**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF PENNSYLVANIA**

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| **RICHARD BANKS, et al** | **: NO 3:08-1110** |
| | **: (CAPUTO, D.J.)** |
| | **:** |
| **Vs** | **: (MANNION, M.J.)** |
| | **:** |
| **KAREN GALLAGER, et al** | **:** |

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF PENNSYLVANIA**

| | |
|---|---|
| **EDWARD J. KRAFT, JR.,** | **: NO: 3:08-1177** |
| **Plaintiff** | **:** |
| | **: (CAPUTO, D.J.)** |
| **Vs.** | **: (MANNION, M.J.)** |
| | **:** |
| **KAREN GALLAGER, et al** | **: [ELECTRONICALLY FILED]** |

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## PLAINTIFF, RICHARD BANK'S BRIEF IN SUPPORT OF HIS MOTION FOR PARTIAL SUMMARY JUDGMENT

### I. Procedural History

On June 11, 2008, the Plaintiffs filed a §1983 Complaint against the Defendants alleging both individual acts of misconduct and a Monell type claim against Dickson City and subsequently, on September 2, 2008, an Amended Complaint was filed.

The conduct complained of arose out of an encounter between the Plaintiff and Defendants, Karen Gallagher and Anthony Mariano, two members of the Dickson City Police Department at the Old Country Buffet on May 9, 2008. Discovery is now complete, and on August 17, 2009, the Plaintiff Richard Banks filed this Motion for Partial Summary Judgment under F.R.C.P. 56.

### II. Statement of Facts

The Plaintiff, Richard Banks, incorporates herein by reference the Statement of Facts filed contemporaneously with the Motion for Summary Judgment.

### III. Questions Presented

**A. WHEN A LAW ENFORCEMENT OFFICER BELIEVES THAT A CITIZEN IS CARRYING A CONCEALED FIREARM, BUT HAS NO SUSPICION, REASONABLE OR OTHERWISE, THAT THE CITIZEN IS ENGAGING IN CRIMINAL ACTIVITY, DOES THAT LAW ENFORCEMENT OFFICER VIOLATE THE CONSTITUTIONAL RIGHTS**

**OF THE CITIZEN BY DETAINING THE CITIZEN, DEMANDING THAT THE CITIZEN PRODUCE IDENTIFICATION AND A LICENSE TO CARRY A CONCEALED FIREARM AND THEN ARRESTS THE CITIZEN WHEN HE REFUSES TO PRODUCE THAT IDENTIFICATION/LICENSURE?**

Suggested Answer: Yes

**B. WHETHER A LAW ENFORCEMENT OFFICER VIOLATES THE CONSTITUTIONAL RIGHTS OF A CITIZEN WHEN THAT LAW ENFORCEMENT OFFICER SEIZES AND RETAINS A FIREARM LEGALLY OWNED AND POSSESSED BY THE CITIZEN, BECAUSE THE FIREARM IS NOT "REGISTERED" TO THAT CITIZEN, EVEN THOUGH THERE IS NO "REGISTRY" OF FIREARM OWNERSHIP IN THE COMMONWEALTH OF PENNSYLVANIA?**

Suggested Answer: Yes

**C. WHETHER THE SEIZURE OF THE FIREARMS FROM THE PLAINTIFF VIOLATED HIS RIGHTS UNDER THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION?**

Suggested Answer: Yes

## IV. Argument

### The Standard For Summary Judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In conducting this analysis, the Court must view all

reasonable inferences drawn from the facts in the light most favorable to the non-moving party. **Integrated Service Solutions, Inc.,v. Dennis M. Rodman, Defendant/Third Party Plaintiff v. Joseph Uricchio, Third Party Defendant**, 2009 U.S. Dist. LEXIS 36182 (E.D., Pa, 2009). An issue is "genuine" under Rule 56(c) if the evidence is such that a reasonable jury could return a verdict for the non-moving party. **Anderson v. Liberty Lobby, Inc**., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. The existence of some factual dispute between the parties does not preclude Summary Judgment, unless there is a genuine issue of material fact. Id.at 248. (emphasis added).

