 1 0 / 1 3 / 2 0 1 2 Time: 0 1 3 5

End Date: 1 0 / 1 3 / 2 0 1 2 Time: 0 1 3 5

Lighting: \_\_\_\_\_ Weather: \_\_\_\_\_ Gang Activity: \_\_\_\_\_

Bias Motive: \_\_\_\_\_ Premises Enter: \_\_\_\_\_  Force Used  Home Inv

Point Entry: \_\_\_\_\_ Point Exit: \_\_\_\_\_ Means Entry: \_\_\_\_\_

Tools Used: \_\_\_\_\_ Entry Dir: \_\_\_\_\_ Exit Dir: \_\_\_\_\_

Consumed Alcohol  Photo/Video  Used Computer Equipment  Used Drugs  Prints Lifted

Weapons: \_\_\_\_\_

Comments: \_\_\_\_\_

- B-Buying Receiving
- C-Cultivation/Manufacturing/Publishing
- D-Distributing/Selling
- E-Exploiting Children
- O-Operating/Promoting/Assisting
- P-Possessing/Concealing
- T-Transporting/Transmitting/Importing
- U-Using/Consuming
- I-Pos With Intent To Sell
- X-Other

Offense

Offense Type: 11:283 HEADLIGHTS REQUIRED/CC  Attempted  Completed

Address: 04400 PLANK RD

City: State: Zip:

District/Zone: 1F1 Location Type:

Begin Date: 1 0 / 1 3 / 2 0 1 2 Time: 0 1 3 5

End Date: 1 0 / 1 3 / 2 0 1 2 Time: 0 1 3 5

Lighting: Weather: Gang Activity:

Bias Motive: Premises Enter:  Force Used  Home Inv

Point Entry: Point Exit: Means Entry:

Tools Used: Entry Dir: Exit Dir:

- B-Buying Receiving
 C-Cultivation/Manufacturing/Publishing
 D-Distributing/Selling
 E-Exploiting Children
 O-Operating/Promoting/Assisting
 P-Possessing/Concealing
 T-Transporting/Transmitting/Importing
 U-Using/Consuming
 I-Pos With Intent To Sell
 X-Other

Consumed Alcohol  Photo/Video  Used Computer Equipment  Used Drugs  Prints Lifted

Weapons:

Comments:

Offense

Offense Type:  Attempted  Completed

Address:

City: State: Zip:

District/Zone: Location Type:

Begin Date: Time:

End Date: Time:

Lighting: Weather: Gang Activity:

Bias Motive: Premises Enter:  Force Used  Home Inv

Point Entry: Point Exit: Means Entry:

Tools Used: Entry Dir: Exit Dir:

- B-Buying Receiving
 C-Cultivation/Manufacturing/Publishing
 D-Distributing/Selling
 E-Exploiting Children
 O-Operating/Promoting/Assisting
 P-Possessing/Concealing
 T-Transporting/Transmitting/Importing
 U-Using/Consuming
 I-Pos With Intent To Sell
 X-Other

Consumed Alcohol  Photo/Video  Used Computer Equipment  Used Drugs  Prints Lifted

Weapons:

Comments:

Person Information

- Victim    Complainant    Suspect    Arrestee    Witness    Prop/Veh Owner    Business
- Financial    Government    Religious    Society    Other/Unknown    Custodian    —

Name, Last: TAYLOR   Name, First: ERNEST   MNI #: 90 00126587

Middle Name:   Suffix:

Social Security: [REDACTED]

Date of Birth: [REDACTED]   Report Age: 052

Age From: 052 to: 052   Sex: M   Race: B   Ethnicity:

Height/From: 5 08 to: 5 08   Weight/From: 300 to: 300   Resident Status:

Eye Color: BRO   Hair Color: BLK   Birth Place (City): LA   State:

Address: [REDACTED]   ST   Apt:

Phone: [REDACTED]   Hours There/From:   to:

