United States Court of Appeals
For the First Circuit

No. 19-1764

EDWARD A. CANIGLIA
Plaintiff – Appellant

v.

ROBERT F. STROM, as the Finance Director of the City of Cranston; CITY OF CRANSTON; COLONEL MICHAEL J. WINQUIST, in his official capacity as Chief of the Cranston Police Department; RUSSELL C. HENRY, JR., individually and in his official capacity as an Officer of the Cranston Police Department; ROBERT QUIRK, individually and in his official capacity as an officer of the Cranston Police Department; BRANDON BARTH, individually and in his official capacity as an officer of the Cranston Police Department; JOHN MASTRATI, individually and in his official capacity as an officer of the Cranston Police Department; WAYNE RUSSELL, individually and in his official capacity as an officer of the Cranston Police Department; AUSTIN SMITH, individually and in his official capacity as an officer of the Cranston Police Department

Defendants – Appellees

BRIEF OF APPELLANT EDWARD CANIGLIA

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JURISDICTIONAL STATEMENT

The Court has jurisdiction to hear an appeal from the entry of a final judgment. 28 U.S.C. § 1291. The District Court determined all liability issues on the parties' cross motions for summary judgment, leaving only the issue of damages on Plaintiff/Appellant Ed Caniglia's due process claim. Caniglia stipulated to nominal damages on that claim only, final judgment entered on July 19, 2019, and he filed a notice of appeal on August 1, 2019. 28 U.S.C. § 2107(a).

STATEMENT OF THE ISSUES

1. Whether the District Court erred in granting Defendants' summary judgment motion and denying Plaintiff's motion where: (a) Defendants violated Plaintiff's rights under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution when they seized him and his firearms from his home without a court order or exigent circumstances; (b) the community caretaking function does not justify Defendants' seizures because the function is based on "state law and sound police procedures" but the District Court cited no state law or objective policing standards to support its holding; and (c) consent does not justify Defendants' seizures because Plaintiff expressly objected to the seizures, Defendants falsely told his wife he had consented to them, Defendant Barth testified that Plaintiff's seizure was "involuntary," and there are factual issues respecting consent?

2. Whether the District Court erred in granting Defendants' summary judgment motion and denying Plaintiff's motion on Plaintiff's claim that Defendants violated the Rhode Island Mental Health Law by seizing him and requiring him to have a psychological evaluation without a court order or a doctor's certification?
3. Whether the District Court erred in granting summary judgment on Plaintiff's claims that Defendants violated Art. 1, Sec. 22 of the Rhode Island Constitution, the Rhode Island Firearms Act, and the Second Amendment by seizing Plaintiff's firearms from his home without a court order or exigent circumstances?
4. Whether the District Court erred in granting summary judgment on Plaintiff's claims that he has private rights of action for violation of the Mental Health Law and the Firearms Act where both Acts state that violations constitute crimes and Rhode Island law provides civil remedies for criminal actions?
5. Whether the District Court erred in granting Defendants' summary judgment motion on qualified immunity and denying Plaintiff's motion where such immunity would be based on the community caretaking function which depends on "state law and sound police procedures" but the District Court cited no state law or objective policing standards in support of its holding and there are numerous disputed material facts respecting qualified immunity?

STATEMENT OF THE CASE

Caniglia set forth numerous facts as undisputed in his Statement of Undisputed Facts and his Statement of Additional Undisputed Facts in support of his summary judgment motion and his Statements of Disputed Facts and Additional Disputed Facts in opposition to Defendants' summary judgment motion. Caniglia will summarize the facts here and highlight them in his Argument, as applicable. All those facts were material. However, very few of them appear in the District Court's decision.

Caniglia ("Ed") is 68 years old. (A248). He has been married to Kim Caniglia ("Kim") since 1993. (Id.). They live in Cranston, Rhode Island. (A712). They have never been in divorce proceedings. (A248). Ed has never had any kind of criminal charges or restraining orders against him. (A254-55). He has no history of violence or threatening violence to himself or others. (Id.). He has never misused firearms. (Id.).

Defendants include the City of Cranston and various Cranston police officers who were named in their official and individual capacities, including Col. Michael Winquist, the chief of the Cranston Police Department ("CPD"), who establishes policy and supervises the CPD; Capt. Russell Henry, who made the decision to seize Ed Caniglia's firearms; Sgt. Brendan Barth, who was the senior CPD officer on scene at the Caniglias' home and who required Plaintiff to have a psychological

evaluation; and Officers John Mastrati, Wayne Russell, and Austin Smith, who were also on scene.[1]

Defendants seized Ed and his firearms from his home because he was purportedly suicidal, which he denied. (A258, A263). Defendants made the seizures without Ed's consent, without a court order, without any exigent circumstances, and without any doctor's certification. (A249, A264, A1054). They compelled him to go to a hospital for a psychological evaluation, which cost Ed about $1000. (A262-63, A269, A1054).

It is undisputed that Defendants have an ongoing practice of seizing people and requiring them to have psychological evaluations and seizing their firearms without court orders or exigent circumstances. (A248-49, A269, A1054). Indeed, Defendants have been sued previously for this practice. Machado v. City of Cranston, C.A. No. 12-445 (D.R.I. 2012). Defendants justified their actions based on the Caniglias' purported consents or the "community caretaking function" ("CCF"). (A251, A260, A1054, A264). However, the CCF does not apply because Defendants did not rely on "sound police procedures" or "state law"; rather, they made individual *ad hoc* decisions based on "instinct." (A252, A262, A1054). Defendants' seizures violated their own written policies and training. The only

[1] Major Robert Quirk, who was involved in the decision whether to return Caniglia's firearms, was also named as a defendant, but is not part of this appeal.

expert witness in the case has opined that Ed was not suicidal, that his comments and actions could not appropriately be deemed suicidal, and that Defendants violated their own policies and training by seizing Ed and his firearms. (A267-68). Any purported "consent" to the seizures was obtained through coercion or trickery. (A259-60, A264).

Plaintiff filed suit on December 11, 2015. His amended complaint alleges violation of the Rhode Island Firearms Act (Count I), Plaintiff's right to keep arms (Count II), violation of Plaintiff's due process (Count III), and violation of Plaintiff's right to equal protection (Count IV), violation of Plaintiff's rights under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution (Count V); violation of Plaintiff's rights under the Rhode Island Mental Health Law (Count VI), and trover and conversion (Count VII). (A1-17). The amended complaint sought damages as well as injunctive and declaratory relief. (A16-17).

After extensive discovery, the parties filed cross-motions for summary judgment. (A18-21). The District Court heard oral argument on March 25, 2019 and it issued its Memorandum and Order on June 4, 2019. Caniglia v. Strom, C.A. No. 15-525, 2019 WL 2358965 (D.R.I. June 4, 2019) ("Caniglia" or the "Decision"). The District Court resolved all liability claims and held that:

- The City and its officials were authorized by the community caretaking function to send Caniglia to Kent Hospital for a mental health evaluation and to seize his guns. The City's conduct did not violate Caniglia's rights under the Fourth Amendment. Id. at *5.

- Even if the City violated Caniglia's rights under the Fourth Amendment, the doctrine of qualified immunity applies to bar this claim against the City. Id. at *6.

- The City did not violate Caniglia's Second Amendment rights by seizing his firearms "under their well-established duties as community caretakers." Moreover, "the Second Amendment does not protect an individual's right to possess a particular gun." Id.

- The City violated Caniglia's right to post-seizure due process by requiring him to file a lawsuit to get back his firearms. Id. at **7-8.

- The City did not violate Caniglia's right to equal protection. Id. at *8.

- The City did not violate the Rhode Island Firearms Act. Id. at *9.

- The City did not violate the Rhode Island Mental Health Law. Id. at *10.

- The City did not convert Caniglia's firearms. Id. at *11.

Plaintiff subsequently stipulated to nominal damages only on the due process claim and final judgment entered on July 19, 2019. Plaintiff filed a notice of appeal on August 1, 2019. He appeals the District Court's Decision granting Defendants' summary judgment motion except with respect to equal protection and conversion. He also appeals the denial of his summary judgment motion with respect to Defendants' liability on Counts V and VI, as well as Defendants' affirmative defenses based on the community caretaking function and qualified immunity.

STANDARD OF REVIEW

This Court reviews *de novo* the grant or denial of a motion for summary judgment. See Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 558 (1st Cir. 2010). The Court accords no deference to the district court's decision. Rhode Island Hospital v. Leavitt, 548 F.3d 29, 33 (1st Cir. 2009). In reviewing a summary judgment, the Court is limited to the evidence available to the district court at the time of the motion was made. Sensing v. Outback Steakhouse of Florida, LLC, 575 F.3d 145, 151 n.10 (1st Cir. 2009). Similarly, this Court should not address issues not raised before and addressed by the district court. Puerto Rico American Ins. Co. v Rivera-Vazquez, 603 F.3d 125, 134, n.9 (1st Cir. 2010).

The Court "draws all reasonable inferences in favor of the nonmoving party while ignoring conclusory allegations, improbable inferences, and unsupported speculation." Shafmaster v. United States, 707 F.3d 130, 135 (1st Cir. 2013). The Court affirms only if the record reveals "no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law." F.R.Civ.P. 56(a). The trial court errs as a matter of law when it applies the wrong legal standard, Rodowicz v. Massachusetts Mut. Life Ins. Co., 192 F.3d 162, 170 (1st Cir. 1999), or it resolves issues of fact in favor of the non-moving party, Tolan v. Cotton, 572 U.S. 650, 657 (2014) (reversing summary judgment based on qualified immunity where lower courts failed to view evidence in light most favorable to the non-moving

party), or if it overlooks evidence demonstrating a genuine issue of fact. Monaghan v. Telecom Italia Sparkle of North America, 647 Fed.Appx. 763, 765 (9th Cir. 2016) ("The district court ignored evidence demonstrating a genuine issue of fact.").

SUMMARY OF THE ARGUMENT

The District Court erred because it held that the CCF justified Defendants' actions when they seized Ed Caniglia in his home, seized his firearms from his home, and required him to go to a hospital for a psychiatric evaluation, all over his objection, and without any court order or doctor's certification, because his wife had expressed some concern about his well-being.

Neither the United States Supreme Court nor the Rhode Island Supreme Court have ever authorized the use of the CCF to seize people or property from a home. Further, the Supreme Court has held that the CCF is based on "state law and sound police procedure." Cady v. Dombroski, 413 U.S 433, 447 (1973) ("Cady"). However, the District Court cited no Rhode Island law and no objective policing standards in finding that the CCF applied.

To the contrary, Rhode Island case law and statutes indicate that the Defendants needed court orders for their actions. Defendants' own General Orders and training demonstrate that their actions were unjustified. Further, the other undisputed factual evidence and expert testimony is that Ed was not suicidal. Moreover, there was no consent to the seizures because Defendants obtained the

purported "consents" through coercion or falsehoods. Further, Kim cannot "consent" to the seizures of her husband and his firearms. It cost Ed approximately $1000 for the unnecessary psychiatric evaluation.

Defendants violated Plaintiff's rights under the Rhode Island Mental Health Law because they required him to have a psychological evaluation without first obtaining a court order or a doctor's certification.

Defendants violated Ed's "absolute" or "core" right to possess firearms in his home for self-defense by seizing his two handguns without a court order, or exigent circumstances, or other circumstances set forth in the Rhode Island Firearms Act.

Ed has private rights of action for violation of the Mental Health Law and the Firearms Act because violations of those statutes are crimes and Rhode Island law provides civil remedies for criminal acts regardless of whether the perpetrators are charged.

Defendant City of Cranston cannot obtain qualified immunity because municipalities cannot get qualified immunity. The individual Defendants cannot get qualified immunity because it depends on the community caretaking function which, in turn, depends on "state law and sound police procedure" but the District Court cited no Rhode Island law or objective policing standards in support of its decision. In addition, the District Court failed to consider numerous material facts supporting Plaintiff's claims and it resolved disputed issues of fact in Defendants' favor.

Accordingly, the District Court erred as a matter of law when it granted Defendants' summary judgment motion and denied Plaintiff's motion.

ARGUMENT

I. THE DISTRICT COURT ERRED AS A MATTER OF LAW WHEN IT GRANTED DEFENDANTS' SUMMARY JUDGMENT MOTION BASED ON THE COMMUNITY CARETAKING FUNCTION AND CONSENT BUT RELIED ON NO RHODE ISLAND LAW OR ANY POLICING STANDARDS AND THERE WAS NO CONSENT

Defendants' seizures of Ed and his firearms from his home violated his rights under the Fourth Amendment and Art. 1, Section 6 of the Rhode Island Constitution. The District Court erred as a matter of law when it said Defendants' community caretaking function (CCF) justified these seizures. Neither the United States Supreme Court nor the Rhode Island Supreme Court have ever held that the CCF justified seizures in a home. Moreover, the Supreme Court has said the CCF is based on state law and sound police procedure but the District Court cited no Rhode Island precedent and no established policing standards to support its Decision. Further, there are issues of fact as to whether the Caniglias consented to the seizures. As a matter of law, Kim cannot consent to Ed's seizure or the seizure of his firearms.

A. Defendants' Seizures of Caniglia and His Firearms from His Home Without Court Orders Violated the Fourth Amendment and Art. 1, Section 6 of the Rhode Island Constitution

The Defendants' warrantless seizures of Caniglia and his firearms from his home violates both the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island

Constitution. The protection against unreasonable searches and seizures applies to civil investigations. McCabe v. Life-Line Ambulance Service, Inc., 77 F.3d 540, 544 (1st Cir. 1996), quoting O'Connor v. Ortega, 480 U.S. 709, 715 (1987) (quoting New Jersey v. T.L.O., 469 U.S. 325, 335 (1985)). "Included among the civil proceedings in which the Fourth Amendment applies are involuntary commitment proceedings for dangerous persons suffering from mental illness." Id.; see also Bilida v. McCleod, 211 F.3d 166, 171 (1st Cir. 2000).

