

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

CARL R. GILBERT, II,
and SHARON GILBERT,

Plaintiffs,

v.

Case No.: 3:08-cv-51-RV/MD

DAVID MORGAN, Sheriff of Escambia County,
Florida; CHARLIE WALKER, Code Enforcement
Enforcement Supervisor, and SOTIRIOS
THAGOURAS, Code Enforcement Officer,
Escambia Board of County Commissioners,

Defendants.

ORDER

Pending is the defendants' joint emergency motion to conduct discovery and amend their Rule 26 disclosures based on newly discovered evidence (doc. 184). The plaintiffs were afforded an opportunity to respond to the defendants' motion.

The background of this case is set forth in my order denying the defendants' motions for summary judgment (doc. 171), and it is incorporated herein. In short, plaintiff Carl R. Gilbert claims that the defendants violated his civil rights when he was arrested three times for allegedly violating Escambia County ordinances. His wife, plaintiff Sharon Gilbert, has stated a derivative claim for loss of consortium. Discovery closed and the matter was scheduled for a pre-trial conference later this month. However, I recently granted the defendants' request to reopen discovery to a limited extent to investigate allegations of insurance fraud that may bear on the plaintiffs' credibility. The defendants now move to expand the scope of this additional discovery to include Mr. Gilbert's alleged involvement in criminal activity, specifically, his involvement in a case involving theft and dealing in stolen property. During the course of the defendants' investigation, Anthony Brown surfaced as a witness on this issue. The defendants have represented that it is "critical" to take Brown's deposition on Monday,

October 12, 2009, because thereafter he will leave the country for a period of six months.

Based on the defendants' representations and the record as developed, Brown's testimony would appear to be relevant and discoverable. Where this line of inquiry goes and whether any evidence obtained can be used at trial is an issue to be determined later.

Accordingly, the defendants' emergency motion to conduct discovery and amend their Rule 26 disclosures based on newly discovered evidence (doc. 184) is hereby GRANTED.

DONE and ORDERED this 9th day of October, 2009.

/s/ Roger Vinson
ROGER VINSON
Senior United States District Judge