City: [REDACTED]   State: [REDACTED]   Zip Code: [REDACTED]

Driver License: [REDACTED]   State: [REDACTED]   Exp Year:    Juvenile

Comments:

Employer Information

Employer's Name:

Address:   Apt:

City:   State:   Zip Code:

Phone: (   )   Hours From:   Hours To:

Start Date:   /   /

Alias Information

Name: TAYLOR ERNEST   Date of Birth: [REDACTED]

Social Security: 000 - 00 - 000000

Name:   Date of Birth:   /   /

Social Security: - -

Name:   Date of Birth:   /   /

Social Security: - -



Vehicle(s) Information

VEH #: [REDACTED]  Stolen  Recovered  Victimized  Suspect  Towed  Other

Vehicle Make: CADILLAC Style: [REDACTED]

Vehicle Model: BROUGHAM Engine Type: [REDACTED] Year: [REDACTED]

Color 1: GRY Color 2: [REDACTED] Value: \$500.00

License Number: WHT127 State: LA Year: [REDACTED]

VIN Number: [REDACTED] Sticker#: [REDACTED]

Characteristics: [REDACTED]

Release Info: [REDACTED]

Keys in car  Doors locked  Property in car Value: [REDACTED]

Recovery Information

Address: [REDACTED] Apt: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Recovered By: [REDACTED]

Date: [REDACTED] Time: [REDACTED]

Condition: [REDACTED] Recovery Value: [REDACTED]

Tow Company Information

Name: [REDACTED]

Address: [REDACTED] Apt: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: ( ) - [REDACTED]

Insurance Information

Insurance Co. Name: [REDACTED]

Policy Number: [REDACTED] Expiration Date: [REDACTED]

Agent's Name: [REDACTED] Phone Number: ( ) - [REDACTED]

Address: [REDACTED] Apt: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Property Information

- Found
- Burned
- Counterfeit
- Damaged
- Recovered
- Seized
- Stolen
- Othr/Unk
- Evidence
- Personal Property

Property Type:  Brand:  Color:

Model:  Size:  Tag No:

Value:  Serial Number:

Date Reported:  /  /  Caliber:

Identifying Characters:

Drug Quantity:  Unit Meas.:  Drug Type:  Quantity:

Recovery Information

Address:      Apt:

City:  State:  Zip Code:  -

Recovered By:

Recovery Value:  Condition:

Property Information

- Found
- Burned
- Counterfeit
- Damaged
- Recovered
- Stolen
- Othr/Unk
- Evidence
- Personal Property

Property Type:  Brand:  Color:

Model:  Size:  Tag No:

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Identifying Characters:

Drug Quantity:  Unit Meas.:  Drug Type:  Quantity:

Recovery Information

Address:      Apt:

City:  State:  Zip Code:  -

Recovered By:

Recovery Value:  Condition:

Property Information

- Found
- Burned
- Counterfeit
- Damaged
- Recovered
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Property Type:  Brand:  Color:

Model:  Size:  Tag No:

Value:  Serial Number:

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Identifying Characters

Drug Quantity:  Unit Meas.:  Drug Type:  Quantity:

Recovery Information

Address:      Apt:

City:  State:  Zip Code:  -

Recovered By:

Recovery Value:  Condition

Property Information

- Found
- Burned
- Counterfeit
- Damaged
- Recovered
- Stolen
- Othr/Unk
- Evidence
- Personal Property

Property Type:  Brand:  Color:

Model:  Size:  Tag No:

Value:  Serial Number:

Date Reported:  /  /  Caliber:

Identifying Characters

Drug Quantity:  Unit Meas.:  Drug Type:  Quantity:

Recovery Information

Address:      Apt:

City:  State:  Zip Code:  -

Recovered By:

Recovery Value:  Condition

## Narrative

On 10/13/12 at approximately 0135 hours Ofcs. J. Thomas and P. Wennemann were patrolling the 4000 block of Plank Rd. when they observed a gray Cadillac Brougham (La. tag WHT127) leave the parking lot of Romeo's Old School Lounge (formally The Boss Lady) (3827 Plank Rd.) without any lights on.

The officers initiated a traffic stop on the vehicle in the 4400 block of Plank Rd. (Plank at Sherwood St.). Ofc. Thomas personally contacted the driver, identified as Ernest Taylor, at his unit. As they spoke Cpl. Wennemann approached Ernest's vehicle from the open driver's side door. In plain view Cpl. Wennemann noticed the stock of what he believed to be a shotgun on the floor resting against the driver's seat. Cpl. Wennemann approached the open vehicle and as he got closer he noticed a black rifle positioned in between the front seats.

Ofc. Thomas at this time proceeded to escort Ernest to the back of his police car where he could be secured in the back seat. When Ofc. Thomas grabbed Ernest's arm Ernest pulled his arm away and backed away refusing to be escorted. Ofcs. Thomas and Wennemann were then able to handcuff Ernest and place him in the back seat of Ofc. Thomas' police car.

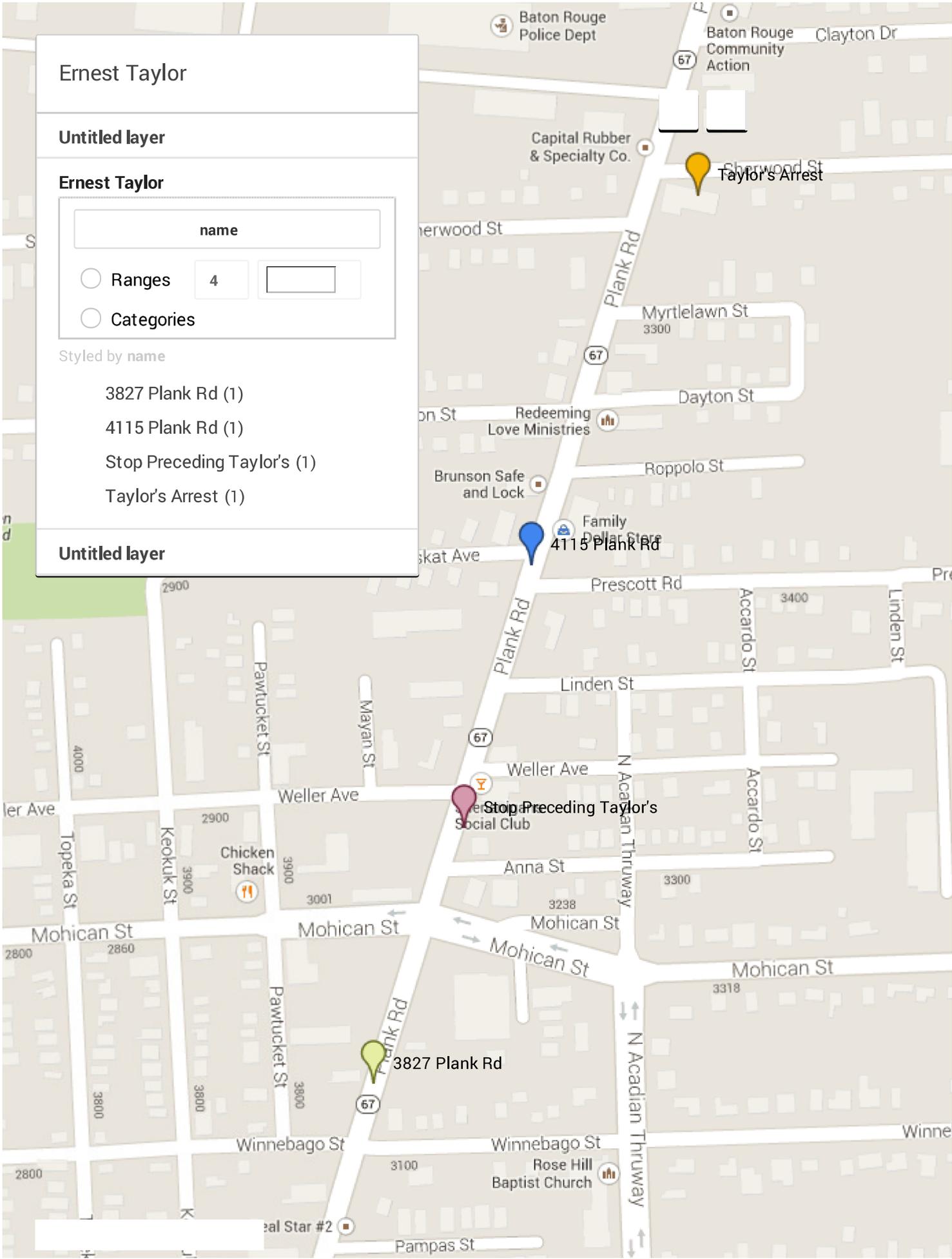
Further investigation of the guns the officers found them to be a HiPoint 9mm and a Squires Bingham .22 caliber.