The Rhode Island constitutional provision provides Rhode Island citizens a "double barreled source of protection which safeguards their privacy from unauthorized and unwarranted intrusions…" State v. von Bulow, 475 A.2d 995, 1019 (R.I. 1984), quoting State v. Sitko, 460 A.2d 1, 2 (R.I. 1983). "This dual safeguard flows directly from the United States Supreme Court's explicit acknowledgement of the 'right of state courts, as final interpreters of state law, 'to impose higher standards on searches and seizures than [those] required by the Federal Constitution,' even if the state constitution provision is similar to the Fourth Amendment." Id., quoting State v. Benoit, 417 A.2d 895, 899 (1980) (quoting Cooper v. California, 386 U.S. 58, 62 (1967)).

The Rhode Island Supreme Court has specifically held that Art. 1, Sec. 6 provides stronger protections against searches and seizures than the Fourth Amendment. Pimental v. Department of Transportation, 561 A.2d 1348, 1352-53

(R.I. 1989) (finding that drunk driving roadblocks violate the right of privacy under the R.I. Constitution); State v. von Bulow, 475 A.2d at 1019-20 (holding that a warrantless search of defendant's private bag in his home violated the Rhode Island Constitution); State v. Maloof, 114 R.I. 380, 333 A.2d 676, 681 (1975) (affirming the suppression of evidence obtained through wiretaps authorized with improper orders).

Moreover, the Rhode Island Supreme Court has repeatedly distinguished between searches and seizures in the home as compared to in an automobile or elsewhere because people have strong rights of privacy in their homes:

- "The warrant requirement serves to guard the privacy and sanctity of the home from 'zealous' police officers 'thrust[ing] themselves into a home' while ardently 'engaged in the often competitive enterprise of ferreting out crime.'" State v. Terzian, 162 A.3d 1230, 1239 (R.I. 2017), quoting Johnson v. United States, 333 U.S. 10, 13 (1948).
- "An individual's right to privacy in his home is rooted in the clear language of the Fourth Amendment: 'The right of the people to be secure in their * * * houses * * * shall not be violated * * *.'" State v. Gonzalez, 136 A.3d 1131, 1146 (R.I. 2016).
- "Casas had a reasonable expectation of privacy with respect to both 224 Amherst Street and his home. The evidence disclosed that defendant's wife

> was an owner of the Amherst Street building, and defendant collected rents and made repairs." State v. Casas, 900 A.2d 1120, 1130 (R.I. 2006).

Further, the Rhode Island Supreme Court has repeatedly relied on the United States Supreme Court's precedents that are most protective of a person's right of privacy in his or her home. See, e.g. State v. Terzian, supra, citing Johnson v. United States, supra; State v. Gonzalez, supra, citing Payton v. New York, 445 U.S. 573 (1980).

In Terzian, the Superior Court had held there were exigent circumstances that justified the seizure of defendant's firearm without a warrant because there was a three-year old child "running around the house." The Supreme Court said exigent circumstances to excuse the requirement of a warrant exist only when "there is such a compelling necessity for immediate action as will not brook the delay of obtaining a warrant." 162 A.3d at 1241, citing State v. Gonzalez, 136 A.3d at 1151 (quoting United States v. Adams, 621 F.2d 41, 44 (1st Cir. 1980). "[T]he police [must] have an objective reasonable belief that a crisis can be avoided only by swift and immediate action." Terzian, id., citing State v. Gonzalez, 136 A.3d at 1151 (quoting State v. Gonsalves, 553 A.2d 1073, 1075 (R.I. 1989)).

> This Court remains ever "mindful of the admonition of the United States Supreme Court to the effect that '[w]hen an officer undertakes to act as his own magistrate he ought to be in a position to justify it by pointing to some real immediate consequences if he postponed action to get a warrant.'" (emphasis original).

Id. at 1241, citing State v. Gonzalez, id., (quoting Welsh v. Wisconsin, 466 U.S. 740, 751 (1984)).

The Court said it had previously set forth specific examples of exigent circumstances that would justify the failure to get a warrant, including providing emergency assistance to an occupant of the house, engaging in "hot pursuit" of fleeing suspect, entering a burning building to put out a fire and to investigate its cause, and preventing the imminent destruction of evidence. Terzian, at 1241, quoting Gonzalez, 136 A.3d at 1164 (quoting Missouri v. McNeely, 569 U.S. 141, 148-49 (2013). The possibility that there may have been a child "running around the house" or a "firearm in the residence" was not the level of exigency that excused the failure to get a warrant. Terzian, at 1242-43. The Court held that the warrantless entry of defendant's house and seizure of his firearm was a clear violation of the Fourth Amendment. Id. at 1243. See also, State v. Jennings, 461 A.2d 361 (R.I. 1983) (holding the police violated Defendant's Fourth Amendment right by conducting a second search of his apartment without a warrant after the "emergency situation" had ended). Similarly, there was no emergency at the Caniglias' home.

Moreover, in 1980, the General Assembly recognized the right of privacy by creating a cause of action for violation of that right, which includes "[t]he right to be secure from unreasonable intrusion upon one's physical solitude or seclusion." R.I.Gen.L. § 9-1-38.1(a)(1); DaPonte v. Ocean State Job Lot, Inc., 21 A.3d 248, 252

(R.I. 2011), citing Swerdlick v. Koch, 721 A.2d 849, 857 (R.I. 1998) ("Swerdlick stands unequivocally for the proposition that a person's private residence is of the species of 'something that is entitled to be private or would be expected to be private.'").

Defendants have the burden of establishing that a warrantless search or seizure was reasonable, including the effectiveness of a third party's consent or the exigency of the circumstances. Illinois v. Rodriguez, 497 U.S. 177, 181 (1980); State v. Linde, 876 A.2d 1115, 1125 (R.I. 2005); State v. Clark, 265 Wis.2d 557, 568, 666 N.W.2d 112, 116 (2003) ("[C]ompliance with an internal policy department policy does not, in and of itself, guarantee the reasonableness of a search or seizure."). Here, there was no emergency or exigent circumstances when the police seized Caniglia. Defendants acknowledged this at the hearing on the summary judgment motions. (A1137). Moreover, it is undisputed that Defendants did not obtain a court order to seize Caniglia or his firearms. (A1136).

Hence, Defendants' seizure of Plaintiff for an involuntary psychological evaluation and of his firearms for "safekeeping" without a court order violated the Fourth Amendment, Art. 1, Sec. 6 of the Rhode Island Constitution, and Rhode Island statutory law.[2] No Rhode Island law supports these seizures nor did the

[2] To the extent this Court may have any concerns about applicable Rhode Island law, Caniglia suggests the Court can certify questions to the Rhode Island Supreme Court pursuant to the Rhode Island Supreme Court's Rule of Appellate Procedure

District Court rely on any. Accordingly, Plaintiff was entitled to summary judgment on his claim. Instead, the District Court said that the CCF justified the seizures. Caniglia will address that holding in Part I.B., *infra*.

With respect to Defendants' summary judgment motion, the material, undisputed facts show Defendants' seizures were unreasonable. On the evening of August 20, 2015, Ed and Kim had an argument. (A256). During the argument, Ed retrieved a handgun he keeps under the mattress of their bed, put it on the dining room table, and said "just shoot me now and get it over with." (Id.). Kim and Ed agree that the handgun was not loaded although Kim did not know it at that moment. (A257). Ed subsequently left the house. (Id.). Kim took the handgun, put it back under the bed, and hid the gun's magazine. (Id.). When Ed returned, the Caniglias argued some more. (Id.).

Kim left and went to a motel. (Id.). The next morning, she ate breakfast at a restaurant. (Id.). She tried to call Ed but he did not answer because he was in the bathroom. (Id.). Kim became concerned that Ed may have committed suicide. (Id.). She called the CPD because she wanted a police officer to accompany her to the house to check on Ed. (Id., A267-68).

6(a); see also, Western Reserve Life Assur. Co. of Ohio v. ADM Associates, LLC, 116 A.3d 794, 798 (R.I. 2015).

The CPD dispatched four police officers in four squad cars in response to Kim's call. (A257). She told the officers she wanted an officer to accompany her to the house to check on Ed. (Id.). Officer Mastrati called Ed on his cell phone, spoke with him, and told Kim that Ed was "fine." (A257-58). The officers told Kim to follow them to the Caniglias' home but to remain in her car. (A258).

Officers Mastrati, Russell, Smith, and Sgt. Barth spoke with Ed on the back porch of the house. (Id.). The officers variously describe Ed as "cooperative," "not abrasive," "normal," "nice," "very polite," and "welcoming." (Id., A259). He did not seem suicidal. (Id.). Ed denied being suicidal (id.), but Officer Mastrati did not believe him. (Id.). Officer Mastrati based his belief on Ed's statement and actions of the prior night. (Id.).

Defendants initially told Ed they were going to seize his firearms. (A259). Ed objected to the seizure: "You're not seizing anything." (Id.). Defendants told Ed that they would not seize his firearms if he went to Kent Hospital for a psychological evaluation. (Id.). Ed agreed only to avoid having his firearms seized. (Id.).

After he left in the Cranston Rescue, Defendants told Kim that Ed had agreed to have his firearms seized. (A264). They said that after Ed was checked out at the hospital, Kim could come to the CPD station and retrieve the firearms. (Id.). After

waiting all day to be evaluated, Ed was discharged. (A265). Ed was charged about $1,000.00 to be transported to the hospital and to be evaluated. (A269).[3]

Defendants' seizures were unreasonable. They justified them on the grounds that Ed was a threat to himself based on his actions and statement the prior evening. However, Plaintiff's expert psychologist, Dr. Lanny Berman, says Defendants' actions were unreasonable. Dr. Berman is a highly-qualified specialist in suicidology. (A790-91). His report states that Caniglia was neither at acute nor imminent risk of suicide on August 20 and 21, 2015. (A795-96). Caniglia's actions and statements on the evening of August 20, 2015 did not constitute suicidal communication, nor did they communicate any suicidal intent. (A798). Further, at no time, and especially on the morning of August 21, 2015, did Caniglia express or communicate in words or actions anything that could be construed as indicating he was at imminent risk of suicide. (A798-99). The Defendants made no independent evaluation of Caniglia's risk for suicide based on both his current mental status and associated risk factors as the CPD officers were trained to observe. (A799-802). Defendants' sole reliance on Caniglia's statement and action on the night before to document any level of concern for imminent risk was inappropriate and a breach of the standards to which these officers were trained. (Id.). The CPD officers did not

[3] Defendants subsequently refused to return Ed's firearms without a court order and did not release them until he filed this lawsuit. On that basis, the District Court found a violation of due process. Caniglia, at **7-8.

apply or rely upon appropriate criteria or reasonable and standard police procedures in determining Caniglia's was in imminent risk of suicide or in determining that his firearms needed to be confiscated on August 21, 2015. (Id.).[4]

The District Court did not address Dr. Berman's opinions in its Decision. Dr. Berman's undisputed opinion alone establishes at least an issue of fact with respect to the reasonableness of Defendants' seizures. Plaintiff submits he was entitled to summary judgment on Count V of his complaint based on these facts.

B. The Community Caretaking Function Does Not Justify Defendants' Seizures of Caniglia or His Fireams

The CCF that Defendants assert to justify their warrantless seizure of Plaintiff's firearms does not apply for two reasons. First, neither the United States Supreme Court nor the Rhode Island Supreme Court have ever said that function validates the non-criminal seizure of persons or property, including firearms, from a person's home without some kind of court order. Second, the CCF is a common law doctrine and its scope depends on "state law" respecting police authority and "sound police procedure." Cady, 413 U.S. at 447. Accordingly, it does not apply when Rhode Island constitutional law, statutes, and decisional law as well as Defendants' own General Orders and training exclude its application here.[5]

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[4] Defendants disclosed no expert witnesses. Thus, they have no expert testimony to refute Dr. Berman's opinions.

[5] Since the community caretaking function is a defense to Plaintiff's claims that Defendants violated his civil rights, Defendants have the burden to prove the

The United States Supreme Court has approved the exercise of the CCF only with respect to searches of automobiles. See, Colorado v. Bertine, 479 U.S. 367 (1987); South Dakota v. Opperman, 428 U.S. 364 (1976); Cady, supra. In Opperman, the Court said it "has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment." 428 U.S. at 367.

In Cady, defendant was a Chicago police officer who was involved in a one-car accident with a rental car in West Bend, Wisconsin. The local police removed the damaged car to a private garage and searched it, attempting to locate and secure defendant's police revolver. Based on evidence found during that warrantless search, the local police conducted a further investigation resulting in defendant being convicted of murder. He argued that the conviction should be overturned because the investigation began with a warrantless search of his car.

The Supreme Court said the nature and frequency of local police officers' contact with motor vehicles because of state regulation and the officers' law enforcement responsibilities may justify a warrantless search of an automobile.

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defense is available to them. See, Farrey v. City of Pawtucket, 725 F.Supp.2d 286, 297 n. 8 (D.R.I. 2010) ("Qualified immunity is an affirmative defense and the burden belongs to the defendant asserting it."); see also, Rosemont Taxicab Co., Inc. v. Philadelphia Parking Authority, 327 F.Supp.3d 803, 822 (E.D.Pa. 2018) (CCF is an affirmative defense).

Cady, 413 U.S. at 441. The Court distinguished such searches from those of a residence:

> [T]here is a constitutional difference between houses and cars…The constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often non-criminal contact with automobiles will bring local officials in "plain view" of evidence, fruits or instrumentalities of a crime or contraband. (emphasis added).

Id. at 441-42. Thus, the Supreme Court has clearly distinguished between houses and cars with respect to the CCF. The Court has never approved the application of the function to the seizure of a person or his property from his home.

Numerous federal and state courts, including the supreme courts of California and New Jersey, have held that Cady does not apply inside a person's home or business or that the CCF does not justify a warrantless search and seizure of property in a home. Ray v. Township of Warren, 626 F.3d 170, 177 (3d Cir. 2010); Lundstrom v. Romero, 616 F.3d 1108, 1125-1129 (10th Cir. 2010); United States v. Gough, 412 F.3d 1232, 1238 (11th Cir. 2005); United States v. Erickson, 991 F.2d 529, 533 (9th Cir. 1993); Ramirez v. Fonseca, 331 F.Supp.3d 667, 679-80 (W.D.Tex. 2018) (under the law of the Fifth Circuit, the CCF does not justify a warrantless entry into plaintiff's home); Thompson v. Village of Monroe, No. 12-cv-5020, 2015 WL 3798152 at *13 (N.D.Ill. June 17, 2015); People v. Ovieda, 7 Cal.5th 1034, 446 P.3d 262, 276 (2019); State v. Hemenway, No. 081206, 2019 WL 3310365 at *16 (N.J.

