

though, Plaintiff's request is wholly unsupported by the law and even contrary to settled precedent.

I. PLAINTIFF'S MOTION FOR RECONSIDERATION DOES NOT SATISFY THE APPLICABLE STANDARD OF REVIEW

The standard of review governing motions for reconsideration is strict, and the only proper basis on which a litigant may move to reargue a court's unambiguous order is that it overlooked evidence or controlling decisions which, had they been considered, might reasonably have altered the result reached by court. Arthur v. King, 500 F.3d 1335 (11th Cir. 2007), *cert. denied* 128 S.Ct. 660, 169 L.Ed.2d 511 (2008).

In Plaintiff's Motion for Reconsideration, there is no argument related to "overlooked evidence" and Plaintiff does not cite to any cases; accordingly, given that Plaintiff has undeniably failed to satisfy the standard of review, his Motion for Reconsideration must be denied.

II. THE QUALIFIED IMMUNITY ANALYSIS FOR 4TH AMENDMENT, FALSE ARREST CLAIMS DOES NOT IMPLICATE THE PURPORTED UNIQUENESS OF A PLAINTIFF'S DAMAGES

Plaintiff's Motion for Reconsideration addresses the "very narrow issue" of whether arguable probable cause for disorderly conduct also affords the deputies with qualified immunity for arresting him for carrying a concealed weapon. Put simply,

Plaintiff wants the Court to divide his 4th Amendment, false arrest claim between the concealed weapon charge and disorderly conduct charge, so that he can proceed to a jury on the former. Notably though, the law does not recognize such a division and thus, this Court should deny the instant motion.

In the case Lee v. Ferraro, the Eleventh Circuit explained that “[t]he validity of an arrest does not turn on the offense announced by the officer at the time of the arrest.” Lee v. Ferraro, 284 F.3d 1188, 1195-96 (11th Cir. 2002). Rather, “[w]hen an officer makes an arrest, which is properly supported by probable cause for a certain offense, neither his subjective reliance on an offense for which no probable cause exists nor his verbal announcement of the wrong offense vitiates the arrest.” Id. This means that, if probable cause existed to arrest Plaintiff for any offense recognized by state law, Plaintiff cannot prevail on any aspect of his false arrest claim. See Devenpeck v. Alford, 543 U.S. 146, 125 S.Ct. 588, 160 L.Ed.2d 537 (2004) (rejecting notion that arrest is unlawful under Fourth Amendment if offense for which there is probable cause to arrest is not “closely related” to offense identified by arresting officer); United States v. Lopez-Moreno, 420 F.3d 420, 432 (5th Cir. 2005) (even if officer was mistaken that suspect was violating particular statute, probable cause for traffic stop still existed if it was objectively reasonable to believe that suspect was violating another statute).

In fact, the Fifth Circuit put it this way:

The claim for false arrest does not cast its primary focus on the validity of each individual charge; instead we focus on the validity of the arrest. If there is probable cause for any of the charges made—here either [interfering with a firefighter or resisting without violence]—then the arrest was supported by probable cause, and the claim for false arrest fails.

Wells v. Bonner, 45 F.3d 90, 95 (5th Cir.1995); see also Stachel v. City of Cape Canaveral, 51 F.Supp.2d 1326 (M.D.Fla. 1999)(quoting Wells).

Accordingly, because it is clear that the existence of arguable probable cause—irrespective of whether the suspect is actually charged with the offense—will preclude a Fourth Amendment, false arrest claim, this Court’s finding that arguable probable cause existed to arrest Plaintiff for disorderly conduct absolutely bars all of his arrest-related claims, regardless of some purportedly unique damage from the specific charge.

III. PLAINTIFF DOES NOT HAVE A FEDERALLY PROTECTED RIGHT TO POSSESS A GEORGIA FIREARMS LICENSE

It is axiomatic that 42 U.S.C. § 1983 creates a mechanism for recovering monetary damages and securing injunctive relief against governmental actors whose action(s) under color of state or local law deprive the claimant of rights, privileges, or immunities secured by the **U.S. Constitution or federal statutes**. In other words, Section 1983 does not confer any substantive rights; rather, it provides a remedy for

deprivation of federal rights established elsewhere. Barfield v. Brierton, 883 F.2d 923, 934 (11th Cir.1989).

For example, the 8th Amendment affords convicted prisoners substantive rights related to their treatment; if a prisoner is subjected to “cruel and unusual” treatment, Sec. 1983 would provide him/her a remedy for said 8th Amendment violation. Similarly, the 4th Amendment affords citizens rights related to government searches without a warrant; this means that if a citizen’s home is searched without a warrant, Sec. 1983 will provide him/her with a remedy for constitutional violation.

In the motion *sub judice*, Plaintiff claims to have been deprived of the right to a “Georgia firearms license (“GFL”) for a period of several months.” [Doc. 32 at 2]. The problem with this argument is that neither the U.S. Constitution nor any other federal law guarantees the Plaintiff the right to a Georgia firearms license. Indeed, the Supreme Court in District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008), confirmed that the 2nd Amendment affords individuals with a right to keep and bear arms, but it is the States that regulate the manner in which people may lawfully carry said arms. Even Heller recognized that States may legitimately regulate one’s right to carry a firearm. Id. at 2817 (recognizing that states have legitimately regulated concealed weapons since the 19th-century).

The fact that there is no federal substantive right to a Georgia firearms license is significant because it means that, regardless of the preclusive effect of arguable probable cause, Plaintiff has no independent substantive claim under federal law for the denial of his Georgia firearms license. Gandy v. Panama City, Fla., 505 F.2d 630 (5th Cir. 1974); Howell v. Blair, 566 F.2d 525 (5th Cir. 1978)(holding that there is no federal right to have a liquor license). Aside from the 4th Amendment, Plaintiff's arrest does not implicate any federal rights, so as to give rise to an actionable Sec. 1983 claim.

Accordingly, because Plaintiff does not have a federally protected right to possess a GFL, his Motion for Reconsideration must be denied.

This 30th day of JULY, 2009.

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