The party bearing the ultimate burden of proof on the claim at trial has a more stringent burden of production when it seeks summary judgment. Its motion must establish the absence of a genuine factual issue. **National State Bank v. Federal Reserve Bank of N.Y.**, 979 F.2d 1579, 1582 (3d Cir. 1991). Once a moving party has satisfied its burden of production, the burden shifts to the non-movant to show, by setting forth specific facts, that there is a genuine issue for trial. **Anderson,** 477 U.S. at 250.

**A. BECAUSE THE DEFENDANTS HAD NO REASONABLE SUSPICION THAT THE PLAINTIFF WAS ENGAGED IN CRIMINAL ACTIVITY OR THAT CRIMINAL ACTIVITY WAS OTHERWISE AFOOT, THE DETENTION AND ARREST OF MR. BANKS AND THE SEIZURE OF HIS PROPERTY WERE VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS UNDER THE FOURTH AMENDMENT.**

**A.1 The Illegality of the Detention.**

It cannot be denied that the interaction between the Plaintiff Richard Banks and Officers Gallagher and Mariano in the vestibule was indeed a detention. Whether Mr. Banks was in the vestibule because he followed Mariano's order to be there, as Mariano testified, or because he voluntarily went out to the vestibule to see what was going on, as Mr. Banks testified, is immaterial. The point is that once Mariano concluded that Richard Banks was carrying a concealed weapon, this interaction escalated from any "mere encounter" to an investigatory detention, and Mr. Banks was not free to leave until he produced identification. Statement ¶ 17. As such, this interaction is governed by the Fourth Amendment to the United States Constitution. I cannot put it any plainer, any simpler or any clearer than Chief Justice Warren writing for the Court in **Terry v. Ohio**, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed. 2d 889 (1968), when he said:

> "It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime – 'arrests' in traditional terminology. It must be recognized that whenever a police

> officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person…It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." **Terry**, at 16-17, 88 S.Ct. at 1877, 20 L.Ed. 2d at 903.

To make an investigatory stop, a law enforcement official must have an articulable, reasonable suspicion that the person stopped is or has just violated the law. **Autrey v. The City of Lancaster,** 2003 U.S. Dist. LEXIS 7694, citing, **Brown v. Texas**, 443 U.S. 47, 51, 99 S. Ct. 2637, 61 L.Ed. 2d 357 (1979). To put in the language of **Terry, supra,** , the Law Enforcement Officer (LEO) must have a reasonable suspicion that "…criminal activity may be afoot…". **Id.,** , @30, 20 L.Ed. @ 911, 88 S.Ct. @1885. The Defendants acknowledge this (since the Defendant himself said so), but are arguing that, given the belief of the concealed carry, and despite the absence of any indication that criminal activity was afoot, or that the Plaintiff was otherwise doing anything suspicious, they had the right to demand identification. This is an amazing *non-sequiter*. Both Defendants were aware that they needed reasonable suspicion before they can detain a citizen, Statement ¶ 7, both acknowledged that they had no such suspicion about the Plaintiff, Statement ¶ 19, 22, and yet they detained and ultimately handcuffed the Plaintiff and placed him in the cruiser.

Their argument, that a Law Enforcement Officer has the right to stop a citizen and demand identification when there is no reasonable suspicion that criminal activity is afoot, was made to and rejected by the United States Supreme Court thirty years ago in **Brown v. Texas**, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357, 1979 U.S. LEXIS 136 (1979).

In that case, two El Paso Police Officers were on patrol around noontime in an area that had a lot of drug incidents. Although they acknowledged that they did not suspect the Defendant of any specific misconduct or suspect that he was armed, the Police Officers nonetheless demanded that Brown identify himself, which he refused to do. After continuing to refuse to identify himself, he was arrested for violation of a Texas Statute, which provided that:

> "(a) A person commits an offense if he intentionally refuses to report or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information" Texas Penal Code, Title 8, §38.02(a).