July 24, 2019); State v. Stewart, 851 N.W.2d 153, 158 (N.D. 2014); State v. Kern, 831 N.W.2d 149, 174 (Iowa 2013); State v. Ultsch, 331 Wisc.2d 242, 254-55, 793 N.W.2d 505, 510-11 (2010) (same); State v. Huddy, 799 S.E.2d 650, 655 (N.C.App. 2017); Ross v. Commonwealth, 61 Va.App. 752, 764, 739 S.E.2d 910, 916 (2013); State v. Christenson, 181 Or.App. 345, 352-53, 45 P.3d 511, 514-15 (2002).

Moreover, even if the CCF applies inside a home, courts have held that the police's community caretaking function ends when the person they seek to protect is not in danger. Corrigan v. District of Columbia, 841 F.3d 1022, 1034-35 (D.C.Cir. 2016); Storey v. Taylor, 696 F.3d 987, 996 (10th Cir. 2012) (CCF does not justify police seizure following report of domestic argument absent exigent circumstances); Arden v. McIntosh, 622 Fed.Appx. 707, 710 (10th Cir. 2015) (police officers' seizure of firearms after "incoherent and unresponsive" homeowner was removed by ambulance was not protected by the community caretaking function and violated homeowner's Fourth Amendment rights); U.S. v. Tarburton, 610 F.Supp.2d 268, 277 (D.Del. 2009); U.S. v. Cruz-Roman, 312 F.Supp.2d 1355, 1364-65 (W.D.Wash. 2004); State v. Witczak, 421 N.J.Super. 180, 197-98, 23 A.3d 416, 426-27 (2011); State v. Maddox, 54 P.3d 464, 468 (Id.App. 2002); State v. Othoudt, 482 N.W.2d 218, 233 (Minn. 1992); State v. Fisher, 2004 WL 440402 at *3 (Del.Super. Feb. 18, 2004). Here, Defendants seek to apply the community caretaking function to seizures that occurred about 12 hours after Ed had made his allegedly suicidal

statement, when he denied being suicidal, and did not seem suicidal. (A259). The firearms seizure occurred after he was in Defendants' custody and on his way to Kent Hospital. (A264). He was clearly no longer in danger, if he ever had been.

Further, the application of the CCF depends upon "state law or sound police procedure." Cady, 413 U.S. at 447. After all, within the limits of the Fourth Amendment, the community decides what caretaking authority its police may have. See, United States v. Gates, 755 Fed.Appx. 649, 651-52 (9th Cir. 2018), citing United States v. Wanless, 882 F.2d 1459, 1464 (9th Cir. 1989) (holding that police officers could not rely on community caretaking function to impound a vehicle where they failed to comply with state law respecting such impoundments).

However, the District Court cited no Rhode Island law or recognized policing standards supporting the application of the community caretaking function in these circumstances. To the contrary, the Rhode Island Supreme Court has approved the application of the CCF only with respect to police actions related to automobiles. See, State v. Rousell, 770 A.2d 858 (R.I. 2001), citing Cady; State v. Cook, 440 A.2d 137, 139 (R.I. 1982), citing Cady. Moreover, Rhode Island criminal law decisions indicate that the Rhode Island Supreme Court would reject the application of the CCF in these circumstances as an invasion of the privacy of the home. See, e.g., Terzian, 162 A.2d at 1242-43; Jennings, 461 A.2d at 367. Further, the General Assembly's promulgation of the Mental Health Law (Part II, *infra*), the Firearms

Act (Part III, *infra*), and the statutory right of privacy (p. 14-15, *supra*) also limit the scope of any CCF in Rhode Island. Accordingly, because Defendants had the burden of proof to establish the CCF and failed to do so, the District Court should have granted Caniglia's motion for summary judgment on that ground.

With respect to Defendants' summary judgment motion based on the CCF, there are material facts in dispute. Regarding "sound police procedure," Cady, at 447, Defendants' own GOs and training refute their invocation of the CCF to justify their seizures of Ed and his firearms without a court order. See, United States v. Proctor, 489 F.3d 1348, 1354-55 (D.C.Cir. 2007) (holding that police officer could not assert CCF which was contrary to department's General Order); United States v. Roth, 944 F.Supp. 858, 862 (D.Wyo. 1996) (same).

The CPD has promulgated General Orders ("GO") to comply with accreditation requirements of the Commission on Accreditation of Law Enforcement Agencies. (A249-50). The GOs constitute a manual that is the "complete catalog" of the CPD's policies and procedures. (A250). There is a GO 100.10 that "define[s] the limit of law enforcement authority during the execution of the criminal process." (A250, A393-98). Similarly, there is a GO 320.80, "Civil Procedure," that applies "while executing the police role in civil situations." (A250, A400). It states that when CPD officers are dispatched to a "keep the peace call," which includes "domestic dispute resolutions," they "must terminate the process if there is any

resistance." (A400). Clearly, Ed resisted. (A259). There is no other GO or training that specifically sets forth the CPD's authority to act pursuant to the CCF. (A251). There is no GO that authorizes the seizure of property from a home for "safekeeping." Finally, every court decision about the CCF of which the officers are aware involves automobiles. (A253-54, A261).

There is a GO 320.70 respecting "Public Mental Health" which states, in part, "officers are not in a position to diagnose mental illness but must be alert to common symptoms." (A252, A418). It says a CPD office can "[t]ransport for involuntary emergency psychiatric evaluation if the person's behavior meets the criteria for this action." (A419). There are three circumstances when a person meets these criteria: (1) the person is imminently dangerous to him/herself or others, (2) the person is unable to care for him/herself, (3) the person is suffering substantial physical deterioration and shows an inability to function if not treated immediately. (A420).[6]

CPD officers received training on mental health issues in 2008, 2011 and 2013, including numerous, specific "risk factors" for suicide. (A253, A472-74, A488). Defendants acknowledged that virtually none of these risk factors were present when they seized Ed and his firearms. (A253, A259). The only factors Defendants considered were that the prior evening Ed had made the dramatic gesture

[6] The Rhode Island Mental Health Law imposes additional requirements. See Part II, *infra*.

during an argument of placing an unloaded handgun on the table and telling his wife to "shoot me now." (A253, A263, A1053).

For purposes of Defendants' motion, it was undisputed, based on Dr. Berman's opinions, that Caniglia was not an imminent threat of suicide when the Defendants spoke with him some 12 hours after the argument with his wife. (A795-96). The CPD's own training on mental health lists numerous risk factors for suicide, (A253, A472-74, A488), but Defendants identify only one, Caniglia's action and statement of the prior night. (A253, A263, A1055). They acknowledge that when they spoke with Caniglia he was "cooperative," "normal," "nice," and not suicidal. (A258-59). The CPD's mental health training also refers them to the Rhode Island Mental Health Law, (A427), which required a court order or at least a doctor's certification in these circumstances. *Infra*, Part II.

Sgt. Barth was the senior CPD officer on scene at the Caniglia home on August 21, 2015. (A258). He had training on dealing with people with mental health issues. (A1053). That training would have included various risk factors for suicide. (A472-74, A488). Sgt. Barth does not remember any of that training. (A1054). He made the decision to send Caniglia for a psychological evaluation at Kent Hospital. (A258, A1054). He decided that Caniglia was imminently dangerous to himself or others. (A1054). Sgt. Barth understands "imminent" to mean "immediately." (Id.).

Sgt. Barth said Caniglia was transported for an "involuntary emergency psychiatric evaluation." (emphasis added). (Id.).

Sgt. Barth did not consult any specific psychological or psychiatric criteria before deciding to send Caniglia for a psychological evaluation, nor did he consult with any medical professionals. (Id.). He does not know whether the CPD has any written policies or procedures on determining when to seek a psychological evaluation. (Id.). Sgt. Barth "probably" based his decision on his "experience up to that point." (Id.). Of the numerous suicide risk factors in his training, the only ones that Sgt. Barth considered were that Caniglia had a gun and he had supposedly said "he wanted harm done to himself." (A1055).

Sgt. Barth bases his authority to send a person for a psychological evaluation on the "community care doctrine." (A1054). He first heard about the "community care doctrine" when he prepared for his deposition in this case. (A1053). Sgt. Barth read about the "community care doctrine" on "Wikipedia" in preparation for his deposition. (Id.). He does not know whether he heard about the "community care doctrine" before 2015. (Id.). He has not received any training or written materials on the "community care doctrine." (Id.). Sgt. Barth is not aware of any Rhode Island decision that authorizes the seizure of a person for a psychological evaluation without a court order. (A1055). He has required people to go for mental evaluations "[m]ore times than he can count." (A1054).

Capt. Henry made the decision to seize Ed's firearms based on the recommendation of the officers at the scene. (A260). He does not remember any basis for the recommendation other than what is set forth in the in the Incident Report. (Id.). Nothing Caniglia said to the CPD officers indicated he was suicidal. (A261). Officer Mastrati, who wrote the Incident Report (A712), said the only risk factor for suicide present on August 21, 2015 was Ed's action the prior night in bringing out the (unloaded) handgun and saying "just shoot me now" to Kim. (A258-59).

Defendants could not identify any legal authority, or written policy, or specific training respecting the CCF that authorizes their actions. (A249, A251, A253, A256, A260-61, A1055). Defendants could not identify any specific set of factors that constitute the factors to be considered in making such decisions. (A252-54). Rather, Defendants acknowledged that CPD officers make *ad hoc* decisions based on their individual experiences and "instinct." (Id., A262). Defendants' justification boils down to the fact that Caniglia had made a supposedly suicidal statement and action the prior night even though he denied being suicidal when Defendants spoke to him. (A258, A1055). Defendants' unwritten practice of seizing firearms for safekeeping and requiring allegedly suicidal people to have psychological evaluations is ongoing. (A969, A1054).

Hence, Defendants failed to comply with any Rhode Island law or "sound police procedure" and, accordingly, they cannot invoke the community caretaking function. The District Court did not address Defendants' failure to comply with their own policies, procedures, and training.

The application of the CCF in these circumstances also presents a very practical problem. Here, Kim Caniglia called the CPD because she wanted an officer to accompany her to her house to be sure Ed was okay. Defendants dispatched four officers in four squad cars and they commandeered the situation. They told Kim that Ed was "fine" but to wait in her car while they spoke with him. Through coercion, they compelled Ed to have a psychological evaluation that cost him $1000. (A259, A269). Through deception, they seized his firearms and required him to file suit to get them back. (A264). If Defendants can justify these kinds of actions based on the CCF, then people will stop calling the police.

C. There Were No Voluntary and Effective Consents to the Seizures

Defendants have the burden of establishing that a warrantless search or seizure was reasonable, including whether a consent was voluntary and effective. Illinois v. Rodriguez, 497 U.S. at 181; State v. Linde, 876 A.2d at 1125; State v. Clark, 265 Wis.2d at 568, 666 N.W.2d at 116 ("[C]ompliance with an internal policy department policy does not, in and of itself, guarantee the reasonableness of a search

or seizure."). The voluntariness of a consent is a factual question. Schneckloth v. Bustamante, 412 U.S. 218, 227 (1973).

The District Court erred as a matter of law when it granted Defendants' summary judgment motion despite numerous disputed and undisputed facts as well as undisputed expert testimony supporting Caniglia's claims.[7] Specifically, the District Court relied on two "facts" respecting alleged consent that Caniglia very strenuously disputed. First, the Court found "there is no evidence that Caniglia's submission to Cranston Rescue was involuntary" and that "[t]he City did not force Caniglia to go to the hospital." Caniglia at *2 and *6. Second, the District Court said "it is undisputed that [Mrs. Caniglia] pointed out where the guns were and allowed the officers to remove them" and "Mrs. Caniglia told the police her husband had guns and allowed them to enter the home to take them." Caniglia at *2 and *6.

However, this Court has made clear that a purported "consent" obtained through "coercive tactics" or "fraud, deceit, trickery or misrepresentation" is not a genuine consent. Pagan-Gonzalez v. Moreno, 919 F.3d 582, 598 (1st Cir. 2019) (holding that FBI agents' deceptive statement to obtain access to a home and a

[7] Caniglia disputed in whole or part numerous facts in Defendants' Statements of Undisputed Facts and of Additional Undisputed Facts, specifically nos. 3, 4, 8, 10, 12, 18, 21, 24, 27-28, 34, 35-38, 40, 42, 52, 53, 55-59, 61-67, and 70. (A108-140, A200-248).

computer vitiated consent); United States v. VanVliet, 542 F.3d 259, 264-65 (1st Cir. 2008), citing Moran v. Burbine, 475 U.S. 412, 421 (1986).

A seizure occurs where a reasonable person believes he is not free. See United States v. Mendenhall, 446 U.S. 544, 554 (1980). Moreover, "[c]onsent given during an illegal detention is presumptively invalid." State v. Casas, 900 A.2d at 1134, quoting United States v. Cellitti, 387 F.3d 618, 622 (7th Cir. 2004). With respect to Ed's seizure, Sgt. Barth testified that he sent Ed for an "involuntary psychological evaluation." (A1054). Moreover, the parties agree that that when Defendants told Ed that they were going to seize his firearms, he said "you're not seizing anything." Ed testified that Defendants said that they would not seize his firearms if he went for the psychological evaluation. (A259). He "agreed" to the evaluation only to avoid the seizure of his firearms. (Id.). Then, after Ed left in the Cranston Rescue, they seized his firearms, anyway. (A264). Defendants coerced Ed to have the psychological evaluation and made a misrepresentation. Accordingly, there was substantial evidence that Defendants seized Ed for the psychological evaluation. The District Court improperly resolved this issue of fact in favor of Defendants.

Defendants argued below that they had Kim's consent to seize Ed because Kim wanted Ed to get "checked out." However, Kim cannot "consent" to Ed's seizure. Rhode Island law specifically required a court order for a person to require another person to have a psychological evaluation. See Part II, *infra*.

With respect to the seizure of Ed's firearms, while Defendants had Kim's consent to go to the Caniglias' home, they did not have Ed's consent to seize his guns while he was going to the hospital to be examined. (A259, A264). Further, Kim allowed the police to take the guns because they told her, falsely, that Ed had agreed to the seizure of the guns. (A264).

