

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SALVADOR REYNAGA

Plaintiff,

v.

MONTEREY COUNTY DISTRICT
ATTORNEY’S OFFICE, and RYAN
MCGIRK

Defendants.

Case No. C-13-01674-RMW

**ORDER GRANTING MOTION TO
DISMISS**

[Re Docket No. 24]

Defendants Monterey County District Attorney’s Office and Ryan McGuirk¹ move to dismiss plaintiff Salvador Reynaga’s First Amended Complaint (FAC). The FAC alleges that the defendants’ refusal to return plaintiff’s gun to him until he completes a required background check is a violation of his Fourth Amendment rights. For the reason explained below, the court grants defendants’ motion to dismiss without prejudice to seeking relief in state court.

I. BACKGROUND

Reynaga was a police officer in Seaside, California. He was arrested on or about March 7, 2011, for sexual advances he allegedly made toward an individual while on duty. As part of the

¹ Ryan McGuirk was mistakenly sued as Ryan McGirk and is referred to as McGirk throughout much of the briefing and in the complaint.

1 investigation, personnel from the District Attorney's Office searched plaintiff's home pursuant to a
2 search warrant and seized his iPhone and Glock 40 gun.

3 After Reynaga was acquitted in November 2012 of the various sexual assault charges, the
4 Monterey County Superior Court ordered the District Attorney's Office to return Reynaga's iPhone
5 and Glock. *See* Dkt. No. 24-2, Ex. A2 at 5 (Hearing Tr.). The Superior Court also opined that it did
6 not see a misdemeanor as prohibiting Reynaga from owning a gun. *Id.* The court did not explicitly
7 discuss the applicability of California Penal Code §§ 33850 *et seq.*, and whether a background
8 check would be necessary before the firearm was returned to Reynaga. *Id.*

9 After the court's order, Reynaga attempted to retrieve his property from the District
10 Attorney's Office. After some delay, the iPhone was returned. Supervising District Attorney
11 Investigator Ryan McGuirk, however, advised Reynaga that the Glock would not be returned until
12 he submitted a form pursuant to California Penal Code §§ 33850 *et seq.* showing proof of eligibility
13 from the California Department of Justice (Cal DOJ).

14 California Penal Code §§ 33850 *et seq.* outline the procedures for the return of a firearm in
15 the custody of a court or law enforcement agency. A claimant seeking the return of a firearm from a
16 court or law enforcement agency must submit an application to Cal DOJ that includes identifying
17 information about the claimant and descriptive information (make, model, serial number, etc.) about
18 the firearm. Cal. Penal Code § 33850. Cal DOJ then performs a background check to be sure the
19 claimant is eligible to receive the firearm. *Id.* § 33865 (a). If the claimant is eligible, then the
20 applicant is given a written notification to present to the agency for the return of the firearm. *Id.*
21 § 33865(c)(3). Section 33855 allows a law enforcement agency or court that has taken custody of
22 any firearm to return a firearm *only* on one of two conditions:

23 a. The individual presents to the agency or court notification of a
24 determination by the department pursuant to Section 33865 that the person
is eligible to possess firearms.

25 b. If the agency or court has direct access to the Automated Firearms
26 System, the agency or court has verified that the firearm is not listed as
27 stolen pursuant to Section 11108, and that the firearm has been recorded in
28 the Automated Firearms System in the name of the individual who seeks
its return. . . .

1 Reynaga specifically acknowledges that he is not making a due process claim. However,
2 even if he were, available state remedies generally satisfy the post-deprivation process requirement
3 of the Due Process Clause. *See Fox*, 176 F.3d at 349. Reynaga has a state remedy for the return of
4 the gun. He can simply ask the court which entered the order to return the Glock to clarify whether
5 it intended for him to fill out an application pursuant to California Penal Code §§ 33850 *et seq.* as a
6 requisite to the return. The question of whether an application for return is required arises out of a
7 state court proceeding and comity requires that the federal court not interfere.

8 **C. Issue Preclusion is not involved**

9 Issue preclusion bars the relitigation of issues actually argued and decided in prior
10 proceedings. Under California law, the party asserting preclusion bears the burden of proof. In order
11 for issue preclusion to apply, the current issue must be an identical issue, actually litigated and
12 necessarily decided in the former proceeding. *See Lucido v. Superior Ct.*, 51 Cal. 3d 335, 340-43
13 (1990).

14 Plaintiff contends the issue of whether a background check is required before returning the
15 gun was actually litigated in “opposing Mr. Reynaga’s motion for the return of his Glock” and was
16 necessarily decided by the state court. *See* Dkt No. 25 at 9. Defendants argue that the applicability
17 of California Penal Code §§ 33850 *et seq.*, and whether a background check is required prior to the
18 weapon’s return was never litigated or considered by the Superior Court.

19 “When an issue is properly raised, by the pleadings or otherwise, and is submitted for
20 determination, and is determined, the issue is actually litigated.” *Barker v. Hull*, 191 Cal. App. 3d
21 221, 226 (1987). Determining whether an issue has been actually litigated in the former proceeding
22 can be difficult where the former judgment or order does not show on its face that the particular
23 issue was decided. 7 Witkin, Cal. Procedure 917 (4th ed. 1997).

