

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHAWN GOWDER,

Plaintiff,

v.

CITY OF CHICAGO, a municipal corporation,
the CITY OF CHICAGO DEPARTMENT OF
ADMINISTRATIVE HEARINGS, MUNICIPAL
HEARINGS DIVISION, SCOTT V. BRUNER,
Director of the City of Chicago Department of
Administrative Hearings, the CITY OF CHICAGO
DEPARTMENT OF POLICE, and JODY P. WEIS,
Superintendent of the City of Chicago Department
of Police,

Defendants.

No. 11-cv-1304

Judge Der-Yeghiayan

**LOCAL RULE 56.1(a)(3) STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES plaintiff Shawn Gowder, by and through his attorney Stephen A. Kolodziej of the law firm of Ford & Britton, P.C., and files this Local Rule 56.1(a)(3) Statement of Material Facts as to which plaintiff contends there is no genuine issue, in support of plaintiff's motion for summary judgment:

1. Plaintiff Shawn Gowder is a resident of the City of Chicago. Plaintiff's Amended Complaint [Doc. # 13] at ¶ 2.

2. Defendant City of Chicago is a political subdivision of the State of Illinois. Defendant City of Chicago Department of Administrative Hearings, Municipal Hearings Division is the administrative agency in which the hearing giving rise to this action occurred. Defendant City of Chicago Department of Police is an agency of the City of Chicago that denied

plaintiff's application for a CFP, which denial was reviewed and affirmed by the Department of Administrative Hearings, as described more fully herein. Defendant Scott V. Bruner is the former Director of the City of Chicago Department of Administrative Hearings. Defendant Jody P. Weis is the former Superintendent of Police for the City of Chicago Department of Police. Defendants' Answer [Doc. # 17] at ¶ 3.

3. On July 2, 2010, the City Council of Chicago amended the Municipal Code of Chicago as it pertains to firearms. The amended ordinance, codified as Municipal Code of Chicago ("MCC") Chapter 8-20, is attached to plaintiff's amended complaint as Exhibit A. Plaintiff's Amended Complaint [Doc. # 13] at ¶ 6; Defendants' Answer [Doc. # 17] at ¶ 6.

4. Pursuant to MCC § 8-20-110(a), it is unlawful for any person to carry or possess a firearm in Chicago without a Chicago Firearm Permit ("CFP"). MCC § 8-20-110(b) provides that no CFP application shall be approved unless the applicant, inter alia, "has not been convicted by a court in any jurisdiction of . . . an unlawful use of a weapon that is a firearm." MCC § 8-20-110(b)(3)(iii). Amended Complaint [Doc. # 13] at ¶ 7; Defendants' Answer [Doc. # 17] at p 7.

5. MCC 8-20-010 contains the Definitions applicable to Chapter 8-20 of the ordinance. Neither § 8-20-010 nor any other provision of MCC Chapter 8-20 defines the term "use." Amended Complaint [Doc. # 13] at ¶ 8; Defendants' Answer [Doc. # 17] at ¶ 8.

6. On November 1, 2010, plaintiff filed an application for a CFP with the City of Chicago Department of Police. Plaintiff's application included a current copy of his Illinois Firearm Owner's Identification Card ("FOID Card"). Amended Complaint [Doc. # 13] at ¶ 11; Defendants' Answer [Doc. # 17] at ¶ 11.

7. Plaintiff has one misdemeanor conviction, entered in 1995, for

carrying/possessing a firearm on a public street in violation of 720 ILCS 5/24-1(a)(10). Amended Complaint [Doc. # 13] at ¶ 12; Defendants' Answer [Doc. # 17] at ¶ 12; Joint Memorandum Regarding Plaintiff's Conviction Status [Doc. # 34] at 2-3.

8. On November 10, 2010, the City of Chicago Department of Police denied plaintiff's application for a CFP on the sole ground that "You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110(b)(3)(iii)." A copy of CPD's denial letter to plaintiff is attached to the amended complaint as Exhibit C. Amended Complaint [Doc. # 13] at ¶ 13; Defendants' Answer [Doc. # 17] at ¶ 13.

9. On November 22, 2010, plaintiff filed a written request for a hearing to contest the denial of his CFP application with the City of Chicago Department of Administrative Hearings (DOAH"), pursuant to MCC § 8-20-200. That request is attached to the amended complaint as Exhibit D. Amended Complaint [Doc. # 13] at ¶ 14; Defendants' Answer [Doc. # 17] at ¶ 14.