Defendants knew the firearms belong to Ed and acknowledge they did not obtain his permission to seize them. (A259, A264). Under the CPD's own GO, Kim cannot consent to the seizure of Ed's firearms. GO 100.10(VII)(j) sets forth "exceptions to the search warrant requirement," including:

i. Consent to search the property by the person whose rights will be affected by the search.

1. Must be voluntary and either written or verbal.

2. A signed "Consent to Search" form is preferred

(emphasis added) (A396). Moreover, the CPD's GO 320.80, respecting "Civil Procedure," states that in "keep the peace" situations," including "domestic dispute resolutions," "the officer must terminate the process if there is any resistance." (A400). Clearly, Ed resisted their intention to seize his firearms. (A259). Accordingly, the seizure of the firearms was not consensual.

Second, as a matter of law, Kim could not consent to the seizure of Ed's firearms. Terzian, 16 A.3d at 1240. In Terzian, the Rhode Island Supreme Court

said: "A third party's consent…is valid if that person has either the 'actual authority' or the 'apparent authority' to consent to [entry and] a search of that property." 162 A.3d at 1239, citing State v. Barkmeyer, 949 A.2d 984, 999-1000 (R.I. 2008) (quoting United States v. Kimoana, 383 F.3d 1215, 1221 (10th Cir. 2004). The Court held that the police officers' assumption that Terzian's girlfriend lived in the house and therefore could consent to a search was not reasonably based on facts. Id. In Georgia v. Randolph, 547 U.S. 103 (2006), the Supreme Court held that the police could not rely on the consent of a tenant to search a house when the cotenant was present and objected. Id. at 113-14. See also, Stoner v. California, 376 U.S. 483, 488 (1964) ("[T]he rights protected by the Fourth Amendment are not to be 'eroded…by unrealistic doctrines of apparent authority.'").

Here, Defendants knew the firearms belonged to Ed. (A259, A263-64). The Incident Report so states. (A712). Ed objected to the seizure of his firearms. (A259). In these circumstances, Kim cannot consent to the seizures of Ed's firearms. Similarly, having supposedly intervened in a "verbal domestic" between Ed and Kim involving Ed's unloaded firearm, and given Ed's denial that he was suicidal, Defendants could not reasonably believe that Kim had authority to agree to the seizure of Ed or his firearms. Further, after Defendants had required Ed to go to Kent Hospital for a psychological evaluation, they told Kim, falsely, that Ed had consented to the seizure. (A264). Contrary to their own GO, Defendants did not

obtain a written consent for the search or the seizure. (A254, A264). There was no voluntary, effective consent to the seizures.

II. THE DISTRICT COURT ERRED AS A MATTER OF LAW WHEN IT HELD THAT DEFENDANTS DID NOT VIOLATE CANIGLIA'S RIGHTS UNDER THE RHODE ISLAND MENTAL HEALTH LAW

Defendants' requirement that Caniglia submit to a psychological evaluation violated the Rhode Island Mental Health Law, R.I.Gen.L. § 40.1-5-1, et seq. ("RIMHL") (which further demonstrates that the CCF cannot apply). The Mental Health Act specifically prescribes the circumstances and procedures by which a person may be admitted or received at a hospital for mental health care and treatment. Section 40.1-5-5; In re Doe, 440 A.2d 712, 714 (R.I. 1982). In Doe, Justice Weisberger wrote: "The Rhode Island Mental Health Law was carefully crafted in order to guarantee that the liberty of an individual patient would be scrupulously protected and that this liberty would be impaired only in the event of findings of stringent necessity…" Id. at 714. He added: "The failure of public officials to apply promptly for required judicial authorization to commit or retain involuntary patients may give rise to civil liability in the event that such a patient should be wrongfully deprived of his liberty." Id. at 716.

The RIMHL provides for emergency certification by a physician of a person "whose continued unsupervised presence in the community would create an imminent likelihood of harm by reason of mental disability…" Section 40.1-5-7(a).

Similarly, a person who resides with someone "alleged to be in need of care and treatment in a [mental health] facility" may file a petition in district court seeking "care and treatment" for a person "whose continued unsupervised presence in the community would create a likelihood of serious harm by reason of mental disability." Section 40.1-5-8(a). This section provides for a judicial process to obtain an involuntary mental health evaluation. It requires the court to find by "clear and convincing evidence that the subject of the hearing is in dire need of care and treatment in a facility, and is one whose continued unsupervised presence in the community would by reason of mental disability, create a likelihood of serious harm, and that all alternatives to certification have been investigated and deemed unsuitable …" Section 40.1-5-8(j). Then, and only then, can the court order the person into mental health treatment.

A person seeking the psychological evaluation of another person must obtain at least a physician's certification, Section 40.1-5-7(a), and, usually, a court order. Section 40.1-5-8. In 2015, the police could make the certification only if "no physician is available," and the police certify in writing that the person is "in need of immediate care and treatment" and his "continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability." Sections 40.1-5-7(a) and (b).

Defendants complied with none of the requirements of the RIMHL. They did not obtain a court order or a physician's certification, they did not attempt to determine if a physician was available to provide a certification, and they did not certify in writing that Plaintiff's continued unsupervised presence in the community would create an imminent likelihood of harm. (A264, A1054, A1136). Instead, they argued below, based on the Kent Hospital records, that Kim wanted her husband "to get checked out." However, Mrs. Caniglia never made that statement to Defendants and she testified the statement in the medical records was taken out of context. (A201). Even so, that justification does not comport with the RIMHL. Accordingly, Defendants violated the Law when they required Ed to submit to a psychological evaluation at Kent Hospital without obtaining a court order or a doctor's certification.

The District Court held that Defendants did not violate the RIMHL because "there is no evidence that the City intended or conspired to admit or commit Caniglia to Kent Hospital. Moreover, the Court imagines that it is not unusual for police to send an individual to the hospital for evaluation after being summoned by a family member to check on his or her well-being." Caniglia, at *10.

However, it is irrelevant to Defendants' liability that they only attempted to get Plaintiff admitted for mental health reasons, but did not succeed. The statute makes it illegal to cause a person to be received for mental health care reasons

without the appropriate procedures. Section 40.1-5-5. Here, Defendants compelled Ed to be transported by Cranston Rescue to Kent Hospital for an involuntary psychological evaluation without the appropriate certification. That violates the statute.

Further, the RIMHL makes it a crime to conspire to cause a person to be admitted to a medical facility. Section 40.1-5-38. Under Rhode Island law, a criminal conspiracy is complete once the conspirators agree to commit the crime. State v. Romano, 456 A.2d 746, 757 (R.I. 1993). In Romano, the Court said:

> [O]nce two or more individuals have agreed to commit an unlawful act, the crime of conspiracy is complete. No further action in furtherance of the conspiracy need occur. This is of no consequence whether the agreement is successfully or substantially effectuated.

Id. citing State v. Ahmadjian, 438 A.2d 1070, 1084-85 (R.I. 1981). It is not necessary that the conspirators actually commit the crime they are conspiring to commit. Romano, 456 A.2d at 757. Thus, it is sufficient here that Defendants agreed to do acts that violate the RIMHL. It is not disputed that Defendants agreed to send Plaintiff to the hospital for a psychological evaluation. (A258-59, A1054). It is legally irrelevant whether Plaintiff was actually admitted.

Defendants argued below that they did not violate the RIMHL because Ed was not committed. However, the Rhode Island Supreme Court has held that a criminal statute prohibits an attempt to violate it even if the statute does not expressly refer to an attempt. See, State v. Gonsalves, 476 A.2d 109, 111 (R.I. 1984); State v.

Latraverse, 443 A.2d 890, 895-96 (R.I. 1982). In Gonsalves, defendant argued he could not be convicted of unlawful use of a credit card where the language of the statute did not refer to an unsuccessful attempt. The Supreme Court said:

> Although penal statutes are to be strictly construed, they should not be interpreted in a manner that would thwart a clear legislative intent. [citation omitted]. Moreover, we will not attribute to the Legislature a meaningless or absurd result. [citation omitted]. It is clear from a reading of the statute that the Legislature intended to prohibit the unlawful use of a credit card with intent to defraud even where that intent is unsuccessful.

476 A. 2d at 111. Defendants did everything they could to violate the statute. The fact that hospital personnel properly determined that Plaintiff was not a threat to his own well-being does not excuse Defendants' attempt to violate the statute.

Moreover, it is no justification that Defendants make a practice of violating the RIMHL. As another circuit court has said: "It would 'make a mockery of the judicial function' to rule 'that administrative agencies are entitled to violate the law if they do it often enough.'…That the Commission has consistently failed to comply with the statutory mandate does not require our acquiescence." Connecticut Light and Power Co. v. Federal Energy Regulatory Comm'n, 627 F.2d 467, 473 (D.C.Cir. 1980), quoting Wilderness Society v. Morton, 479 F.2d 842, 865 (D.C. Cir. 1973) (en banc). Yet, that was a basis of the District Court's Decision.

III. THE DISTRICT COURT ERRED AS MATTER OF LAW WHEN IT HELD DEFENDANTS DID NOT VIOLATE CANIGLIA'S RIGHT TO KEEP ARMS IN HIS HOME UNDER THE SECOND AMENDMENT, THE RHODE ISLAND CONSTITUTION, AND THE RHODE ISLAND FIREAMS ACT

Defendants violated Caniglia's "absolute" right under the Rhode Island Constitution to keep arms in his home (which further demonstrates that the CCF does not apply). Article 1, Section 22 of the Rhode Island Constitution states: "The right of the people to keep and bear arms shall not be infringed." The Rhode Island Supreme Court's most extensive analysis of this provision is in Mosby v. Devine, 851 A.2d 1031 (R.I. 2004). In that case, the Court considered the authority of the Attorney General to issue permits for concealed-carry of handguns. The Court interpreted the provision separately from the "origins and proper interpretation of the Second Amendment." Id. at 1039. It specifically found that Section 22 established an individual right to keep and bear arms: "Thus, like the right to be free from unreasonable searches and seizures and other rights provided to 'the people,' we believe that the right provided in art. 1, sec. 22 flows to the people individually." Id. at 1040-1041. The Rhode Island Supreme Court said that: "It is the keeping of arms that is the *sine qua non* of the individual right under art. 1, sec. 22." Id. at 1042.

The Court distinguished between the right "to keep" and the right "to bear" arms. Id. at 1041-42. The Court said that the right to bear arms is subject to

reasonable regulation by the Legislature. Id. at 1044. The Court said the Rhode Island Firearms Act, R.I.Gen.L. §11-47-1, et seq., ("RIFA") was such a reasonable regulation. The Court noted, however, that "one has an absolute right to keep firearms in one's house or business…" (emphasis added). Id. at 1043, n. 7. Here, Plaintiff was denied his absolute constitutional right to keep arms in his home for the purpose of self-defense because his weapons were taken from his home without a warrant or other court order or exigent circumstances.

The Mosby court said the RIFA sets forth reasonable restrictions on the right to bear arms. 851 A.2d at 1044. The RIFA states: "The control of firearms…regarding their ownership, possession…shall rest solely with the state, except as otherwise provided in this chapter." R.I.Gen.L. § 11-47-1. Moreover, as the Rhode Island Supreme Court has said, the Act "…is generally nonrestrictive as to the rights of persons generally to purchase, own, carry, transport or have in their possession or control most kinds of firearms…" State v. Storms, 112 R.I. 121, 125, 308 A.2d 463, 465 (1973). Further, the RIFA provides: "Nothing in this section shall be construed to reduce or limit any existing right to purchase and own firearms and/or ammunition or to provide authority to any state or local agency to infringe upon the privacy of any family, home or business except by lawful warrant." (emphasis added). Section 11-47-60.1(a). Thus, Defendants cannot utilize the CCF in a manner that is inconsistent with the RIFA.

To the extent Defendants argue Plaintiff's mental state justified their seizure of his guns, the General Assembly set forth in the RIFA that the mental conditions which disqualify a person from possessing a firearm are being "a mental incompetent" or "a drug addict." Section 11-47-6. These restrictions do not apply to Plaintiff, nor do the other characteristics barring possession of a firearm: felons and fugitives from justice, section 11-47-5; illegal aliens, section 11-47-7; or minors, section 11-47-33.

The District Court said Plaintiff did not have a claim for violation of the RIFA because the City returned Caniglia's firearms after he filed suit. Caniglia, at *9. However, nothing in the RIFA, or elsewhere in Rhode Island law, authorizes Defendants to seize firearms without a court order or exigent circumstances so long as they eventually return them. Accordingly, the RIFA limits the scope of the CCF in Rhode Island.

With regard to federal law, this Court recently confirmed that the possession of firearms in the home is a "core Second Amendment right." Gould v. Morgan, 907 F.3d 659, 671-72 (1st Cir. 2018). The Court said:

> The home is where families reside, where people keep their most valuable possessions, and where they are the most vulnerable (especially while asleep at night)…Police may not be able to respond to calls for help quickly, so an individual within the four walls of his own house may need to provide for the protection of himself and his family in case of emergency. Lastly—but surely not least—the availability of firearms inside the home implicates the safety only of those who live or visit there, not the general public.

Id. Here, Defendants seized Ed's two handguns that he used to protect his home, including the one he kept under his mattress. They violated his core Second Amendment right.

In addition, other federal courts have recognized that the Second Amendment protects persons not only against a complete bar of access to firearms but also against unreasonable time, place, and manner restrictions on firearms possession. Heller v. District of Columbia, 801 F.3d 264, 280-81 (D.C.Cir. 2015) (striking down certain firearms regulations including a requirement that they be inspected and a limitation on the number of purchases within a 30-day period); Jackson v. City and County of San Francisco, 746 F.3d 953, 961 (9th Cir. 2013) (analogizing Second Amendment rights to First Amendment rights). Defendants' argument that they can seize specific firearms so long as they do not bar Plaintiff from obtaining other firearms is an unreasonable time, place, or manner restriction. For example, Plaintiff may not be barred from possessing firearms, even for a short period, because Defendants have an unfounded concern that he has psychological issues. See Tyler v. Hillsdale County Sheriffs Department, 837 F.3d 678, 699 (6th Cir. 2015) (holding that a federal statute prohibiting possession of firearms by any person who had ever been committed to a mental institution must be analyzed under intermediate scrutiny); Keyes v. Sessions, 282 F.Supp.3d 858, 878 (M.D.Penn. 2017) (striking down as unconstitutionally applied to plaintiff the same federal statute addressed in Tyler).