The Defendant was subsequently convicted of the offense and fined $45.00 plus Court costs. On appeal to the United States Supreme Court, this decision was reversed, and in so reversing the Court made several pronouncements which are of significance to the matter now under scrutiny, as follows:

(a) When the officers detained the Defendant and demanded identification, they performed a seizure of his person subject to the requirements of the Fourth Amendment. **Id, 443 U.S. at 50, 61 L.Ed, 2d at 361**.

(b) In convicting the Defendant, the County Court necessarily found as a matter of fact that the Officer "lawfully stopped" the Defendant, as required by that section of the Texas Penal Code. **Id.**

(c)The Fourth Amendment applies to this seizure. **Id.**

(d). "the flaw in the State's case is that none of the circumstances preceding the Officer's detention of [the Defendant] justified a reasonable suspicion that he was involved in criminal conduct" **Id.,** at 52-53, 61 L.Ed 2d at 362.[2]

Despite these long standing and clearly established principles of law, and despite the fact that the Defendants, Officers Mariano and Gallagher and Chief Stadnitski acknowledged that an LEO needs to meet the "reasonable suspicion" standard of **Terry** before an investigative detention can be made, Mariano and Gallagher just plowed ahead in conscious

[2] Compare this to **Hibel v. Sixth Judicial District Court of Nevada,** 542 U.S. 177, 124 S.Ct. 2451, 159 L.Ed 292 (2004)(once a legitimate Terry stop is made, in that the police officer has a reasonable suspicion that criminal activity is afoot, requiring the suspect to produce identification is not a violation of the Fourth Amendment).

disregard of the Constitution and trampled all over the Fourth Amendment rights of the Plaintiff. Indeed, the undisputed facts in this case are even more compelling than the facts in **Brown, supra,** for at least in that case the encounter took place in a drug infested neighborhood, whereas the incident now before the Court took place in the middle of a crowded retail establishment that was open for business.

It is clear from the depositions of Mariano and Gallagher that they were of the mistaken view that the mere carrying of a concealed firearm gave them the right, in and of itself, and in the absence of any other conduct or reasonable suspicion that criminal activity was afoot, to demand identification and production of the license and were of the further view, as demonstrated by the arrest of Banks, that refusal to produce the license (and perhaps any other type of identification) authorized the shackling and arrest of anybody who did so refuse. Statement, ¶ 17, 18.

It is true that it is illegal to carry a concealed firearm in the Commonwealth of Pennsylvania without a license to do so, **18 Pa.C.S.A. 6106,** and it is also true that, under certain circumstances, a Police Officer may require that the license be produced. Specifically, **§6122 of Uniform Firearm Act** states, in pertinent part, that:

> "§ 6122. Proof of license and exception
> (a) GENERAL RULE.-- When carrying a firearm concealed on or

> about one's person or in a vehicle, an individual licensed to carry a firearm shall, upon lawful demand of a law enforcement officer, produce the license for inspection. Failure to produce such license either at the time of arrest or at the preliminary hearing shall create a rebuttable presumption of nonlicensure."

It must be noted that the Texas Statute analyzed in **Brown v. Texas supra,** purported to justify a police-imposed detention and a requirement that identification be produced if the individual is "lawfully stopped", whereas the Pennsylvania Statute purports to require production of the license upon "lawful demand". The Texas statute was found to be unconstitutional thirty years ago, because that type of stop and detention requires, at the very least, that the requirements of the Fourth Amendment first be satisfied, because:

> "In the absence of any basis for suspecting [defendant] of misconduct, the balance between the public interest and [defendant's] right to personal security and privacy tilt in favor of freedom from police interference." **Brown, supra, Id, @ 52, 61 L.Ed 2d @ 363).**

There is absolutely no distinction of any significance between the two statutes involved. For a "stop" or a "demand" to be legal, there must be some reasonable suspicion, based on articulable facts that the detainee is or was involved in criminal activity. Neither in **Brown,** nor in the case now before this Court is there any such articulable fact or reasonable suspicion, and the detention was therefore illegal.