24 Here, on its face, the findings and order provided by the Monterey County Superior Court
25 reflect that the court ordered the Glock be returned. *See* Dkt. No. 24-4. However, neither the
26 transcript nor the order itself specifically address the applicability of California Penal Code
27 §§ 33850 *et seq.*, and whether a background check is a precondition to the weapon’s return. While
28 Reynaga asserts that the Superior Court rejected the defendants’ argument that a background check

1 was required, the transcript is not clear that the Superior Court judge intended for the gun to be
2 returned without compliance with §§ 33850 *et seq.*, overlooked the requirements, or knowingly
3 decided compliance was not necessary. It is impossible to tell from the transcript whether the
4 “actually litigated” requirement for issue preclusion has been satisfied. *See Barker v. Hull*, 191
5 Cal.App.3d 221, 226 (1987). Accordingly, the prior proceeding ordering the return of the Glock
6 does not preclude the defendants from requiring Reynaga to comply with the statutorily mandated
7 background check procedures before returning the gun.

8 The plain language of the statute requires the District Attorney’s Office to follow the
9 background check procedures outlined by the legislature. The legislature established this section of
10 the penal code to ensure that law enforcement agencies and courts in possession of firearms follow a
11 consistent procedure for returning firearms so that firearms can be recorded and accounted for. Cal.
12 Assem. Bill History, 2003-2004 A.B. 2431. Nothing in the court order or transcript suggests that the
13 Superior Court was implicitly circumventing these requirements. In fact, unless the court had “direct
14 access to the Automated Firearms Systems . . . [and] verified that the firearm is not listed as a
15 stolen . . . and that the firearm [had] been recorded in the Automated Firearms Systems in the name
16 of the individual who seeks its return,” it was unauthorized to release the firearm without express
17 permission from the Cal DOJ. Cal. Penal Code § 33855(b). The District Attorney’s Office has an
18 obligation to follow the procedures outlined by the California Penal Code, and cannot return the gun
19 until Reynaga completes the background check requirement.

20 Reynaga relies on *Razzano v. County of Nassau*. 765 F. Supp. 2d 176 (E.D.N.Y. 2011). In
21 *Razzano*, plaintiff, a gun owner, brought a § 1983 claim against the county, county police
22 commissioner, and county police officers. *Id.* Razzano alleged that defendants violated his due
23 process rights by failing to provide him with adequate opportunity to recover longarm rifles and
24 shotguns that defendants confiscated from his residence. *Id.* at 184. The court also recognized that
25 plaintiff had claim under the Fourth Amendment because the initial seizure of his firearms was
26 unreasonable. *Id.* at 182. *Razzano* is distinguishable from Reynaga’s case for two reasons. First, the
27 initial seizure of Razzano’s firearms was unlawful because the police did not have probable cause
28 for an arrest and even admitted they were not arresting him for any crime. *Id.* at 184. Here, the

1 initial seizure was lawful and plaintiff does not contest the initial seizure. *See* Dkt No. 23. Second,
2 while Razzano also had his firearms withheld, Razzano’s case differs because Nassau County had
3 no procedure for recovering seized longarms. Here, unlike *Razzano*, Reynaga has been provided a
4 process for recovering his Glock in accordance with state law.

5 **D. Defendant Ryan McGuirk Is Entitled to Qualified Immunity**

6 Defendant Ryan McGuirk moves to dismiss Reynaga’s claim under § 1983 because he does
7 not adequately state a claim and McGuirk is entitled to qualified immunity.

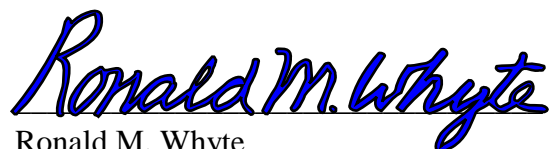
8 The “doctrine of qualified immunity protects government officials from liability for civil
9 damages insofar as their conduct does not violate clearly established statutory or constitutional
10 rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231
11 (2009) (internal quotation, citation omitted). In *Saucier v. Katz*, the Supreme Court outlined a two-
12 step process for resolving government officials qualified immunity claims. 533 U.S. 194, 121
13 (2001). First, a court must decide whether the facts that a plaintiff has alleged make out a violation
14 of a constitutional right. *Id.* at 201. Second, if the plaintiff has satisfied this first step, the court must
15 decide whether the conduct violates clearly established statutory or constitutional rights of which
16 reasonable officer would have known. *Pearson v. Callahan*, 555 U.S. 223, 232, (2009).

17 As discussed above, the District Attorney’s Office withholding Reynaga’s Glock until he
18 provides proof of eligibility from Cal DOJ does not amount to a violation of his constitutional
19 rights. Regardless, defendant McGuirk is entitled to qualified immunity because he was acting in his
20 official capacity and a reasonable officer in McGuirk’s position would believe requiring a
21 background check as required by state law and procedure is constitutional.

22 **III. ORDER**

23 Defendants’ motion to dismiss is granted without prejudice to seeking relief in state court.

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27 Dated: March 7, 2014


Ronald M. Whyte
United States District Judge