Cpl. Wennemann informed Ernest of his Miranda Rights and that he was under arrest for Possession of a Firearm Where Alcohol is Sold, Resisting an Officer and Headlights Required. A warrants check on Ernest produced a misdemeanor warrant through the East Baton Rouge Parish Sheriff's Office for Aggravated Assault. Cpl. Wennemann informed Ernest of this warrant. He stated he had already been to court for the warrant and he was no longer wanted.

The officer's asked Ernest if he had someone who could come get his car, if he wanted it towed, or parked at 1st District. Ernest elected to have his car parked at 1st District. Ernest was informed that his car had to be inventoried before it was parked. He was asked if there were any other guns or anything of value in the car that the officers needed to know about. He stated NO. When the officers opened the trunk they found an SKS 7.62 cal. assault rifle.

Ernest was placed under arrest for Possession of a Weapon Where Alcoholic Beverages are Sold and/or Consumed, Resisting an Officer, Headlights Required, and Fugitive from EBRSO. He was booked into Parish Prison and his car was parked at 1st District by Ofc. J. Daniels.

Cpl. Wennemann placed the rifles into Evidence at the Evidence window.



Ernest Taylor

---

Untitled layer

Ernest Taylor

Ranges 4

Categories

Styled by name

- 3827 Plank Rd (1)
- 4115 Plank Rd (1)
- Stop Preceding Taylor's (1)
- Taylor's Arrest (1)

Untitled layer

al Star #2

**Lookup Detail View**

**Name and Address**

Information provided is current.

Name	MailAddress	PublicAddress
THE BOSS LADY & CO	3827 PLANK RD BATON ROUGE, LA 70806	3827 PLANK RD BATON ROUGE, LA 70806

**Credential**

Information provided is current.

Credential	License Type	Issue Date	Expiration Date	Status	Reason
AG.17.0000010360- BL	CLASS A GENERAL BEER AND LIQUOR	02/01/2014	01/31/2015	CURRENT	LICENSE ACTIVE

Generated on: 7/10/2014 12:24:43 PM

**Lookup Detail View**

**Name and Address**

Information provided is current.

<b>Name</b>	<b>MailAddress</b>	<b>PublicAddress</b>
ROMEOS OLD SCHOOL BAR & LOUNGE	400 LOFASO ST BATON ROUGE, LA 70806	4115 PLANK RD BATON ROUGE, LA 70805

**Credential**

Information provided is current.