It is clear from Gallagher's deposition that she was attempting to justify this on the basis that the Plaintiffs may have been terrorists, or may have been convicted felons, or may have had a PFA issued against them, all of which would make it illegal for them to be in possession of a firearm. See Statement ¶ 22. However, she did not know and could not know if any of these disqualifying events were present, unless she demanded and checked I.D. In essence, and to use a nonlegal expression, both her and Mariano put the cart before the horse. Under this theory, anybody seen in possession of a firearm could be stopped, detained, and be required to produce identification, even in the absence of any suspicion of criminal activity. This is not the law, and has not been the law since **Terry v. Ohio**.

The defendants seem to be arguing that because carrying a concealed firearm is permitted but only with a license, that government permitting gives police officers the unfettered right to detain an individual and demand production of that license. That the law is otherwise has been clearly established for the past thirty years, ever since the Supreme Court decided this issue in **Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed 2d 660 (1979).**

In that case, a municipal police officer in the State of Delaware pulled over an automobile being occupied by the defendant. The stop was not

made pursuant to any type of standard, guideline or procedure, was not predicated upon any observed violation of the motor vehicle code, nor was there any reasonable suspicion that the occupants of the vehicle were engaging in any type of criminal activity. Rather, as the arresting officer testified to at a suppression hearing: "I saw the car in the area and wasn't answering any complaint, so I decided to pull them off", **Id, @650-651, 59 L.Ed 2d @665,** apparently to check for the driver's license and registration paperwork for the vehicle. The trial court held that the stop was a violation of the Fourth Amendment to the United States Constitution. The Supreme Court affirmed that decision, stating as follows:

> *An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation*… Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment." **Id, @ 661, 59 L.Ed 2d 673.** (italics added).

In **Prouse v. Deleware, supra,** the Supreme Court decided that merely operating a car doesn't give the police the right to stop the car and demand paperwork from the driver; so too, the mere possession of a concealed firearm does not, in and of itself, give the police the right to detain the Plaintiff and make him prove that he is entitled to possess the

firearm. The result in this case, therefore, must be the same as the result in **Prouse** – a declaration that the detention, seizure and arrest were violations of the Plaintiff's constitutional rights under the Fourth Amendment to the United States Constitution.

**A.2 The Illegality of the Arrest**.

It is submitted that, since the original encounter between Mr. Banks and Gallagher and Mariano was illegal, then the subsequent shackling, arrest and confinement of Mr. Banks for up to 45 minutes was, *ipso facto,* illegal, as was the original seizure of the two firearms. In that regard, the Plaintiff incorporates herein by reference all of his arguments about the legality of the detention.

Nonetheless, if the Court does somehow find that the original detention was legal, it is submitted that the arrest for failing to produce identification and the license was still illegal and a violation of the Plaintiff's Fourth Amendment rights.

As noted above, a citizen carrying a concealed firearm is required to produce the license for inspection, but only "upon lawful demand". 18 Pa.C.S.A. 6122(a). But, as held by the United States Supreme Court 30 years ago in **Brown v. Texas, supra,** for any demands to be "lawful" the LEO must have some reasonable suspicion that criminal activity was afoot,

and it is conceded by the individual Defendants in this case that no such reasonable suspicion existed. Statement, ¶ 7,12,19,22. Since there was no "lawful" demand for either identification or the license, there was no requirement that Mr. Banks produce such and his failure to do so does not constitute probable cause to take him into custody.

Furthermore, it takes incredible linguistic and mental gymnastics to conclude that the failure of Mr. Banks to produce identification constitutes the crime of disorderly conduct. Gallagher references subsection (a)(4) of the statute as the basis for arresting Mr. Banks. That section provides, in pertinent part, as follows:

> § 5503. Disorderly conduct
> (a) OFFENSE DEFINED. --A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
>
> (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