10. Pursuant to plaintiff's request, the DOAH held a hearing on the denial of plaintiff's CFP application on December 8, 2010. At that hearing, plaintiff submitted, through counsel, a written brief and oral argument, in which plaintiff argued that because the term "use" is not defined in MCC Chapter 8-20, that term must be given its plain and ordinary meaning in linguistic usage of operating, discharging or actively employing a firearm, rather than merely carrying or possessing a firearm. Therefore, plaintiff's prior conviction for carrying/possessing a firearm while on a public street did not constitute a conviction for the unlawful "use" of a weapon within the meaning of MCC § 8-20-110(b)(3)(iii), and the DOAH must so construe the ordinance in order to avoid raising a substantial constitutional question. Plaintiff further argued

that a prior misdemeanor conviction, as opposed to a felony conviction, cannot form the basis for denial of the fundamental constitutional right to keep and bear arms. Thus, the denial of plaintiff's CFP application, based solely upon a prior misdemeanor conviction for carrying/possessing a weapon in a public street and the erroneous interpretation of the ordinance by the DOAH, would violate plaintiff's fundamental right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution and Article I § 22 of the Illinois Constitution. Amended Complaint [Doc. # 13] at ¶ 16; Defendants' Answer [Doc. # 17] at ¶ 16; Certified Record of Proceedings before the City of Chicago Department of Administrative Hearings [Doc. # 18-1] at pp. 71-78.

11. At the administrative hearing, the City of Chicago introduced as its group Exhibit 6 the Illinois State Police records of plaintiff's criminal background check, which included a Certified Statement of Conviction/Disposition from the Circuit Court of Cook County, Illinois. Certified Record of Proceedings before the City of Chicago Department of Administrative Hearings [Doc. # 18-1] at pp. 31-34, 67. The Certified Statement shows a misdemeanor conviction entered on a charge of "Carry/Posses [sic] Firearm in P" pursuant to 720 ILCS 5/24-1(A)(10)1. *Id.* at pp. 31, 67.

12. The DOAH issued a decision on December 8, 2010, which was served upon plaintiff on December 22, 2010. The DOAH affirmed the denial of plaintiff's CFP application on the grounds that the Illinois Criminal Code, 720 ILCS 5/24-1(a)(1), defines "unlawful use of a weapon" as including the offense of carrying or possessing a handgun on or about the person upon any public street or lands within the corporate limits of a city. Therefore, the DOAH concluded that "the plain and ordinary meaning and usage given to 'unlawful use of a weapon' in this jurisdiction is to 'carry or possess a firearm' as provided in 720 ILCS 5/24-1(a)(10)." The

DOAH further concluded that “There is no distinction between the meanings of ‘use of a weapon’ and ‘carry and possess a firearm[‘] as used in MCC 8-20-110.” Therefore, the DOAH ruled that “the basis for the denial of the application has not been rebutted by the Applicant,” and affirmed the CPD’s denial of plaintiff’s CFP application. Amended Complaint [Doc. # 13] at ¶¶ 17-18; Defendants’ Answer [Doc. # 17] at ¶¶ 17-18.

13. Plaintiff timely filed an action for administrative review of the DOAH’s decision in the Circuit Court of Cook County, Illinois within 35 days of the date the decision was served upon the plaintiff, pursuant to section 103 of the Illinois Administrative Review Law, 735 ILCS 5/3-103. Amended Complaint [Doc. # 13] at ¶ 19; Defendants’ Answer [Doc. # 17] at ¶ 19. Plaintiff’s complaint included a cause of action against the defendants under the Second and Fourteenth Amendments to the U.S. Constitution pursuant to 42 U.S.C. § 1983. Defendants’ Notice of Removal [Doc. # 1] at ¶ 2.

14. Defendants removed this action to this Court on Feb. 24, 2011. Defendants’ Notice of Removal [Doc. # 1].

15. Following removal, Defendants served upon plaintiff their Rule 26(a)(1) Disclosures, a copy of which is attached hereto as Exhibit A. With respect to the purported governmental interests served by MCC § 8-20-110 and the manner in which the ordinance serves such purported interests, that disclosure states only: “Individuals with knowledge of the governmental purposes served by MCC § 8-20-110. Investigation continues.” Defendants have never disclosed the names of any specific individuals having such knowledge, nor have defendants ever disclosed any experts pursuant to FRCP 26(a)(2). Declaration of Stephen A. Kolodziej, attached hereto as Exhibit B.

Respectfully submitted,

s/ Stephen A. Kolodziej

Stephen A. Kolodziej
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Attorney for Plaintiff Shawn Gowder

CERTIFICATE OF SERVICE

I, Stephen A. Kolodziej, an attorney, hereby certify that on March 19, 2012, service of the foregoing LR 56.1(a)(3) Statement of Material Facts in support of plaintiff's Motion for Summary Judgment is being made in accordance with the General Order on Electronic Case Filing section XI to the following:

Rebecca Alfert Hirsch
Andrew W. Worseck
Assistant Corporation Counsel
30 N. LaSalle Street, Suite 1230
Chicago, IL 60602

s/ Stephen A. Kolodziej
Stephen A. Kolodziej
Ford & Britton, P.C.
33 N. Dearborn, Suite 300
Chicago, Illinois 60602
(312) 924-7508
skolodziej@fordbritton.com

LIST OF EXHIBITS

- A. Defendants' Rule 26(a)(1) Disclosures**
- B. Declaration of Stephen A. Kolodziej**

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHAWN GOWDER,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 11 CV 1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF)	JUDGE DER-YEGHIAYAN
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

DEFENDANTS' RULE 26(a)(1) DISCLOSURES

Defendants City of Chicago (the "City"), City of Chicago Department of Administrative Hearings ("DOAH"), Scott Bruner ("Bruner"), City of Chicago Department of Police ("CPD"), and Jody P. Weis ("Weis"), by and through their attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, pursuant to Fed. R. Civ. P. 26(a)(1), disclose the following:

A. Individuals likely to have discoverable information relevant to claims or defenses:

- Plaintiff Shawn Gowder
- Sgt. Jeffrey Schaaf
- Police officers involved in or who witnessed the arrest of Plaintiff on January 10, 1995, and any other witnesses or persons with knowledge of said arrest. Investigation continues.
- Individuals with knowledge of the governmental purposes served by MCC § 8-20-110. Investigation continues.

This disclosure is not intended to be a final list of possible witnesses in this matter. Defendants reserve the right to supplement this disclosure as their investigation continues. Defendants also reserve the right to call any witness disclosed by Plaintiff or any Defendant at the trial of this matter.

B. Documents, data compilations, and tangible things in Defendants' possession, custody or control that Defendants may use to support their claims or defenses:

- Administrative Record, *City of Chicago v. Shawn Gowder*, 10GR000041
- Plaintiff's 1995 Arrest Report
- Legislative Record for The Responsible Gun Ownership Ordinance, MCC § 8-20-010 *et seq.*

Defendants filed a complete copy of the Administrative Record with the Court on April 7, 2011, and thus Plaintiff has already been provided a copy. Defendants will produce copies of the other documents to Plaintiff under separate cover.

C. Computation of damages: Not applicable

D. Any insurance agreement applicable to payments made to satisfy judgment:

Not applicable; the City of Chicago is self-insured.

Date: May 12, 2011

Respectfully submitted,

MARA S. GEORGES
Corporation Counsel for the City of Chicago

By: 
Assistant Corporation Counsel

Michael A. Forti
Mardell Nereim

William Macy Aguiar
Rebecca Alfert Hirsch
Andrew W. Worseck
City of Chicago, Department of Law
Constitutional and Commercial Litigation Division
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 742-0260
Attorney No. 90909

CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the Defendants, hereby certifies that on May 12, 2011, she served a copy of the foregoing **Defendants' Rule 26(a)(1) Disclosures** on the party listed below by electronic mail and U.S. Mail, postage prepaid, before 5:00 p.m.

Stephen Kolodziej
Brenner Ford Monroe & Scott Ltd.
33 N. Dearborn St., Suite 300
Chicago, IL 60602
Tel: (312) 781-1970
Fax: (312) 781-9202
Email: skolodziej@brennerlawfirm.com

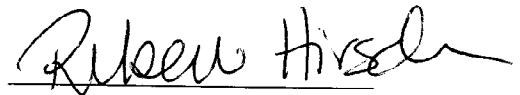
A handwritten signature in black ink, reading "Rebecca Hirsch", written over a horizontal line.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
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EASTERN DIVISION**

SHAWN GOWDER,

Plaintiff,

v.

CITY OF CHICAGO, et al.

Defendants.

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No. 11-cv-1304
Judge Der-Yeghiayan

DECLARATION OF STEPHEN A. KOLODZIEJ

I, Stephen A. Kolodziej, hereby certify and declare as follows:

1. I am counsel of record for plaintiff Shawn Gowder in the above-captioned matter.

I filed this lawsuit on plaintiff's behalf and have represented plaintiff throughout the entirety of proceedings in this Court.

2. On May 12, 2011, defendants served upon me their initial disclosures pursuant to FRCP 26(a)(1). A true and accurate copy of that disclosure is attached as Exhibit A to plaintiff's LR 56.1(a)(3) statement of material facts filed in support of plaintiff's motion for summary judgment.

3. As of the filing of plaintiff's motion for summary judgment, other than defendants' initial Rule 26(a) disclosure, I have never received any additional disclosures of any fact or expert witnesses from defendants pursuant to FRCP 26(a)(1) or (2).

Under penalty of perjury I certify that the foregoing is true and correct.



Stephen A. Kolodziej

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