Here, the District Court held that the Second Amendment does not apply to specific firearms, only to a general right to possess firearms. Caniglia, at *6. (The Court did not address Plaintiff's rights under Art. 1, Section 22 of the Rhode Island Constitution). Plaintiff notes Judge Elrod's dissenting opinion in Houston v. City of New Orleans, 675 F.3d 441 (5th Cir. 2012), opinion withdrawn and superceded on rehearing, 682 F.3d 361 (5th Cir. 2012), which rejects that position. Judge Elrod relies in part on the dissent of former Judge, now Supreme Court Justice, Kavanaugh, in Heller v. Dist. of Columbia, 670 F.3d 1244, 1271 (D.C.Cir. 2011). Judge Elrod highlights both that the Supreme Court has made clear that the Second Amendment is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees," 675 F.3d at 450, citing McDonald v. City of Chicago, 130 S.Ct. 3020 (2010), and that interpreting the Second Amendment requires "an exhaustive historical analysis." 675 F.3d at 449, quoting, Heller v. District of Columbia, 554 U.S. 570, 626 (2008). None of the cases holding that the Second Amendment only protects a general right to keep firearms--instead of a right to specific, traditional firearms--recognize the Supreme Court's directives in this area. 675 F.3d at 405-51 and n. 4. None of those cases provide any historical analysis supporting those holdings. Similarly, the Eighth Circuit has said: "We do not foreclose the possibility that some plaintiff could show that a state actor violated

the Second Amendment by depriving an individual of a specific firearm." Walters v. Wolf, 660 F.3d 307, 318 (8th Cir. 2011).

This is just such a case. If Plaintiff's possession of guns was a threat to public safety, then it was incumbent on Defendants to take such steps as the law permitted to prevent him from having any guns. Defendants did not do that. Instead, they seized Plaintiff's two handguns and did nothing more. This is a specific effort to deprive Plaintiff from keeping those specific guns in his home without a legitimate basis. There can be no clearer situation appropriate for the application of the Second Amendment.

IV. UNDER RHODE ISLAND LAW, PLAINTIFF HAS PRIVATE RIGHTS OF ACTION FOR VIOLATIONS OF THE MENTAL HEALTH LAW AND THE FIREARMS ACT

Rhode Island constitutional provisions and statutes provide a damages remedy to persons injured by violations of criminal statutes, including the RIFA and the RIMHL (collectively, "the Acts"). The constitutional provisions include Art. 1, Sec. 5 which reads, in part: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property or character." R.I.Const., Art. 1, Sec. 5. Similarly, Article 1, Sec. 23 states in relevant part: "A victim of a crime…shall be entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss

caused by the perpetration of the crime…" (emphasis added). R.I.Const., Art. 1, Sec. 23.

The General Assembly has effectuated these provisions through R.I.Gen.L. § 9-1-2, which provides, *inter alia*:

> Whenever any person shall suffer any injury to his person, reputation or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made…

R.I.Gen.L. § 9-1-2. Rhode Island courts have held or noted that this statute provides a civil claim for damages in a variety of circumstances in which the defendant's conduct constituted a crime, regardless of whether defendant was charged or convicted, including: forgery, Western Reserve Life Assur. Co. of Ohio v. Caramadre, 847 F.Supp.2d 329 (D.R.I. 2012); involuntary manslaughter, Gray v. Derderian, 400 F.Supp.2d 415 (D.R.I. 2005); assault and battery, Iacampo v. Hasbro, 929 F.Supp. 562 (D.R.I. 1996); illegal drug testing, Goddard v. APG Security-RI, LLC, 134 A.3d 173, 174 (R.I. 2016); damage to a historic stone wall, Morabit v. Hoag, 80 A.3d 1 (R.I. 2013); wrongful death, Tyre v. Swain, 946 A.2d 1189 (R.I. 2008); invasion of privacy and wiretapping, Cady v. IMC Mortgage Co., 862 A.2d 202 (R.I. 2004); extortion, Mello v. DaLomba, 798 A.2d 405 (R.I. 2002); conversion, Ludwig v. Kowal, 419 A.2d 297, 303 (R.I. 1980); embezzlement, DaCosta v. Rose, 70 R.I. 163, 37 A.2d 794 (1944); larceny of corporate opportunity

and by false pretenses, Baris v. Steinlage, C.A. 99-1302, 2003 WL 23195568 at *28 (R.I.Super. Dec. 12, 2003); larceny by false pretenses, Rhode Island Hospital Trust National Bank v. Ellman, P.C. 87-0501, 1988 WL 1017221 at *2 (R.I.Super. Apr. 5, 1988); perjury, Chernov v. Schein, No. 85-2577, 1986 WL 716027 at *1 (R.I.Super. Apr. 24, 1986).

Here, both the RIFA and the RIMHL contain provisions making violations of the Acts criminal. R.I.Gen.L. §§ 11-47-26, and 40.1-5-38, respectively. Nothing in those Acts exempts them from the civil damages remedy provided by § 9-1-2. Indeed, Justice Weisberg has said of the RIMHL: "The failure of public officials to apply promptly for required judicial authorization to commit or retain involuntary patients may give rise to civil liability in the event that such a patient should be wrongfully deprived of his liberty." In re Doe, 440 A.2d at 716. Plaintiff was wrongfully deprived of his liberty and his firearms. Accordingly, he has damages remedies for the violations of the Acts.

V. THE DISTRICT COURT ERRED AS A MATTER OF LAW WHEN IT HELD DEFENDANTS OBTAINED QUALIFIED IMMUNITY BECAUSE THAT DEPENDS ON THE COMMUNITY CARETAKING FUNCTION WHICH DOES NOT APPLY AND THERE ARE NUMEROUS MATERIAL DISPUTED FACTS

Defendants cannot obtain qualified immunity for several reasons. First, qualified immunity does not apply to the City of Cranston. Owen v. City of Independence, Missouri, 445 U.S. 622, 657 (1980). Second, qualified immunity

does not apply to Caniglia's request for injunctive relief. Newman v. Burgin, 930 F.2d 955, 957 (1st Cir. 1991). Third, Defendants cannot get qualified immunity based on the community caretaking function where that function depends on "state law" and there is no state law supporting their actions. Cady, at 447. To the contrary, Plaintiff's right to be free from such seizures was clearly established under Rhode Island law. Fourth, Defendants cannot get qualified immunity based on the community caretaking function where that function depends on "sound police procedures," id., but their own General Orders, their own testimony, and the undisputed opinions of Dr. Berman show they did not follow any objective policing standards.

State statutes and local regulations are evidence of clearly established law. Hope v. Pelzer, 536 U.S. 730, 744 (2002) (prison regulation was clearly established law); Suarez Cestero v. Pagan Rosa, 198 F.Supp.2d 73, 95 (D.P.R. 2002) (police regulations in manual constitute clearly established law). Further, with respect to the federal claims, Supreme Court, First Circuit, and Rhode Island decisions control, rather than decisions from other circuits. El Dia, Inc. v. Governor Rossello, 165 F.3d 106, 110 n.3 (1st Cir. 1999). Plaintiff relies on local law. Defendants rely on decisions from distant jurisdictions.

Moreover, Defendants cannot obtain qualified immunity for requiring Caniglia to have a psychological evaluation where they had no probable cause to do

so. Alfano v. Richer, 847 F.3d 71, 77 (1st Cir. 2018); see also, Pagan-Gonzalez v. Moreno, 919 F.3d at 600 (holding that FBI agents could not obtain qualified immunity because they would reasonably have understood that using deception to obtain consent was a violation of the Fourth Amendment). In Alfano, plaintiff had consumed 6-8 beers over a 4-6 hour period and intended to attend a concert at the Xfinity Center in Mansfield, Massachusetts. When he attempted to enter the Center he was intercepted by two security officers who took him to a local police officer working at the concert and told the police officer that they thought he was incapacitated. The police officer placed plaintiff in protective custody, took him to the Mansfield police station where he was held for five hours and released, by which time the concert was over. Plaintiff sued the police officer alleging a violation of his Fourth Amendment rights. The district court granted the police officer's summary judgment motion based on qualified immunity.

On appeal, this Court said the situation was analogous to when a police officer takes a person into protective custody because of concerns that his psychological condition creates a likelihood of serious harm. Id. at 77, citing Ahern v. O'Donnell, 109 F.3d 809, 817 (1st Cir. 1997). Accordingly, the police officer had to have probable cause to believe that the plaintiff posed an imminent threat of likely harm to himself or others before he could take him into protective custody. Id. at 78-79. This Court said the police officer may have had probable cause to believe plaintiff

was intoxicated but there was an issue of fact as to whether plaintiff was incapacitated, i.e., apt to harm himself or others. Accordingly, because the law was clear that defendant must be incapacitated before taking him into custody and there was an issue of fact whether plaintiff was incapacitated, defendant was not entitled to qualified immunity. Id. at 80.

Here, the law is well-established that Defendants had to have probable cause to believe Ed was an imminent threat to cause harm to himself or others before requiring him to have a psychological evaluation. However, they learned when they got to the Caniglia house that the Ed was "normal," and not suicidal. (A258-59). The CPD GOs state that CPD officers are not qualified to diagnose mental illness, but they list numerous symptoms of mental illness. (A252, A418). The CPD officers have received training on numerous risk factors for suicide. (A472-74, A488). The only factor that arguably applies is Ed's dramatic statement to his wife, during an argument, "shoot me now," with an unloaded gun. (A253, A1055). Sgt. Barth made the decision to require Ed to have an involuntary psychological evaluation. He remembered none of his mental health training. (A1054). He did not consult with any set of factors or any medical professional before making his decision. (Id.) Sgt. Barth made his decision based only on his "experience." (Id.). Dr. Berman has determined that Ed was not suicidal. (A795-96). No doctor has said Ed was suicidal.

(A265). Thus, Defendants could not reasonably believe that they had probable cause to seize Caniglia and his firearms.

The District Court held that Defendants could get qualified immunity because the law was ambiguous whether the CCF applied to police activities in a person's home. Caniglia at *6, citing McDonald v. Town of Eastham, 745 F.3d 8, 13-14 (1st Cir. 2014). The Court also said that "an officer who is entitled to qualified immunity under federal law is similarly immune from suit for the state law equivalent of that claim under Rhode Island law." Caniglia at *5, n. 4, citing Estrada v. Rhode Island, 594 F.3d 56, 63 (1st Cir. 2010) (citing Hatch v. Town of Middletown, 311 F.3d 83, 89-90 (1st Cir. 2002).

However, the District Court cited no ambiguity in Rhode Island law with respect to the application of the CCF to these seizures. Similarly, Defendants, when questioned at deposition, could cite no Rhode Island decisional or statutory law or GO that supported the seizures. (A249, A251, A253, A256, A260-61, A1055). And, as set forth herein, there is no Rhode Island law that justifies the application of the CCF to these seizures. *Supra*, pp. 10-29. See U.S. v. Gates, supra, (federal law requires that when a police officer conducts a seizure and search pursuant to the CCF the officer must comply with state law, as well). Accordingly, it is irrelevant that courts in other jurisdictions—which may have different state law—have permitted the application of the CCF. As the Supreme Court said in Cady, it is state law that

determines the application of the function (as well as "sound police procedure," which the District Court also did not cite).

Further, since no Rhode Island state court has said that the CCF applies in these circumstances, it cannot be said that the scope of qualified immunity is the same for state law claims as it may be for corresponding federal claims.

The District Court erred by granting summary judgment based on qualified immunity when there were at least issues of material fact. Tolan v. Cotton, 572 U.S. at 657. In Tolan the Supreme Court unanimously vacated summary judgment for a police officer based on qualified immunity. After reviewing the conflicting evidence, the Court said: "The witnesses on both sides came to this case with their own perceptions, recollections, and even potential biases. It is in part for that reason that genuine disputes are generally resolved by juries in our adversarial system." Id. at 1868. The Court vacated the Fifth Circuit's judgment so the circuit court could consider whether, under the undisputed facts, defendant's action violated clearly established law. Id.

Similarly, in Lundstrom v. Romero, 616 F.3d at 1129, the Tenth Circuit rejected the CCF arguments made by the defendant police officers and reversed summary judgment for them based on qualified immunity. The undisputed facts showed the police officers violated plaintiffs' Fourth Amendment rights during warrantless seizures at plaintiffs' home. See also, Castagna v. Edwards, 361

F.Supp.3d 171, 180 (D.Mass. 2019) (holding police officers could not claim the CCF to enter an apartment during a party to ask the resident to turn down the music and could not get qualified immunity); Gombert v. Lynch, 541 F.Supp.2d 492, 503 (D.Conn. 2008) (rejecting police officers' claim of CCF for warrantless entry into plaintiff's curtilage and holding officers could not get qualified immunity).

Here, Caniglia specifically disputed in whole or part numerous facts that Defendants set forth in support of their summary judgment motion. *Supra*, pp. 30-34. In addition, as set forth previously, the District Court overlooked numerous material facts supporting Plaintiff's claims. *Supra*, pp. 16-19, 24-29. Specifically referring to qualified immunity, some of these disputed or overlooked facts include:

- Plaintiff did not seriously ask his wife to end his life. His gun was not loaded. Rather, Plaintiff made a dramatic gesture during a domestic argument. He told Defendants he was not suicidal or depressed. (A114, A116, A207, A258-59);
- Plaintiff was "calm," "cooperative," "normal," and not suicidal when Defendants spoke with him. (A258-59);
- Ms. Caniglia's purported hope that Plaintiff "could get some help at the hospital" was taken out of context (A201);
- Defendants' purported beliefs that Plaintiff had made a suicidal statement or that Plaintiff and others were endangered were not reasonably based on their training. (A116-17, A201-02, A252, A258, A261, A267-68); and,

- Defendants' belief that they had the legal authority to seize Plaintiff's firearms and require him to have a psychological evaluation was not reasonably based on their GOs or their training. (A201-07).

Accordingly, there were numerous disputed issues of fact that would bar Defendants' summary judgment motion on qualified immunity.