The irony of this is that the only public inconvenience created was when the police arrived and disturbed all of the people in the group who were sitting quietly eating a meal with their families. Be that as it may, it is clear that failing to produce a license does not "create a hazardous or physically offensive condition which serves no legitimate purpose of the actor". Refusing to produce identification is neither hazardous nor

physically offensive. Furthermore, Mr. Banks refusal did indeed serve a legitimate purpose in that he refused to sacrifice his Fourth Amendment rights just because it was convenient for the police or it was the wish of the police that he do so. They were there to "investigate" but in the absence of any suspicion of criminal activity being afoot, their investigation, under the dictates of **Terry v. Ohio, supra,, Brown v. Texas, supra.** and the Fourth Amendment to the United States Constitution, was limited to asking him questions and asking for, not demanding identification. Mr. Banks was well within his rights in refusing to produce that identification. Finally, his intent was not to create a public inconvenience, but to exercise his right to be free from illegal interference by the police. As such, his refusal to produce either the license or other identification did not give any reasonably trained and reasonably competent police probable cause to believe he was committing a crime. Therefore, his arrest on this nonexistent legal basis must, as a matter of law, be declared illegal. A necessary corollary to that is the initial seizure of the two firearms was likewise illegal.

**B. THE SEIZURE OF AND REFUSAL TO RETURN THE FIREARM TO MR. BANKS LIKEWISE CONSTITUTED AN ILLEGAL SEIZURE AND ANOTHER VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE PLAINTIFF**

The refusal of the Defendants to return the seized firearm to the Plaintiff was likewise without justification. The individual Defendants have

attempted to justify this seizure on the basis that the handgun was not "registered" to the Mr. Banks, and therefore could not be returned to him. The problem with this analysis is that in Pennsylvania, there is no "registry" of gun ownership, and, indeed, the maintenance of such a registry is clearly and unequivocally prohibited by state law. Specifically, 18 Pa.C.S. §6111.4 states that:

> "Notwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within the Commonwealth."

In **Allegheny County Sportsmen's League *et al* v. Edward G. Rendell, *et al*, 580 Pa. 149, 860 A.2d 10, 2004 Pa LEXIS 2414 (2004),** a group of sportsmen brought a declaratory judgment action against the Governor of Pennsylvania, the State Police Commissioner and the State Police, alleging that the State Police were violating this provision of the Pennsylvania Uniform Firearms Act of 1995 by maintaining a handgun sales database. The database about which the sportsmen were complaining is one that is compiled by the State Police from records of handgun sales which are required to be submitted to the State Police under §6111(b)(1) of the Uniform Firearms Act. The Petitioners argument was that the maintenance of such a registry of handgun sales was a violation of

§6111.4, prohibiting the creation or maintenance of a registry of firearm ownership The Commonwealth Court granted the preliminary objections of the Commonwealth and, on appeal to the Supreme Court, that decision was affirmed. In disposing of the matter, the Supreme Court stated the obvious –

> "the database at issue is not a registry of ownership, but rather, merely reflects the applications/records of sale for handgun purchases that occur in Pennsylvania. The database does not maintain a record of all firearms owned by Pennsylvanians, which would include long guns, or firearms that are owned by Pennsylvanians, but not purchased in the Commonwealth. Additionally, the database of handgun sales does not include handguns that are transferred between spouses, parents and children, and grandparents and grandchildren. See **18 Pa.C.S. § 6111(c).** Nor is the database a survey of existing ownership. The database maintained by the Commonwealth merely contains information regarding the sales of handguns in the Commonwealth. Such a database does not amount to a "registry of firearm ownership" as prohibited by the Firearms Act." **Allegheny County Sportsmen's League, supra, 580 Pa. @168**

The Supreme Court went on to hold that because the database maintained by the State Police was a database of handgun sales in the Commonwealth, it did not violate §6111.4 of the UFA, because that section merely prohibit a registry or database of firearm ownership.

So, since 1995, when the UFA was amended to include the prohibition of this registry of firearm ownership, the law of Pennsylvania was clear that a registry of firearm ownership was prohibited and, therefore,

could not and did not exist. In case there was any doubt about the clear meaning of what was prohibited, that doubt was completely erased by the extensive discussion of the UFA and this firearm ownership registry by the highest law of the Commonwealth in **Allegheny County Sportsmen's League, supra,**

Despite that, the Defendants Mariano and Gallagher nonetheless seized the firearm legally in the possession of the Plaintiff, and then refused to return it to him, because, according to a registry that was illegal and did not exist, the Plaintiff was not legally in possession of the firearms.