<b>Credential</b>	<b>License Type</b>	<b>Issue Date</b>	<b>Expiration Date</b>	<b>Status</b>	<b>Reason</b>
AG.17.0000112352- BL	CLASS A GENERAL BEER AND LIQUOR	02/01/2014	01/31/2015	CURRENT	LICENSE ACTIVE

Generated on: 7/10/2014 12:25:31 PM



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ASK THE EXPERT • JOBLINE • WAFB

## I-Team: Are guns allowed in vehicles in parking lots where alcohol is sold?

Posted: Jul 07, 2014 10:53 PM CDT

Updated: Jul 08, 2014 11:48 AM CDT

By Kiran Chawla - [bio](#) | [email](#)

BATON ROUGE, LA (WAFB) - An obscure Baton Rouge gun law is at the center of a potential showdown in federal court and whether a conflicting Louisiana law trumps the city's law.

Ernest Taylor was pulled over by the Baton Rouge Police Department in north Baton Rouge around 1:30 a.m. on Oct. 13, 2012. He had just left the parking lot of Boss Lady Lounge on Plank Road without any headlights on. The dash camera video from the officers' police cars from that night showed officers asking Taylor to step out of his car. As he's standing outside, an officer approached his car.

"You got a shotgun on the floor," the officer said. "You got a weapon between the seat. You got a pistol in there also. You sure there ain't nothing else we don't know about?"

Taylor repeatedly told the officers he had the papers on his weapons. Taylor even told the officers there was another gun in the trunk and he had papers for that one as well.

"You got a shotgun and all this stuff. You know you ain't supposed to have a weapon at a bar," the officers said.

Taylor once again said he had the papers on them.

"It doesn't matter. No matter if you have papers or not, you're not supposed to have a weapon on your vehicle," the officer replied.

According to Baton Rouge City Ordinance 13:95.3, a person is not allowed to have a gun "in any premises where alcoholic beverages are sold and or/consumed." The ordinance includes "the parking lot." It's that law Baton Rouge police officers used on Taylor.

"You were in the parking lot, right?" asked the officer.

"I didn't have the pistol on me. Come on dude. Come on," said Taylor.

"You were in the parking lot with those guns," said the officer.

But a state law passed in 2008 contradicts what the city has on its books. The Louisiana law states, "a person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area."

"My reading of the city ordinance is it's obviously unconstitutional," said John McLindon, a Baton Rouge lawyer. "The way this is written, if you were hunting and you stopped to get gas at a gas station, you would be violating this law. You would be committing a crime."

McLindon added state law trumps city ordinance.

"The Louisiana Legislature passed a law which more or less trumps this city ordinance, and that's another reason that the city ordinance, in my opinion, is unenforceable. It violates the United States Constitution. It violates the State Constitution, and it violates the Louisiana Revised Statutes passed by the Louisiana Legislature. It punishes protected behavior, legal behavior, and if it does that, then it violates federal and state constitutions," McLindon explained.

McLindon said the city ordinance's legal term made it too broad, but because it was a city ordinance, it applies to BRPD.

"Usually, city ordinances are carried out by Baton Rouge City Police. State laws are usually carried out by the sheriff and the Louisiana State Police," McLindon said.

The I-Team asked BRPD about the ordinance and its use of it.

"The officers acted in good faith when this ordinance was enforced and we will continue to use it as long as it is a law on the books," said Sgt. Mary Ann Godawa with BRPD.

The East Baton Rouge Metro Council is working to change things. Nearly two weeks ago, the parish attorney's office asked the council members to consider deleting the current ordinance, saying certain provisions are unconstitutional.

"We have a case pending, a false arrest because the arrest was made under the earlier ordinance that we want to repeal," said Assistant Parish Attorney Frank Gremillion.

"If you have a lawful firearm in your car and you pull up to the Winn-Dixie and they sell alcohol, you are under violation under this," said Parish Attorney Mary Roper.

Taylor was arrested for headlights required, resisting an officer, fugitive from the East Baton Rouge Parish Sheriff's Office and possession of a firearm where alcohol is sold. As for his three confiscated guns, Taylor got them back two weeks ago.

Louisiana State Police said it only enforces state laws. EBRSO said it enforces state and parish laws, but could not recall the last time it used the charge for possession of a firearm where alcohol is sold.

