

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

OBIDIAH FRANCOIS, ET AL

CIVIL ACTION

VERSUS

NO. 13-2640

CITY OF GRETNA, ET AL

SECTION: "C" (3)

ORDER & REASONS

Before this Court is a Motion to Lift Stay filed by Plaintiff, Matthias Francois ("Plaintiff" or "Mr. Francois"). Rec. Doc. 34. Defendant, City of Gretna ("Defendant" or "Gretna") opposes the motion. Rec Doc. 36. The motion is before the court on briefs, without oral argument. Having considered the memoranda of counsel, the record, and the applicable law, the Court finds that the Motion to Lift Stay is **DENIED**.

I. BACKGROUND

The plaintiffs were arrested on October 24, 2012 and charged with violations of La. R.S. 14:59A(5) (Criminal Mischief - Filing a False Police Report) and La. R.S. 14:285A (Harassing Phone Calls). Rec. Docs. 25 and 25-1. On May 7, 2013, the defendants filed a 42 U.S.C. §1983 complaint against Gretna alleging a violation of their Fourth Amendment rights

when Gretna arrested them and seized their cell phones. Rec. Doc. 4. On June 24, 2013, Gretna filed a Motion to Stay Proceedings pending the resolution of the underlying criminal proceedings. Rec. Doc. 10. The Motion to Stay was granted by this Court on July 30, 2013. Rec. Doc. 22.

On or about May 23, 2014 the La. R.S. 14:59 charge against Mr. Francois was formally dismissed without prejudice. Rec. Doc. 36-1 at 1. However, on May 22, 2014 a grand jury in the 24th Judicial District Court for the parish of Jefferson formally indicted Mr. Francois on three additional counts arising from the October 24, 2012 arrest, specifically, violations of La. R.S. 14:122 (Public Intimidation- two counts) and La. R.S. 14:126.1 (False Swearing for Purposes of Violating Public Health and Safety). Rec. Doc. 26-1 at 10. These charges are open and pending against the plaintiffs. *Id.*

II. ANALYSIS

The decision to stay a case lies within the sound discretion of the District Court. *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962). Mr. Francois argues that the Motion to Lift Stay should be granted because the criminal proceedings against him have been dismissed. Rec. Doc. 34. Mr. Francois's Motion only addressed the dismissal of charges under La. R.S. 14:59. *Id.* As "Exhibit B" to Gretna's Opposition shows however, new charges stemming from the same arrest were brought against Mr. Francois and are still currently pending in state court.

Rec. Doc. 36-1 at 10. A stay is appropriate if a state criminal defendant brings a federal civil rights lawsuit while his state criminal trial is pending. *Younger v. Harris*, 401 U.S. 37, 49 (1971). State criminal charges are still pending against Mr. Francois. Abstention is therefore appropriate here because criminal proceedings are still ongoing in state court. Accordingly, the Motion to Lift Stay is denied.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that Plaintiff's Motion to Lift the Stay is **DENIED**.

New Orleans, Louisiana, this 16th day of October, 2014.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE