

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

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v.
ROBERT F. STROM as the Finance Director of
THE CITY OF CRANSTON, et al.
Defendants

C.A. No. 15-525

**PLAINTIFF'S SUPPLEMENT TO HIS MOTION FOR
SUMMARY JUDGMENT RESPECTING POST-SEIZURE DUE PROCESS**

Pursuant to the Court's text order on January 29, 2019, Plaintiff hereby supplements his motion for summary judgment respecting Defendants' failure to provide due process after the seizure of his firearms.

SUMMARY OF FACTS

Plaintiff has previously submitted a Statement of Undisputed Facts ("SUF") in support of his motion for summary judgment. Plaintiff will refer to that Statement by its numbered paragraphs ("SUF ____"), unless otherwise set forth.

The Cranston Police Department ("CPD") has a General Order, GO 350.20, "Bureau of Criminal Identification," that addresses the return of firearms that have been seized for safekeeping. (SUF 21, Exhibit G, Page 11 of 15). It refers to "the criteria set forth in R.I. General Law," and provides that if the owner of the firearm is incompetent, a drug addict, or a drunkard prohibited from possession of a firearm, then the CPD will notify the owner that he must obtain a court order to get back his firearm. (Id.). However, if the firearm was confiscated due to "the owner's temporary state of mind posing a threat to himself/herself or others," the CPD will send a letter to the owner informing him the firearm can be retrieved at CPD headquarters. (Id.).

On August 21, 2015, four Cranston Police Department (“CPD”) officers came to Plaintiff’s house in response to a phone call from Plaintiff’s wife respecting an argument that the Plaintiff and his wife had the prior evening. (SUF 58-82). One of the officers said that in these situations the Cranston Police confiscate firearms. (SUF 83). Mr. Caniglia responded: “You’re not confiscating anything.” (SUF 84). The police officers told Mr. Caniglia that if he submitted to a psychiatric evaluation at Kent Hospital his firearms would not be removed from the house. (SUF 85). Mr. Caniglia only agreed to go to the hospital to prevent the confiscation of his firearms. (Id.).

Officer Mastrati said there was no crime involved with respect to the incident at the Caniglia’s house. (SUF 112). After Mr. Caniglia left in the Cranston rescue, one of the police officers told Mrs. Caniglia that Ed had given him permission to seize the firearms. (SUF 113). Mrs. Caniglia never said she wanted the guns out of the house. (Id.). The officer told Mrs. Caniglia that she could retrieve the guns by going to the Police Department and they would be returned to her. (Id.). Defendants believe that Mrs. Caniglia consented to a search of the house. However, she did not consent to seizure of the firearms. (SUF 114). Officer Mastrati seized five items from the Caniglia residence including two handguns, clips for the handguns, and ammunition. (SUF 115). The guns belong to Mr. Caniglia. (SUF 116). Mr. Caniglia went in the Cranston rescue to Kent Hospital, was evaluated by a social worker, and discharged. (SUF 121, Exhibit X). The CPD never sent Mr. Caniglia a letter about retrieving his guns.

On Monday, August 24, 2015, Kim Caniglia went to the Cranston Police Department to retrieve Ed’s firearms. (SUF 122). She was told she would have to request a copy of the police report, that it would take 3-5 business days, and that it would cost 35 cents a page. (Id.). She was told she would have to wait for a captain to review the request. (Id.).

On August 24, 2015, Mrs. Caniglia returned to the Cranston Police Department and received a copy of the report. (SUF 123). She was told the captain had not reviewed the request yet. (Id.). A few days later, the Police Department called the Caniglias and said that the guns would not be returned and they would have to get a court order. (Id.).

The Cranston Police Department has a record which indicates that on September 1, 2015, a captain of the Department denied a request to return the firearms. (SUF 124). That captain's signature is not identified. (Id.).

During the second week of September 2015, Mr. Caniglia went to the Cranston Police Department to obtain his firearms. He was told they were not going to release the firearms. (SUF 125).

On October 1, 2015, Mr. Caniglia's attorney, Nicholas Lambros wrote a letter to Chief Winkist requesting the return of Mr. Caniglia's firearms. (SUF 126). When Col. Winkist received Mr. Lambros' letter he initially instructed Major Quirk to tell Mr. Lambros to get a court order because he mistakenly believed that the situation involved a domestic assault. (SUF 128). When Major Quirk told him it did not, Col. Winkist says he instructed Major Quirk to return the firearms. (Id.).

However, Major Quirk recalls the events differently. He testified that he reviewed the Incident Report, that he spoke with Col. Winkist about the incident, and that he called Mr. Lambros to tell him he would have to get a court order for the return of the firearms. (SUF 129). He reported this conversation to Col. Winkist. (Id.).

Major Quirk does not know whether Col. Winkist and he consulted with any of the Cranston Police Department's policies or procedures. (SUF 130). He does not believe that he spoke with any of the officers involved in the seizure of Mr. Caniglia's firearms before making

this decision. (Id.). This decision was consistent with the custom and practice of the Cranston Police Department. (SUF 131). That custom and practice is not reflected in any written document. (Id.). Major Quirk is not aware of any legal authority for this custom and practice. (Id.).

Major Quirk recalls that there was some other event that prompted Col. Winquist to instruct him to return Mr. Caniglia's firearms but he does not recall what it was. (SUF 132). On December 11, 2015, Plaintiff filed this lawsuit. (SUF 133). On December 22, 2015, Defendants returned Mr. Caniglia's firearms, magazine and ammunition to him without a court order. (SUF 134). Col. Winquist does not know why it took until December 22, 2015 to release Mr. Cangilia's firearms. (SUF 135).

ARGUMENT

This Court has already held that Defendants' failure to provide post-seizure due process in Richer v. Parmelee, C.A. 15-162, violated that plaintiff's due process rights. Richer v. Parmelee, 189 F.Supp.3d 334, 342 (D.R.I. 2016) ("Richer"). Mr. Cangilia submits that the same conclusion must apply here because the facts are substantially the same. Accordingly, Plaintiff will present here only a summary of the arguments presented in Richer.

Defendants' actions violate the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution by depriving Mr. Caniglia of his property without due process of law. Richer, id.; see Walters v. Wolf, 660 F.3d 307, 311 (8th Cir. 2011) ("Walters"); Avanzo v. Rhode Island Dept. of Human Services, 625 A.2d 208 (R.I. 1993). In Richer, the North Smithfield Police Department ("NSPD") seized plaintiff's firearms for safekeeping because of a purported suicide threat. At the NSPD's insistence, plaintiff went to a hospital for a psychological evaluation and was discharged the same day. Three week later he went to the NSPD to retrieve his guns. He

was told he would have to get a court order to regain them. A year later, plaintiff requested the return of his firearms in writing and enclosed letters from his wife and psychologist attested to his well-being. The NSPD did not respond. Over the next few years, plaintiff made other efforts to get back his guns. The NSPD refused to return them, citing its potential liability. The American Civil Liberties Union sent the NSPD letter requesting the return of the guns, to no avail. In 2015, plaintiff filed suit and moved for a preliminary injunction. Defendants returned the guns before the motion was heard.

In 2016, Richer moved for partial summary judgment on various grounds, including that the defendants had denied his rights to due process. This Court rejected defendants' argument that plaintiff's access to state court for a post-seizure action was adequate due process. To the contrary, the Court said a post-seizure lawsuit was "insufficient to ensure Mr. Richer an adequate opportunity to challenge the Town's confiscation and retention of his property under these circumstances." 189 F.Supp.3d at 342. The Court held that the Town must provide some post-deprivation procedures to meet the requirement of due process. *Id.*, citing, *inter alia*, Razzano v. City of Nassau, 765 F.Supp.2d 176 (E.D.N.Y. 2011).

In Walters, the defendant police department stopped Walter's car because he lacked a front license plate required under Missouri. A computerized records check revealed an outstanding warrant for Walters' arrest. The defendants seized a handgun and ammunition that Walters had in his car despite the fact that he had legally purchased the gun from a licensed firearm dealer, the handgun was properly registered in his name under Missouri law, and he held a valid permit to conceal and carry the handgun. The defendants refused several requests to return the handgun and ammunition stating they maintained a policy "require[ing] a Court Order before returning a lawfully confiscated firearm." Walters filed suit alleging defendants had

deprived him of his property without due process of law. The district court dismissed his suit finding that his ability to pursue an action in replevin in state court provided an adequate post-deprivation remedy and that Walters had failed to use this remedy. Walters v. City of Hazelwood, Mo., No. 4:09-CV-1473 (CEJ), 2010 WL 429015, at 4 (E.D.Mo. Oct. 22, 2010). Walters appealed.

The Eighth Circuit rejected the district court's decision that Walters' ability to file a replevin action in state court was an adequate remedy. Id. at 313-314, citing, Zinerman v. Burch, 494 U.S. 113, 127 (1990); Hudson v. Palmer, 468 U.S. 517 (1984); Parratt v. Taylor, 451 U.S. 527 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327, 330-31 (1986). The failure to return the firearms was a deprivation that had no attendant exigencies, as compared to the original seizure. Id. at 314, citing Lathon v. City of St. Louis, 242 F.3d 841, 843 (8th Cir. 2001). The Eighth Circuit said "under Lathon, relegation to a post-hoc state court tort action to address the deprivation is inherently insufficient." Id. at 315.

With respect to state law, the Rhode Island Supreme Court has emphasized the purpose of the Rhode Island Firearms Act ("RIFA") was to "prevent criminals and certain other person from acquiring firearms generally and handguns in particular without at the same time making unduly difficult such acquisition for other members of society." Gadomski v. Tavares, 113 A.3d 387, 389 (R.I. 2015), quoting, State v. Storms, 112 R.I. 121, 127, 308 A.2d 463, 466 (1973). The Court also reiterated that a person's rights under the RIFA are not "committed to the unfettered discretion of an executive agency." Id. at 390, quoting Mosby v. Devine, 851 A.2d 1031, 1050 (R.I. 2004). In Gadomski, the Supreme Court held that the City of East Providence must provide "certain procedural steps" when a person applied for a concealed weapon permit. Id. Moreover, "[a] rejected applicant is entitled to know the evidence upon which the

department based its decision and the rationale for the denial.” Id. quoting Mosby, 851 A.2d at 1051. The Court held that the respondents’ letter denying petitioner’s application was inadequate as a matter of law where it was “nothing more than the recital of a litany.” Id. at 391, quoting Bernuth v. Zoning Board of Review of New Shoreham, 770 A.2d 396, 401 (R.I. 2001).

One of the fundamental requirements of due process is notice that is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 309, 314 (1950). Due process requires that notice and a hearing must be granted at a time when the deprivation of property can still be prevented. Fuentes, 407 U.S. at 82. An opportunity for a hearing “must be provided before the deprivation at issue takes effect.” Id. See Ford v. Turner, 531 A.2d 233 (D.C. 1987) (Court ruled that the government’s failure to give Ford at minimum notice that her property, in this case guns, had been seized, that the District sought to retain the weapons pursuant to specified authority, and that Ford could take particular steps to challenge the District’s action was a violation of Ford’s due process rights).

Here, Plaintiff suffered two deprivations: the first, when the CPD seized his guns for “safekeeping” and the second, when it refused to return them without a court order. (Plaintiff has separately addressed the first seizure in his original summary judgment motion). At no time did Defendants give Plaintiff any notice whatsoever that his lawfully obtained weapons were seized pursuant to any relevant statute, regulation or justifiable policy (other than “safekeeping”), nor was he informed why they were seized, nor was he informed of a meaningful process to object to the continued retention of his property, nor was he given an opportunity for a hearing to object to the seizure and retention of his property. To the contrary, Defendants’ continued retention of the weapons directly contravenes the RIFA. Section 22(b) of the Act states: “If the

police department in the city or town in which the firearm was seized or confiscated has not been notified by a justice of the superior court or the attorney general that the firearm is necessary as evidence in a criminal or civil matter, it shall be returned to the rightful owner.” R.I.Gen.L. § 11-47-22(b) (emphasis added). Plaintiff was effectively denied the opportunity to be heard by the CPD which told him he would have to get a court order to get back his weapons.¹

Defendants have deprived Plaintiff of his property by failing to comply with their own GO. A governmental organization’s own procedures can establish due process rights. See Gates v. City of Chicago, 623 F.3d 389 (7th Cir. 2010) (discussing adequacy of City’s procedures to notify arrestees of their ability to obtain money seized from them when they were arrested); Alexandre v. Cortes, 140 F.3d 406, 412-13 (2nd Cir. 1998) (discussing City of New York’s administrative procedures for the return of property); Conyers v. City of Chicago, 162 F.Supp.3d 737, 745-46 (N.D.Ill. 2016) (arrestees alleged due process violation when they alleged City failed to provide notice of procedures to obtain property when they were arrested); Nasius v. Littleton Police Department, C.A.No. 07-cv-01001, 2009 WL 734719 at *11 (D.Colo. Feb. 19, 2009) (report and recommendation that issues of fact respecting police department procedures for return of seized property barred summary judgment on due process claim).

Here, GO 350.20 provides that if the firearms were seized due to the owner’s temporary state of mind, the CPD is to send the owner a letter telling him he can come to CPD headquarters to retrieve them. The GO further provides that the CPD can tell the owner he must get a court order for the return of his firearms only if he meets certain criteria, which happen to be criteria

¹ Because there never was a court action related to this incident, Plaintiff would have had to file a miscellaneous petition in state district court, pay a filing fee (\$104.02), pay a constable to effect service on defendants (approximately \$45 per defendant), and, perhaps, retain an attorney to assist him. Thus, the cost to regain possession of his wrongfully seized and retained guns would be approximately \$150-200, exclusive of legal fees.

set forth in the RIFA that disqualify a person from possession of firearms. R.I.Gen.L. § 11-47-6. The CPD violated their own GO by not sending Mr. Caniglia a letter telling that he could retrieve his firearms and by requiring him to go to court to get back the guns.

CONCLUSION

Defendants' violated Plaintiff Edward Caniglia's rights to post-seizure due process under the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution, as well as his rights under the Cranston Police Department General Order 350.20.

EDWARD CANIGLIA

By his attorneys,

/s/ Thomas W. Lyons

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CERTIFICATION

I hereby certify that on January 31, 2019, a copy of the foregoing was filed and served electronically on all registered CM/ECF users through the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas W. Lyons