Finally, Plaintiff asserts that the application of qualified immunity is not appropriate here because Defendants could not identify any statute, case law, or GO that authorized their actions at the time of the seizures despite the City having been previously sued for the same practice, Machado v. City of Cranston, C.A. No. 12-445 (D.R.I. 2012). To the contrary, Rhode Island constitutional provisions, statutes, and case law, and Defendants' own GOs and training indicate that Defendants did not have authority for their actions. Qualified immunity is not appropriate because Defendants' ongoing practice of seizing people and firearms from their homes without court orders does not result from Defendants' genuine uncertainty about the state of the law. Rather, the application of qualified immunity here would be the product of the *ex post facto* research skills of Defendants' counsel in locating non-Rhode Island decisions to justify Defendants' actions. The Court should not deprive Plaintiff of a remedy on that basis.

CONCLUSION

For these reasons, the Court should reverse the denial of Plaintiff's summary judgment motion respecting Counts V and VI as well as on Defendants' affirmative defenses based on the community caretaking function and qualified immunity. The undisputed facts show Defendants seized Plaintiff and his firearms from his home without a court order, without any exigency, without a doctor's certification, and without consent. The CCF does not apply to these seizures because neither Rhode Island law nor sound police procedures support its application. For that reason, Defendants cannot get qualified immunity.

The Court should also reverse the District Court's grant of summary judgment for Defendants, vacate the final judgment, except with respect to due process, and remand the case for further proceedings.

Edward Caniglia, by his attorneys

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed.R.App. P. 32(f), this brief contains 12,987 words.

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/s/ Thomas W. Lyons

Attorney for Appellant Edward Caniglia
Dated: September 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I filed and served this pleading electronically via Pacer in the Court's docket.

/s/ Thomas W. Lyons

ADDENDUM

1. The District Court's June 4, 2019 Memorandum and Order

2. Final Judgment

2019 WL 2358965
Only the Westlaw citation is currently available.
United States District Court, D. Rhode Island.

Edward A. CANIGLIA, Plaintiff,

v.

Robert F. STROM as the Finance Director of the City of Cranston, the City of Cranston, Col. Michael J. Winquist in his individual capacity and in his official capacity as Chief of the Cranston Police Department, Capt. Russell Henry, Jr., in his individual capacity and in his official capacity as an officer of the Cranston Police Department, Major Robert Quirk, in his individual capacity and in his official capacity as an officer of the Cranston Police Department, Sgt. Brandon Barth, in his individual capacity and in his official capacity as an officer of the Cranston Police Department, Officer John Mastrati in his individual capacity and in his official capacity as an officer of the Cranston Police Department, Officer Wayne Russell in his individual capacity and as an officer of the Cranston Police Department, Officer Austin Smith in his individual capacity and in his official capacity as an officer of the Cranston Police Department, and John and Jane Does Nos 1-10, in their individual capacities and in their official capacities as officers of the Cranston Police Department, Defendants.

C. A. No. 15-525-JJM-LDA
|
Signed June 4, 2019

Synopsis

Background: Detainee brought § 1983 action against city and police officers, alleging violations of the Second, Fourth, and Fourteenth Amendments, as well as state law, when he was taken to a hospital for a well-being check and had his guns removed from his home. Parties cross-moved for summary judgment.

Holdings: The District Court, John J. McConnell, J., held that:

officers' insistence that detainee go to a hospital for a mental health check was not a seizure;

even if it was a seizure, officer's conduct was reasonable as part of their community caretaking function;

seizing detainee's legally possessed guns from his home was reasonable;

policy of removing firearms from a home where an individual threatened suicide did not implicate rights under the Second Amendment;

seizure of firearms with no policy, custom, or procedure for their return violated Fourteenth Amendment due process;

police taking detainee to hospital for mental health evaluation did not violate Rhode Island Mental Health Law; and

under Rhode Island law, seizure and retention of guns for a few months was not conversion.

Plaintiff's motion granted in part and denied in part; defendants' motion granted.

Attorneys and Law Firms

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Marc DeSisto, Caroline V. Murphy, Patrick K. Cunningham, DeSisto Law LLC, Providence, RI, for Defendants.

MEMORANDUM AND ORDER

JOHN J. MCCONNELL, JR., United States District Judge

***1** This case brings to the forefront the constitutionality of police conduct when officers are not acting in their law enforcement or investigatory capacity, but aiding individuals out in the community. Edward Caniglia's wife called Cranston police for assistance when she became concerned for her husband's health and safety. Police arrived at the Caniglia's home, spoke to both Mr. and Mrs. Caniglia, and ultimately decided to send Mr. Caniglia in a Cranston rescue for a well-being check at Kent Hospital and to remove from the home the guns that he legally possessed.

Mr. Caniglia filed this lawsuit and both he and the City have filed cross-motions for summary judgment. The City moves (ECF No. 45) on these counts: Count I – Rhode Island Firearms Act; Count II – Second Amendment/Article I, § 2 of the Rhode Island Constitution; Count III – Fourth Amendment/Article 1, § 6 of the Rhode Island Constitution; Count V – Equal Protection; Count VI – Rhode Island Mental Health Law; and Count VII – Conversion, and claims for Declaratory and Injunctive Relief. Mr. Caniglia has cross-moved (ECF No. 43) on Counts III, VI, and VII and also on Count IV – Due Process, and the City's immunity and community caretaking function defenses.

I. FACTS

On August 20, 2015, Mr. Caniglia and his wife had an argument in their home in Cranston, Rhode Island. ECF No. 55 at ¶ 1. Mrs. Caniglia asked her husband what was wrong, and he responded by going into their bedroom and returning with a gun; he threw it on the table and said, "why don't you just shoot me and get me out of my misery." *Id.* at ¶ 3. Mrs. Caniglia was shocked by her husband's behavior and threatened to call 911. *Id.* at ¶¶ 5-6. Mr. Caniglia left the home. *Id.* at ¶ 7. Mrs. Caniglia did not call 911. *Id.*

Mrs. Caniglia hid the gun between the mattress and box spring in their bedroom. *Id.* at ¶ 8. She then realized that the gun had not been loaded because she saw the magazine under the mattress. *Id.* at ¶ 9. She moved the magazine to a drawer. *Id.* She hid the gun and magazine because she was worried about her husband's state of mind. *Id.* at ¶ 11. When Mr. Caniglia returned to their home, the couple continued to fight, and Mrs. Caniglia left to spend the night at a hotel. *Id.* at ¶ 14.

The next morning, Mrs. Caniglia tried to reach Mr. Caniglia by phone, but he did not answer. ECF No. 59 at ¶ 62. She became worried; she was afraid that he would do something with the gun. *Id.* at ¶ 63. She called Cranston police and asked them to make a well call. [1] ECF No. 55 at ¶16. She also asked for an escort back to her home to check on Mr. Caniglia. ECF No. 59 at ¶¶ 63-64. Officers John Mastrati, and Austin Smith, and Sargent Brandon Barth arrived at the hotel to speak with Mrs. Caniglia. ECF No. 55 at ¶ 19. She told them about the gun and what she did with it and the magazine and about what Mr. Caniglia said during their argument. *Id.* at ¶ 20. She told them that she was concerned about her husband's safety and about what she would find when she got home; she was worried about him committing suicide. *Id.* at ¶ 22.

***2** Officer Mastrati called Mr. Caniglia and asked to speak with him at his home. ECF No. 59 at ¶ 66. He told Mrs. Caniglia that her husband sounded fine, but instructed her to follow them to the home, and to stay in the car. *Id.* at ¶ 67. The officers spoke with Mr. Caniglia on his back porch. *Id.* at ¶ 69. Mr. Caniglia told Officer Mastrati that he brought the gun out during an argument with his wife, that he was sick of arguing with her, and that he told his wife "just shoot me" because he "couldn't take it anymore." ECF No. 55 at ¶¶ 26, 29. He was calm for the most part and told Officer Mastrati that he would never commit suicide. ECF No. 59 at ¶¶ 70-71. He seemed normal during that encounter. *Id.* at ¶ 80. When officers asked about his mental health, he told them it was none of their business. *Id.* at ¶ 82.

Mrs. Caniglia arrived at the house and the officers told her she could come in. ECF No. 55 at ¶ 31. Mr. Caniglia asked her why she called the police and she told him that she was worried about him. *Id.* at ¶ 33. Based on his conversations with Mrs. Caniglia, Officer Mastrati was concerned about Mr. Caniglia's suicidal thoughts and that he was a danger to himself. *Id.* at ¶¶ 36-37. Sargent Barth, who was in charge at the scene, also considered Mr. Caniglia's statement that his wife should shoot him as a suicidal statement. *Id.* at ¶ 38.

A rescue from Cranston Fire Department responded to the scene. Richard Greene, a rescue lieutenant, remembers little about the call but that police told him that they recovered a gun from the scene and that Mr. Caniglia asked his wife to shoot him. ECF No. 59 at ¶ 103. Officer Greene told Mr. Caniglia that he was taking him to Kent Hospital and he went. *Id.* at ¶¶ 105-106. Mr. Caniglia disputes the officers' characterization that he went voluntarily because he says he only went so that the officers would not take his guns, but there is no evidence that Mr. Caniglia's submission to Cranston rescue was involuntary. ECF No. 65 at ¶ 70. A physician and a nurse examined him, and he was evaluated by a social worker. ECF No. 59 at ¶ 121. The hospital discharged him the same day. *Id.*

Sargent Barth made the decision to seize Mr. Caniglia's guns, [2] which Captain Henry approved based on the assertion from the officers at the scene who felt it was reasonable to do so based on Mr. Caniglia's state of mind. ECF No. 55 at ¶ 41; ECF No. 59 at ¶ 87. Captain Henry was concerned that if the guns remained in the home, Mr. Caniglia and others could be in danger. ECF No. 55 at ¶ 42. After Mr. Caniglia left the home, Mrs. Caniglia showed the police where the guns and magazines were kept in the bedroom and garage and the

officers removed them from the premises. *Id.* at ¶ 40. The parties dispute the assertion that Mrs. Caniglia wanted the guns removed, but it is undisputed that she pointed out where the guns were and allowed the officers to remove them. ECF No. 59 at ¶¶ 113-114.

A few days later, Mrs. Caniglia went to the Cranston Police Department to retrieve her husband's guns. *Id.* at ¶ 122. After being informed that she needed a copy of the police report and such a request required a captain's approval, she complied and waited only to be told a few days later that her request was denied, and she needed to get a court order. *Id.* at ¶¶ 122-123. A month later, Mr. Caniglia tried to get his guns back from Cranston Police and they told him that they were not going to release them. *Id.* at ¶ 125. Mr. Caniglia's attorney sent a letter to Chief Michael Winquist requesting that the police return the guns to no avail. *Id.* at ¶ 126. After filing this lawsuit, the police gave Mr. Caniglia his guns back without a court order. *Id.* at ¶¶ 133-134. Cranston Police did not prevent Mr. Caniglia from buying or possessing any new guns during this time period. ECF No. 55 at ¶ 46.

II. STANDARD OF REVIEW

***3** When ruling on a motion for summary judgment, the court must look to the record and view all the facts and inferences therefrom in the light most favorable to the nonmoving party. *Continental Cas. Co. v. Canadian Univ. Ins. Co.*, 924 F.2d 370, 373 (1st Cir. 1991). Once this is done, Rule 56(c) requires that summary judgment be granted if there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. A material fact is one affecting the lawsuit's outcome. *URI Cogeneration Partners, L.P. v. Board of Governors for Higher Education*, 915 F. Supp. 1267, 1279 (D.R.I. 1996).

The analysis required for cross-motions for summary judgment is the same. *Scottsdale Ins. Co. v. Torres*, 561 F.3d 74, 77 (1st Cir. 2009) ("The presence of cross-motions neither dilutes nor distorts this standard of review"). In evaluating cross-motions, the court must determine whether either party is entitled to judgment as a matter of law based on the undisputed facts. *Id.*

III. ANALYSIS

The Court will begin by discussing the motions on Mr. Caniglia's federal claims. The Court will first discuss Count III, which alleges that the City unlawfully seized him and his guns in violation of the Fourth Amendment, then Count II, which alleges that the City violated Mr. Caniglia's rights under the Second Amendment by taking his guns, and then Count IV which is a claim that the City violated due process by failing to afford him any process for the return of his guns. The Court will also address the City's asserted immunity and defenses. Finally, the Court will turn to Mr. Caniglia's claims under Rhode Island common and statutory law, Counts I, VI, and VII.

A. Count III – Fourth Amendment

Both Mr. Caniglia and the City have moved for summary judgment on his Fourth Amendment search and seizure claim. In this claim, Mr. Caniglia alleges that the City violated his Fourth Amendment right to be free from unreasonable searches and seizures by taking his guns from his home without a warrant and requiring him to submit to a mental health evaluation. ECF No. 51 at ¶ 78. The City argues that it is entitled to summary judgment because the officers' behavior was reasonable and consistent with its duty to protect the public. The Court will first look at the relevant Fourth Amendment law as well as the parameters of the community caretaking function and qualified immunity defenses that the City invokes.

1. Fourth Amendment Law

Generally, Fourth Amendment jurisprudence talks about searches and seizures in terms of arrests, investigatory stops, or inventory searches. *Morelli v. Webster*, 552 F.3d 12, 19 (1st Cir. 2009) ("A detention at the hands of a police officer constitutes a seizure of the detainee's person and, thus, must be adequately justified under the Fourth Amendment."); *United States v. Coccia*, 446 F.3d 233, 237-38 (1st Cir. 2006) ("[A] law enforcement officer may only seize property pursuant to a warrant based on probable cause describing the place to be searched and the property to be seized."). But here, the City argues that its police officers did not violate Mr. Caniglia's constitutional rights because they neither stopped nor arrested him for law enforcement purposes, but detained him and seized his guns in furtherance of their duties under the community caretaking function. The City moves for summary judgment on this defense and also on qualified immunity. Mr. Caniglia argues that he is entitled to summary judgment because it is undisputed that his Fourth Amendment rights were violated and that this exception does not apply here because it has only been sanctioned as an exception in cases involving seizures and searches of vehicles, not homes.