The Defendants as Police officers for Dickson City are charged with responsibility for enforcing the laws of the Commonwealth, and yet their familiarity with the laws they are supposed to be enforcing is abysmal.

### C. THE SEIZURE OF THE FIREARMS FROM MR. BANKS, ESPECIALLY WHEN CONSIDERED IN LIGHT OF THE DEFENDANTS' REFUSAL TO RETURN THE FIREARM TO HIM BECAUSE IT WAS NOT "REGISTERED" TO HIM, CONSTITUTED A VIOLATION OF THE PLAINTIFF'S RIGHTS UNDER THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION AND UNDER RECENT PRONOUNCEMENTS FROM THE UNITED STATES SUPREME COURT

The Second Amendment provides that the right of the people to keep and bear arms shall not be infringed. An individual has the right to possess a firearm unconnected with service in a militia under the Second

Amendment. **District of Columbia v. Heller**, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). Under current law, Mr. Banks had the right to carry a firearm under the Second Amendment on May 9, 2008.

Heller left open the question as to whether the Second Amendment applied to the states under the Fourteenth Amendment since it was ”not presented by this case.” **Heller,** 128 S. Ct. at 2813. Two circuit courts have addressed this issue. The Second Circuit summarily held that the Second Amendment does not apply to the states through the Fourteenth Amendment because “we must follow **Presser”**[1] and leave “to the Supreme Court the prerogative of overruling its own decisions.” **Maloney v. Cuomo,** 554 F. 3d 56, 59 (2d Cir. 2009).

However, in more recent, and a more reasoned decision, the Ninth Circuit held that the Second Amendment *does apply* to the states through the Fourteenth Amendment because the right to keep and bear arms is so fundamental that the Due Process Clause guarantees it. **Nordyke v. King,** 2009 U.S. App. LEXIS 8244 (9th Cir.). The Ninth Circuit looked at **Maloney**, but said the Second Circuit relied on **Presser** to reject direct application or total incorporation, without considering selective

[1] **Presser v. Illinois**, 116 U.S. 252, 265, 6 S. Ct. 580, 29 L.Ed.618 (1886) (Supreme Court Second Amendment imposes a limitation on federal, not state, legislative efforts.)

incorporation through the Due Process Clause. **Heller** acknowledged **Presser** did not discuss selective incorporation through the Due Process Clause. **Id**. at p. 44. Therefore, **Presser** did not foreclose the Ninth Circuit's review of whether the Second Amendment applied to states through selective incorporation. The Ninth Circuit found that it did. **Id**. at p. 46.

The Third Circuit had not weighed in on the issue.[2] In light of the Ninth Circuit's extensive analysis (which the Second Circuit did not undertake), Mr. Banks urges the District Court to follow **Nordyke** and, accordingly, to enter judgment in his favor as a matter of law on this claim.

## V. Conclusion

A. Because Mariano and Gallagher had no reasonable suspicion that the Plaintiff, Richard Banks, was engaged in any type of criminal activity, and because the interaction in the vestibule area was originally a detention subject to the Fourth Amendment requirements, such detention was a violation of the constitutional rights of the Plaintiff and judgment must be entered in his favor.

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[2] Mr. Banks found one district court case within the Third Circuit that has addressed the issue post Heller, and it held the Second Amendment does not apply to an unincorporated territory via the Fourteenth Amendment. United States v. Lewis, 2008 U.S. Dist. LEXIS 103631 (D.V.I.).

B. Because the Plaintiff was not required to produce identification or the license to carry a concealed weapon, his arrest for failing to do so was likewise a violation of his Fourth Amendment rights, and judgment must be entered in his favor.

C. The seizure and retention of the firearm, based on it not being registered in a non-existent registry that would be illegal if it did exist, likewise constituted an illegal seizure and a violation of the Plaintiff's Fourth Amendment rights, and judgment must be entered in his favor.

Respectfully submitted

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**Certificate of Service**

I, Robert J. Magee, Esquire, hereby certify that the within Plaintiff, Richard Banks's Brief in Support of His Motion for Summary Judgment has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that service of the within documents upon the individuals identified below was effected by electronic service by virtue of such filing pursuant to LR 5.7.

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