Because the Metro Council deferred the issue on June 25, it will take up the matter at its next meeting on July 23.

Meanwhile, Taylor and his attorneys are taking the case to federal court and that hearing was rescheduled from July 8 to July 30.

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WAFB

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Baton Rouge, LA 70802

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## Joe Donahue

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**From:** Tedrick Knightshead <TKnightshead@brgov.com>  
**Sent:** Tuesday, June 24, 2014 10:19 AM  
**To:** Joe Donahue  
**Cc:** Christy Duke  
**Subject:** FW: ernest taylor letter to chief

Look at this and see if this will suffice. I will also get an acknowledgement from the Chief that officers have been instructed not to enforce the ordinance, until it can be repealed by the council. Please advise. Thanks

---

**From:** Frank Gremillion  
**Sent:** Tuesday, June 24, 2014 10:13 AM  
**To:** Tedrick Knightshead  
**Subject:** ernest taylor letter to chief

Tedrick,  
Will the following first draft suffice, or do you need something else? Let me know.  
Thanks  
f

Dear Chief Dabadie,

I am writing to suggest that it might be wise to instruct your officers to no longer enforce Section 13:95.3, at least until we can obtain a clarification from the Metro Council.

As you know, this ordinance prohibits possession of a firearm on the premises where alcoholic beverages are consumed.

The ordinance may have some constitutional problems, and upon researching the matter we have concluded that during 1986, the council became concerned about the ordinance and enacted section 13:95.4, which accomplishes the same purpose without creating constitutional problems.

It appears that the council adopted section 13:95.4 intending to replace section 13:95.3 with section 13:95.4, but neglected to repeal the former, thus leaving both ordinances in effect. We intend to put the matter to the council as soon as possible, and we intend to recommend that section 13:95.3 be repealed and that section 13:95.4 be re-numbered to replace 13:95.3.

In the meantime, we suggest that you consider instructing your officers to use section 13:95.4 rather than 13:95.3.

Please advise whether you will be able to instruct your officers as suggested.

We will keep you advised of the situation.

Thank you very much for your assistance.

Cordially,

## Joe Donahue

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**From:** Tedrick Knightshead <TKnightshead@brgov.com>  
**Sent:** Friday, May 23, 2014 2:53 PM  
**To:** Joe Donahue  
**Subject:** Re: Ernest Taylor

I said control. The city evidence may have possession or the AG's office may have. I will send you the motion to retrieve property. You file it and the property will be released. But the parish Atty's office was recused from the case so the parish Atty's office is not exercising legal control over the items seized in the Criminal matter because we recused ourselves.

On May 23, 2014, at 1:20 PM, "Joe Donahue" <[joe@mcglynnnglisson.com](mailto:joe@mcglynnnglisson.com)> wrote:

If the City is no longer in possession of Mr. Taylor's firearms, then I need to have notice of that fact. Have they been destroyed?

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**From:** Knightshead Law Firm [<mailto:knightsheadlaw@gmail.com>]  
**Sent:** Friday, May 23, 2014 1:14 PM  
**To:** Joe Donahue  
**Cc:** Tedrick Knightshead; [shameka.n.cooper@hotmail.com](mailto:shameka.n.cooper@hotmail.com)  
**Subject:** Re: Ernest Taylor

The City does not have control of the items. Whether the case is pending or not. Not law requires the the party petition the court for return of it's property. I could send you the articles if you like. That way you can see that it's not the city. I have no objection to the weapons being returned, but if another agency is dealing with the matter. I'm powerless to take property they control.