2. Community Caretaking Function

***4** "The Supreme Court recognized several decades ago that '[l]ocal police officers, unlike federal officers, frequently ... engage in what, for want of a better term, may be described as community caretaking functions.' " *United States v. Gemma*, 818 F.3d 23, 32 (1st Cir. 2016) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973)). "Apart from investigating crime, police are 'expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safety.' "[3] *Gemma*, 818 F.3d at 32 (quoting *United States v. Rodriguez–Morales*, 929 F.2d 780, 784–85 (1st Cir. 1991)); *Cady*, 413 U.S. at 441, 93 S.Ct. 2523 (The community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.").

"The community caretaking doctrine gives officers a great deal of flexibility in how they carry out their community caretaking function." *Lockhart-Bembery v. Sauro*, 498 F.3d 69, 75 (1st Cir. 2007) (citing *Rodriguez–Morales*, 929 F.2d at 785). As long as police are not investigating a crime, the Fourth Amendment imperatives stay intact, "so long as the procedure involved and its implementation are reasonable." *Id.* "Reasonableness does not depend on any particular factor; the court must take into account the various facts of the case at hand." *Lockhart-Bembery*, 498 F.3d at 75. Courts "must balance 'its intrusion' on [an individual's] substantial liberty interests in remaining in [his] home, against the defendants 'legitimate governmental interests' in minimizing the risk of harm to [an individual], the family members, and themselves" while performing their community functions. *Estate of Bennett v. Wainwright*, 548 F.3d 155, 172 (1st Cir. 2008) (citing *Skinner v. By. Labor Executives' Ass'n*, 489 U.S. 602, 619, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989)).

The Court will first address whether there was a seizure of a person. Mr. Caniglia argues that it was unreasonable for the City to require him to go to the hospital for a mental health check. But "not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19 n. 16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *see also United States v. Smith*, 423 F.3d 25, 28 (1st Cir. 2005) ("In order to find a seizure, ... we must be able to conclude that coercion, not voluntary compliance, most accurately describes the encounter."); *see also Lockhart-Bembery*, 498 F.3d at 75–76. The officer's insistence, even if viewed as an order, was not a seizure because Mr. Caniglia voluntarily left in the Cranston rescue.

***5** But even if sending him to the hospital was a seizure, "a seizure does not violate the Fourth Amendment unless it is unreasonable under the circumstances." *Estate of Bennett*, 548 F.3d at 172 (citing *Skinner*, 489 U.S. at 619, 109 S.Ct. 1402); *Ahern v. O'Donnell*, 109 F.3d 809, 816 (1st Cir. 1997). Here, the Court finds that a jury could not find that any of the individual officers' conduct in sending Mr. Caniglia for a mental health evaluation was unreasonable. Their response to the Caniglia home was not part of a criminal investigation and had no law enforcement investigatory purpose. Officers responded to a call from Mr. Caniglia's wife who was concerned about his mental and emotional well-being. Officer Mastrati believed Mr. Caniglia was a danger to himself. ECF No. 55 at ¶ 37. Sargent Barth considered Mr. Caniglia's statement to his wife to be a suicidal statement. ECF No. 55 at ¶ 38. Looking at the record as a whole, the officers had a legitimate safety concern for the Caniglia's at the time. *Lockhart-Bembery*, 498 F.3d at 76. There can be no dispute that sending Mr. Caniglia to talk to a mental health professional is a quintessential community caretaking function and was reasonable under these circumstances.

Regarding the seizure of the guns, there is no dispute that the officers knew the guns were legally possessed and did not suspect that they would uncover evidence of a crime so were acting solely in their roles as community caretakers. But Mr. Caniglia argues that the officers' response in removing his guns was not reasonable because they knew he was not suicidal, Mrs. Caniglia knew he was not suicidal, the gun was not loaded when he brought it out during the argument, and most of the events that prompted their well-being check happened the day before so there was no emergency or reason remove the guns from the home.

The City argues that the officers' actions that day were reasonable based on their belief that the Caniglia's were in crisis. Mrs. Caniglia called police and told them about the previous days' argument that devolved into Mr. Caniglia putting a gun on the table and making a suicidal comment, that Mr. Caniglia was depressed, and that she was afraid and worried about her husband. Captain Henry believed that if the officers left Mr. Caniglia at his home with the guns,

he, his wife, and their neighbors could potentially be in danger. ECF No. 55 at ¶ 42. The Court finds that the officers' conduct was reasonable under these circumstances. Could they have left the guns in the home pending Mr. Caniglia's clearance from Kent Hospital? Perhaps, but, "Where is no requirement that officers must select the least intrusive means of fulfilling community caretaking responsibilities." *Lockhart-Bembery*, 498 F.3d at 76 (citing *Colorado v. Bertine*, 479 U.S. 367, 373–74, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987); *Rodriguez-Morales*, 929 F.2d at 786). Thus, the Court finds that the undisputed record supports its conclusion that the City and its officers were authorized by the community caretaking function to send Mr. Caniglia to Kent Hospital for a mental health evaluation and to seize his guns. The City's conduct did not violate Mr. Caniglia's rights under the Fourth Amendment.

Even if the Court were to find that the City were "mistaken in their judgment" and violated Mr. Caniglia's rights under the Fourth Amendment, the City argues that qualified immunity protects it from liability. *Estate of Bennett*, 548 F.3d at 172. Given these facts, the Court agrees. The Court will briefly review the legal standard for qualified immunity as it relates to Fourth Amendment analysis.

3. Qualified Immunity

"Qualified immunity[4] protects an officer from suit when a reasonable decision in the line of duty ends up being a bad guess—in other words, it shields from liability 'all but the plainly incompetent or those who knowingly violate the law.' " *Belsito Commc'ns, Inc. v. Decker*, 845 F.3d 13, 22–24 (1st Cir. 2016) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011)); *see also Morelli v. Webster*, 552 F.3d 12, 19 (1st Cir. 2009). A two-step inquiry requires the court to ask "(1) whether the facts alleged or shown by the Plaintiff make out a violation of a constitutional right; and (2) if so, whether the right was 'clearly established' at the time of the defendant's alleged violation." *Maldonado v. Fontánes*, 568 F.3d 263, 269 (1st Cir. 2009) (quoting *Pearson v. Callahan*, 555 U.S. 223, 243, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009)). The second step has two prongs: a law is clearly established depending on (1) "the clarity of the law at the time of the alleged civil rights violation" and (2) "whether a reasonable defendant would have understood that his conduct violated the plaintiffs' constitutional rights." *Id.* The Court therefore must inquire "whether, at the time of the intrusion, Fourth Amendment jurisprudence signaled to the individual defendants in this case that their conduct overstepped constitutional boundaries." *MacDonald v. Town of Eastham*, 745 F.3d 8, 12 (1st Cir. 2014).

***6** When the First Circuit has considered whether the community caretaking function applies to searches and seizures in homes as well as cars, it observed that "the reach of the community caretaking doctrine is poorly defined outside of the motor vehicle milieu," that it "has not decided whether the community caretaking exception applies to police activities involving a person's home," and that the case law reveals that the scope and boundaries of the community caretaking exception are nebulous." *Id.* at 13-14. The First Circuit concluded that "neither the general dimensions of the community caretaking exception nor the case law addressing the application of that exception provides the sort of red flag that would have semaphored to reasonable police officers that their entry into the plaintiff's home was illegal." *Id.* at 15.

Because of this ambiguity, the Court finds that it is not clearly established that the community caretaking exception does not apply to police activity in the home intended to preserve and protect the public. *Gemma*, 818 F.3d at 32. Sending Mr. Caniglia for a voluntary well-being check and taking his guns for his and his family's safety were reasonable exercises of the officers' mandate. The City did not force Mr. Caniglia to go to the hospital and Mrs. Caniglia told police her husband had guns and allowed them to enter the home to take them. Nothing about those facts would have led police to believe they were violating Mr. Caniglia's clearly established constitutional rights. The Court thus defers to the officers' reasonable decisions made in the line of duty and concludes that qualified immunity applies to bar this claim against the City.

The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) and DENIES Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) as to Count III.

B. Count II – Second Amendment of the United States and Rhode Island Constitutions

Mr. Caniglia's Second Amendment claim alleges that the City, through "a set of customs, practices, and policies," deprived him of his lawfully obtained and possessed weapons for no reason. ECF No. 51 at ¶¶ 73-74. The policy at issue is that the City will take an individual's weapons for safekeeping without a warrant if they believe that person may be a threat to himself or others. *Id.* at ¶ 27.

The United States Supreme Court announced in *D.C. v. Heller* that an individual has a right to possess firearms in his or her home for protection, but noted that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and thus does not protect "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose" or "for any sort of confrontation." 554 U.S. 570, 595, 626, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) (emphasis omitted); *see also Worman v. Healey*, 922 F.3d 26, 34 (1st Cir. 2019).

Keeping this limitation in mind, the Court must consider whether the City's justification for taking Mr. Caniglia's guns comes within the scope of the Second Amendment's protection of the right to bear arms. If it does not, the inquiry ends. "The issue is a sensitive one, as it implicates not only the individual's right to possess a firearm, but the ability of the police to take appropriate action when they are confronted with a firearm that may or may not be lawfully possessed, and which, irrespective of the owner's right to possess the firearm, may pose a danger to the owner or others." *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 572 (7th Cir. 2014).

Here, the Court finds that the City's policy of removing the guns from a home where an individual threatened suicide does not affect Mr. Caniglia's Second Amendment right to possess a gun. Just as the Second Amendment is not implicated when the police seize a firearm during an arrest, or at a crime scene, the Second Amendment is not implicated when the police reasonably seize a gun under their well-established duties as community caretakers. Moreover, it also is undisputed that the City eventually returned Mr. Caniglia's guns to him and that the City did not prevent Mr. Caniglia from buying or possessing any guns the incident in his home. ECF No. 55 at ¶¶ 46-48. The Court has found under similar facts that the Second Amendment does not protect an individual's right to possess a particular gun. *Richer v. Parmelee*, 189 F. Supp. 3d 334, 343 (D.R.I. 2016) (*Richer I*). The parties have presented no new case law or argument that persuades it otherwise.

***7** The City's Motion for Summary Judgment (ECF No. 45) on Count II is GRANTED.

C. Count IV – Fourteenth Amendment Due Process

Mr. Caniglia moves for summary judgment on his due process claim – the Court granted a similar motion for the plaintiff in *Richer I*. Mr. Caniglia alleges that the City violated his due process rights when it seized his guns with no policy, custom, or procedure–with no process–for returning them. The City refused to return Mr. Caniglia's property for four months and only did so after Mr. Caniglia repeatedly asked, had his lawyer send a letter, and ultimately sued.

The Fourteenth Amendment forbids the City from depriving "any person of life, liberty, or property, without due process of law."[5] "In evaluating a procedural due process claim under the Fourteenth Amendment, we must determine 'whether [the plaintiff] was deprived of a protected interest, and, if so, what process was his due.' " *Garcia-Gonzalez v. Puig-Morales*, 761 F.3d 81, 88 (1st Cir. 2014) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982)). The City held Mr. Caniglia's property for four months, which qualifies as a deprivation of his property right. *see Fuentes v. Shevin*, 407 U.S. 67, 85, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) ("a temporary, nonfinal deprivation of property is nonetheless a 'deprivation in the terms of the Fourteenth Amendment.").

The Court's analysis of this claim in the *Richer I* case is instructive here. The Court focused on the process due and remarked that due process "is flexible and calls for such procedural protections as the particular situation demands." *Richer I*, 189 F. Supp. 3d at 339 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)). Relying on the *Mathews v. Eldridge* test, this Court noted the three relevant factors in determining what procedural protections are due:

> First, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Richer I, 189 F. Supp. 3d at 339 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). Analyzing the first factor, the Court held that the private interest in the "use and possession of property" ingrained in the Fourteenth Amendment trilogy "reflects the high value,

embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government interference." *Richer I*, 189 F. Supp. 3d at 339 (quoting *Fuentes*, 407 U.S. at 81, 92 S.Ct. 1983). The Court concluded based on *Fuentes* that "absent extenuating circumstances, due process requires a baseline of notice and an opportunity to be heard when chattels are to be confiscated." *Richer I*, 189 F. Supp. 3d at 340 (quoting *Fuentes*, 407 U.S. at 96, 92 S.Ct. 1983).

First, the Court finds that Mr. Caniglia had a private interest in his personal property. Second, it is undisputed that the City took his personal property, did not afford him any notice of how to get his property back, and arbitrarily denied his requests for its return. Once in litigation, the City argues that the process Mr. Caniglia should have taken advantage of was to file a state court action under R.I. Gen. Laws § 12-5-7 to recover his property. But the burden on Mr. Caniglia to pay filing and service fees, to hire a lawyer, and wait for justice to ensue is too much of a barrier to his constitutional right to enjoy his property, "free from government interference." *Richer I*, 189 F. Supp. 3d at 339 (quoting *Fuentes*, 407 U.S. at 81, 92 S.Ct. 1983).

***8** Finally, the Court considers the City's interest, articulated here as the traditional community caretaking function of protecting the health and safety of the public. The Court acknowledges that the City's officers were in a sensitive situation and acted within reason, trusting their law enforcement instincts to protect the Caniglia's by removing guns from a once volatile domestic situation that could again escalate once the police left. That said, once Mr. Caniglia left the hospital after being cleared by a doctor, a nurse, and a social worker, returned home to his wife, that exigency disappeared and without a reignition of that fight or evidence of domestic instability, the Court finds that Mr. Caniglia's interest in retaining his property outweighed the City's interest in keeping his guns away from him. *Richer I*, 189 F. Supp. 3d at 340; *Razzano v. Cty. of Nassau*, 765 F. Supp. 2d 176, 189 (E.D.N.Y 2011) ("once a person whose [guns] are taken has the opportunity to legally obtain and possess new [guns], the retention of that individual's old [guns] does not greatly protect the public from potential harm."). Because Mr. Caniglia has shown there is undisputed evidence that the City denied him due process, the Court GRANTS Mr. Caniglia's Motion for Summary Judgment (ECF No. 45) on Count IV. [6]

D. Count V – Equal Protection

The City moves for summary judgment on Mr. Caniglia's Equal Protection claim. In that claim, he alleges that he is entitled to injunctive relief against the City's policies, customs, and practices, which deprived him of his legal guns in violation of the Fourteenth Amendment. Because Mr. Caniglia fails in both his pleading and his presentation of any disputed material facts, his equal protection claim cannot survive.

"The equal protection guarantee of the Fourteenth Amendment prohibits the state from 'deny[ing] any person within its jurisdiction the equal protection of the laws.' " *Pagan v. Calderon*, 448 F.3d 16, 34 (1st Cir. 2006) (quoting U.S. Const. Amend. XIV, § 1). Equal protection has been interpreted to mean that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). "Plaintiffs claiming an equal protection violation must first identify and relate *specific instances* where persons *situated similarly in all relevant aspects* were treated differently." *Buchanan v. Maine*, 469 F.3d 158, 178 (1st Cir. 2006) (emphasis in original) (internal quotation mark omitted). "Thus, the proponent of the equal protection violation must show that the parties with whom he seeks to be compared have engaged in the same activity vis-à-vis the government entity without such distinguishing or mitigating circumstances as would render the comparison inutile." *Cordi-Allen v. Conlon*, 494 F.3d 245, 251 (1st Cir. 2007) (citing *Perkins v. Brigham & Women's Hosp.*, 78 F.3d 747, 751 (1st Cir. 1996)).

Looking through the entire record, from the complaint through the summary judgment evidence, Mr. Caniglia does not point to any other individual similarly situated who was treated differently. He speculates that other gun owners could fall victim to the City's unconstitutional gun seizure policies and procedures, but fails to cite any specific cases. At this stage of the case, Mr. Caniglia's equal protection claim allegations are not enough to survive summary judgment. The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) on Count V.

***9** Now the Court will discuss the motions made on Mr. Caniglia's state law claims.

E. Count I – Rhode Island Firearms Act

The City moves for summary judgment on Mr. Caniglia's claim under the Rhode Island Firearms Act ("RIFA"), R.I. Gen. Laws § ll-47-22(b). Mr. Caniglia alleges that the RIFA

limits the circumstances under which police can prevent individuals from possessing guns and the City's conduct violated the statute. To determine the exact violative conduct, the Court finds itself taking a circuitous route. He argues that the City took his guns under R.I. Gen. Laws § 11-47-6, which limits those "under guardianship or treatment or confinement by virtue of being a mental incompetent" from possessing a gun. He then argues that the City had no basis for taking his guns under this section, but also asserts that the City should have returned his guns under § ll-47-22(b) because the guns were not evidence of a civil or criminal matter. The City denies that it violated the RIFA when it took his guns.

The RIFA provides no further relief because the City returned Mr. Caniglia's guns to him. *Richer I*, 189 F. Supp. 3d at 343 (finding that the RIFA "only contemplates injunctive relief, and not damages.") In the face of this truth, Mr. Caniglia argues that he is entitled to relief under R.I. Gen. Laws § 9-1-2 which "provides civil liability for criminal offenses" and a "plaintiff may recover civil damages for injury ... that results from the commission of a crime or offense, irrespective of whether charges have been filed against the offender." *Morabit v. Hoag*, 80 A.3d 1, 4 (R.I. 2013). Mr. Caniglia asserts that "Defendants' unwritten policy of requiring persons whose guns they have seized to obtain an order in state court before they return them" is a criminal act. ECF No. 51 at ¶ 69. The assertion is not supported by the facts in this case though because it is undisputed that the City returned Mr. Caniglia's guns without a state court order. The City did not violate the RIFA so he is not entitled to money damages under § 9-1-2. [7]

The Court therefore GRANTS the City's Motion for Summary Judgment (ECF No. 45) on Count I.

F. Count VI – Rhode Island Mental Health Law

Mr. Caniglia alleges that the Rhode Island Mental Health Law ("RIMHL") provides the processes through which state actors can require an individual to submit to care for mental health issues,' specifically, he argues that the statute dictates that before the state moves forward with having an individual admitted or certified to a medical or mental health facility, it must obtain a certification from a doctor that the individual needs immediate care. Because the City failed to get the certification and conspired to have him admitted to Kent Hospital for a mental health evaluation, Mr. Caniglia alleges that it violated the RIMHL.

***10** Both parties move for summary judgment. The City argues it is entitled to dismissal because first, the RIMHL does not provide for a private right of action, and second, there is no evidence that the City attempted and/or conspired to have Mr. Caniglia admitted to Kent Hospital so no doctor certification was required. Mr. Caniglia concedes the first point but argues again that he has a cause of action for damages under R.I. Gen. Laws § 9-1-2. He also argues that that the City's agreement to send him to the hospital for a psychological evaluation is undisputed evidence of a conspiracy and it is irrelevant that he was not admitted.

Even if there is a private right of action, the scheme legislated in the RIMHL is not a fit here. The purpose of the RIMHL is "remedial. It was designed to establish a due-process framework for the commitment of mentally ill persons and for their periodic reevaluation." *In re Doe*, 440 A.2d 712, 716 (R.I. 1982). It is undisputed that the City did not seek emergency certification for Mr. Caniglia to a medical or mental health facility, but there is also no evidence in the summary judgment record that the City intended to or conspired to admit or commit Mr. Caniglia to Kent Hospital.

Moreover, the Court imagines that it is not unusual for police to send an individual to the hospital for an evaluation after being summoned by a family member to check on his or her well-being. The officers asked Mr. Caniglia to go with Cranston rescue to get checked out at Kent Hospital and he agreed to go. ECF No. 65 at ¶ 70. He was there for a brief time and then released by medical staff. There is no evidence that police officers had any contact with hospital staff during or after the evaluation to attempt or ensure his admission. Because the City has not violated the RIMHL, there is no crime so § 9-1-2 does not provide Mr. Caniglia any relief.

The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) and DENIES Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) on Count VI.

G. Count VII – Conversion

Both parties move for summary judgment on Mr. Caniglia's common law claim for conversion. In his complaint, he alleges that the City seized his guns without his permission, without legal justification, and retained them for several months despite his repeated requests that they be returned. The City objects and argues that the claim should be dismissed because the City's actions do not legally qualify as a conversion.

In an action for conversion, the Court focuses its inquiry on "whether the defendant has appropriated to his own use the chattel of another without the latter's permission and without legal right." *Terrien v. Joseph*, 73 R.I. 112, 53 A.2d 923, 925 (1947). "This intentional exercise of control over the plaintiffs chattel must 'so seriously interfere[ ] with the right of another to control it that the [defendant] may justly be required to pay the other the full value of the chattel.' " *Narragansett Elec. Co. v. Carbone*, 898 A.2d 87, 97 (R.I. 2006) (quoting Restatement (Second) *Torts* § 222(A)(1) at 431 (1965)). Essentially, a conversion forces a defendant to purchase the property by judicial sale. *Prosser and Keeton on Torts* § 15 at 90 (5th ed. 1984).

To determine if a defendant has converted property, the Court should consider

(a) [T]he extent and duration of the actor's exercise of dominion or control;

(b) the actor's intent to assert a right in fact inconsistent with the other's right of control;

(c) the actor's good faith;

(d) the extent and duration of the resulting interference with the other's right of control;

(e) the harm done to the chattel;

***11** (f) the inconvenience and expense caused to the other.

Restatement (Second) of Torts § 222A(2) (1965). While the City kept Mr. Caniglia's property after a few months, there is no evidence that the City intended to assert any kind of ownership over the property; it removed the guns from the Caniglia home in its reasonable belief that it was in the interest of public safety, and there is no evidence that the property was damaged in any way. And while the City's resistance to returning the guns inconvenienced Mr. Caniglia, this sole factor does not convince the Court that the City intended to convert his property.

The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) and DENIES Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) on Count VII.

IV. CONCLUSION

Well-being checks are an important part of the work of law enforcement, often putting officers in a position to invade the privacy of an individual's home to protect the health and safety of those inside and of the community as a whole. Officers must strike a balance, however, between responding to a crisis and respecting the inviolate rights of community members. Here, the Court determined from the undisputed material facts that the City operated within its duties to care for the community during the well-being check on Mr. Caniglia and his family. The arm of the law, however, can only go so far into the zone of privacy guaranteed by the United States Constitution. The City infringed on Mr. Caniglia's rights when it refused to return his property and failed to provide him with any process of how to get it back after his health and safety were secured.

Therefore, the Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) as to Counts I, II, III, V, VI, and VII. The Court GRANTS Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) as to Count IV and DENIES it as to Counts III, VI, and VII.

IT IS SO ORDERED.

All Citations

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Footnotes

1 Mrs. Caniglia testified that the police officers' actions were not what she expected She wanted an escort home and she and the police would knock on the door and when her husband answered she would know he was okay and "that we would talk and if things were fine, the officer would leave." ECF No. 59 at ¶ 142.

2 There is a dispute over what the police said to Mr. and Mrs. Caniglia about seizing the guns – the Caniglia's say that the police told Mrs. Caniglia that her husband approved the seizure and that if Mr. Caniglia went to the hospital for an evaluation, they would not take the guns – but that dispute is not material because ultimately, they took the guns. ECF No. 59 at ¶¶ 85-86.

3 Mr. Caniglia correctly points out that courts are split about whether the community caretaking function standard the United States Supreme Court first set forth in *Cady* in the vehicle context also applies to searches of a home. *See, e.g., Ray v. Twp. of Warren*, 626 F.3d 170, 177 (3d Cir. 2010); *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994); *United States*

v. Erickson, 991 F.2d 529, 532 (9th Cir. 1993); *United States v. Pichany*, 687 F.2d 204, 207–09 (7th Cir. 1982); *Hawkins v. United States*, 113 A.3d 216, 222 (D.C. 2015). The Fifth and Eighth Circuits have applied the community caretaking function to warrantless searches of the home, *see United States v. York*, 895 F.2d 1026, 1029 (5th Cir. 1990); *United States v. Quezada*, 448 F.3d 1005, 1007–08 (8th Cir. 2006). The Sixth Circuit has ruled both ways. *Compare United States v. Rohrig*, 98 F.3d 1506, 1521–25 (6th Cir. 1996) with *Goodwin v. City of Painesville*, 781 F.3d 314, 331 (6th Cir. 2015) and *United States v. Williams*, 354 F.3d 497 508–09 (6th Cir. 2003). The First Circuit has not had occasion to rule either way on this question. *MacDonald v. Town of Eastham*, 745 F.3d 8, 13-14 (1st Cir. 2014). But given the court's recognition of the validity of police caretakers who "combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safey[,]' " *Gemma*, 818 F.3d at 32 (quoting *Rodriguez–Morales*, 929 F.2d at 784–85), and the reality that these services could be required not only in vehicles, but also in homes as well it appears that the community caretaking defense could be applied in a home, depending on the facts of each individual case.

4 An officer who is entitled to qualified immunity under federal law is similarly immune from suit for the state-law equivalent of that clam under Rhode Island law *Estrada v. Rhode Island*, 594 F.3d 56, 63 (1st Cir. 2010) (citing *Hatch v. Town of Middletown*, 311 F.3d 83, 89–90 (1st Cir. 2002)).

5 This constitutional right is actionable against state and municipal officials through 42 U.S.C. § 1983.

6 On a side note, the Court feels compelled to address Mr. Caniglia's argument that the City's officers took the guns solely to cover all their bases so that they would not be subject to liability or public censure for leaving the guns in the home. While the Court finds that the facts and law justify the City's actions, his perceptions as a citizen provides all the more reason for the City to develop "a clear procedure ... about how to review and resolve the seizure and retention of guns". *Richer*, 189 F. Supp. 3d at 340. "Appropriate procedures initiated or noticed by the [City] would have eliminated the risk of such a lengthy deprivation without plaintiff] having a meaningful opportunity to contest it." *Id.* The lack of any procedure violates notions of due process.

7 Even if there were a violation of the RIFA, "[t]he plain language of the statute D requires a causal connection between the alleged crime and the claimed injury." *Kelly v. Marcantonio*, 187 F.3d 192, 203 n.8 (1st Cir. 1999). Mr. Caniglia has failed to allege or produce evidence of a causal connection between the crime and his injury – presumably because he has his property back and he has no evidence of current injury.

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UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA, Plaintiff	:	
v.	:	C.A. No. 15-525
ROBERT F. STROM as the Finance Director of THE CITY OF CRANSTON, et al. Defendants	:	

FINAL JUDGMENT

Pursuant to the Court's June 4, 2019 Memorandum and Order and F.R.Civ.P. 58, final judgment shall enter as follows:

1. Plaintiff's claims against all Defendants on Count I (Violation of the Rhode Island Firearms Act), Count II (Violation of the Right to Keep Arms), Count III (Violation of Plaintiff's Rights Under the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution), Count V (Equal Protection), Count VI (Violation of the Rhode Island Mental Health Law), and Count VII (Trover and Conversion) are dismissed, with prejudice;
2. Defendants Robert F. Strom in his official capacity as Finance Director of the City of Cranston, City of Cranston, and Colonel Michael Winquist in his official capacity as Colonel of the Cranston Police Department are liable to Plaintiff on Count IV (Violation of Plaintiff's Due Process);
3. By consent of the Parties, Defendants Strom and Winquist are liable to Plaintiff for $1 in nominal damages for violation of Plaintiff's due process rights only.
4. Plaintiff's claim under Count IV as against any Defendant other than Robert F. Strom in his official capacity as Finance Director of the City of Cranston, City of Cranston, and Colonel Michael Winquist in his official capacity as the Colonel of the Cranston Police Department is dismissed, with prejudice

5. Plaintiff's application for the issuance of declaratory and injunction relief for violation of Plaintiff's due process rights (Count IV) is denied.

6. Plaintiff is awarded his taxable costs, attorney's fees and related nontaxable expenses as against Defendants Robert F. Strom in his official capacity as Finance Director of the City of Cranston, City of Cranston, and Colonel Michael Winquist in his official capacity as the Colonel of the Cranston Police Department in an amount to be determined by the Court on separate motion. By agreement and for good cause shown, the time within which Plaintiff shall submit his motion for costs, attorney's fees and related nontaxable expenses pursuant to F.R.Civ.P. 54(d) and Local Civil Rules 54 and 54.1 shall be and is hereby extended to forty-five (45) days after entry of the within judgment and, if any party takes an appeal from the within judgment, is further extended until forty-five (45) days after the issuance of mandate by the Court of Appeals resolving all appeals.

Enter:

7/19/19

Agree as to form:

EDWARD CANIGLIA
By his attorneys,
/s/ Thomas W. Lyons
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