On May 23, 2014, at 12:49 PM, Joe Donahue <[joe@mcglynnnglisson.com](mailto:joe@mcglynnnglisson.com)> wrote:

Tedrick,

There is no longer a criminal case pending against Mr. Taylor. Whether the firearms are in your possession, or in the possession of another agent of the City of Baton Rouge is not my concern. In my opinion, the correct procedure to assure the return of Mr. Taylor's firearms (absent the City's agreement to return them) is through the lawsuit pending in federal court. While I initially attempted to coordinate all of my efforts with both the PA's office and the AG's office, I believe that resulted in extensive delay and was ultimately counterproductive. As your letter appears to indicate that the City does not intend to voluntarily relinquish possession of Mr. Taylor's firearms, I will make the appropriate filings with the Court.

-Joe

**Terrence "Joe" Donahue, Jr.**  
**Associate Attorney**  
**MCGLYNN, GLISSON & MOUTON**  
**340 Florida Street**  
**Baton Rouge, LA 70801**  
**Phone: 225-344-3555**  
**Fax: 225-344-3666**

<image001.jpg>

Email: [Joe@mcglynnnglisson.com](mailto:Joe@mcglynnnglisson.com)

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**From:** Tedrick Knightshead [<mailto:TKnightshead@brgov.com>]

**Sent:** Friday, May 23, 2014 12:33 PM

**To:** Joe Donahue

**Cc:** [shameka.n.cooper@hotmail.com](mailto:shameka.n.cooper@hotmail.com); Knightshead Law Firm  
([knightsheadlaw@gmail.com](mailto:knightsheadlaw@gmail.com))

**Subject:** Ernest Taylor

Joe, I apologize, but it thought that I told you before about the procedure to retrieve Mr. Taylor's weapons. The weapons are being held in evidence. The City Prosecutor's office recused it self, once the suit was filed. Then the Attorney General's office took over the case. The evidence is held under the criminal case. Although it MAY, because I don't know if the AG's office has custody of it, be in evidence. But I have no authority to pull that evidence, because the City recused itself in the criminal matter. I personally cannot instruct anyone to release Mr. Taylor's property. You would have to contact the AG's office and file the necessary motion to retrieve Mr. Taylor's property. I apologize, but you could have petitioned the Court at any time for the return of Mr. Taylor's property, whether the case was pending or not. The prosecuting body, AG's Office, will have to be notified and they decide whether they will object to the return of the weapons. I simply cannot other property not in my control released.

12-cr-106939J

STATE OF LOUISIANA

NUMBER:

SECTION:

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

ERNEST TAYLOR

STATE OF LOUISIANA

\*\*\*\*\*

MOTION AND ORDER TO RETURN WEAPONS

NOW INTO COURT, through the undersigned counsel, comes the City of Baton Rouge through the Baton Rouge Police City Department, who respectfully requests an order to return seized weapons presently within the custody of the Baton Rouge Police City Department.

1.

The above captioned case has been dismissed on April 28, 2014 by the Attorney General's Office and all items of seized property are no longer needed for evidentiary purposes.

2.

At the request of the Court a motion is made that the following disposition be made of those seized items that have not yet been returned to their owner, Ernest Taylor:

- 1. Make: Yugo            Caliber: 7.62    Gun Type: Rifle            Serial No: V696561
- 2. Make: Arms Corp    Caliber: 22      Gun Type: Rifle            Serial No: A151444
- 3. Make: Hi-Point     Caliber: 9mm    Gun Type: Rifle            Serial No: B86117

RESPECTFULLY SUBMITTED:

BATON ROUGE POLICE DEPARTMENT

*Kim D Brooks*

KIM BROOKS  
 BAR ROLL #21687  
 SENIOR SPECIAL ASSISTANT PARISH ATTORNEY  
 LEGAL ADVISOR  
 BATON ROUGE CITY POLICE DEPARTMENT  
 P.O. BOX 2406  
 BATON ROUGE, LA 70821  
 TELEPHONE NO.: (225) 389-3809  
 FAX NO.: (225) 389-5589

I hereby certify that this is a true copy of the abstract of the court records

JUN 20 2014  
*Angela W. 8280*  
 Legal Specialist of City Court  
 Senior/Chief Dpy. Clerk of City Court