

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATRICK RODGERS, ON HIS OWN	:	CIVIL ACTION
BEHALF AND ALL OTHER PERSONS	:	
SO SITUATED,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SYLVESTER JOHNSON, COMMISSIONER	:	
OF POLICE FOR THE CITY OF	:	
PHILADELPHIA, AND	:	
THE CITY OF PHILADELPHIA, PA,	:	
	:	
Defendants.	:	No. 04-4963

**MEMORANDUM**

Stengel, J.

April 1, 2005

The plaintiff challenges the City of Philadelphia’s requirement that persons seeking to renew their gun permits submit to fingerprinting. Patrick Rodgers refused to be fingerprinted, and his application to renew was denied. Each side filed a motion for judgment on the pleadings on the issues of whether the City’s policy is unlawful. I will deny the plaintiff’s motion and grant the defendants’ motion.

**I. BACKGROUND**

On October 22, 2004, Patrick Rodgers filed this action<sup>1</sup> under 42 U.S.C. § 1983 against Philadelphia Police Commissioner Sylvester Johnson and the City of Philadelphia, claiming that defendants violated his rights under the Fourth and Fourteenth Amendments by requiring him to

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<sup>1</sup> This was originally styled as a “class action,” but no request for class certification has been filed and only vague references by plaintiff’s counsel to others who are eligible for renewal suggest that a class action may have initially been contemplated but not pursued.

submit his fingerprints in order to get his gun license renewed.<sup>2</sup> According to Rodgers, his gun license expired on October 29, 2004, but he was never sent an application for renewal. When Rodgers attempted to renew his license, he “was instructed by the employees of the Defendant City’s police department that he would have to submit to fingerprinting in order for his renewal application to be processed, which condition the Plaintiff has refused.” Pl.’s Compl., at 4.

Rodgers contends that the Pennsylvania Uniform Firearms Act, 18 Pa.C.S.A. § 6101, et seq., “requires that a license holder such as Plaintiff shall be sent an application for renewal not more than 60 days before the expiration of his license.” Pl.’s Compl., at 3. The Act “requires all license holders such as Plaintiff to pay \$1.50 as a renewal notice processing fee as part of the cost for their license, which such amount the Plaintiff did pay to defendant City of Philadelphia.” Id. Rodgers complains that Philadelphia “collected the statutory processing fee from every individual to whom they have issued a license” but “have never sent to any license holder the application for renewal as required by statute.” Id. at 4.

Rodgers contends that the Act “does not require fingerprinting as a prerequisite to the issuance or reissuance of a gun license.” Id. The Act requires a uniform application for a gun permit throughout Pennsylvania “on a form prescribed by the Pennsylvania State Police.” Id. He notes that “[t]he form prescribed by the Pennsylvania State Police does not require fingerprinting.” Id. According to Rodgers, the Pennsylvania State Police “do not require fingerprinting as a condition precedent to the issuance of a gun carry license, nor do the Sheriffs of any of the other counties of the Commonwealth of Pennsylvania.” Id. at 5. Rodgers maintains that defendants’ conduct in requiring the fingerprints as a condition precedent “has not only

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<sup>2</sup> Rodgers has abandoned his claims under the First, Second, Fifth, and Sixth Amendments.

deprived Mr. Rodgers and all other members of the class of his rights guaranteed to him by the United States Constitution but has subjected them to embarrassment, humiliation, pain and suffering.” Id.

## **II. STANDARD OF REVIEW**

A motion for judgment on the pleadings is treated under the same standards as a motion to dismiss. Shelly v. Johns-Manville Corp., 798 F.2d 93, 97 n.4 (3d Cir. 1986). A motion for judgment on the pleadings will only be granted if the moving party can establish that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir. 1991). In determining whether a material issue of fact exists, the court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993).

## **III. DISCUSSION**

Section 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Section 1983 does not create substantive rights; it provides only remedies for deprivations of rights established elsewhere in the Constitution or federal laws. Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). To establish a Section 1983 claim, a plaintiff must

demonstrate a violation of a right secured by the Constitution and the laws of the United States and that the alleged deprivation was committed by a person acting under color of state law. Id. In this case, defendants argue that Rodgers cannot establish a deprivation of a right under the Fourth Amendment or under the Fourteenth Amendment's equal protection clause.

**A. The Fourth Amendment Claim**

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

The analysis of any Fourth Amendment claim involves a potential violation at two different levels: “the ‘seizure’ of the ‘person’ necessary to bring him into contact with government agents . . . and the subsequent search for and seizure of the evidence.” United States v. Dionisio, 410 U.S. 1, 8 (1973). With respect to the first level of analysis, the United States Supreme Court, in Dionisio, stated that a subpoena to appear before a grand jury to furnish a voice exemplar for identification purposes is not a “seizure” in the Fourth Amendment sense. Id. at 9. The Court indicated that even though the summons may be inconvenient or burdensome, there was no arrest or investigative stop and, therefore, no seizure. Id. at 10.

In this case, as in Dionisio, there was no arrest or investigative stop. Therefore, there could be no Fourth Amendment violation with respect to the first level of analysis.

With respect to the second level of analysis, the United States Supreme Court has stated that the Fourth Amendment provides no protection for what “a person knowingly exposes to the

public, even in his own home or office.” Id. at 14. Thus, in concluding that voice exemplars are not entitled to Fourth Amendment protection, the Dionisio Court stated:

The physical characteristics of a person’s voice, its tone and manner, as opposed to the content of a specific conversation, are constantly exposed to the public. Like a man’s facial characteristics, or handwriting, his voice is repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world.

Id. In reaching this conclusion, the Court noted the similarity between voice exemplars and fingerprinting. Id. at 15. According to the Court, fingerprinting itself “involves none of the probing into an individual’s private life and thoughts that marks an interrogation or search.” Id.

The Third Circuit Court of Appeals has held that fingerprinting in connection with obtaining a license does not implicate the Fourth Amendment. In Trade Waste Management Ass’n, Inc. v. Hughey, 780 F.2d 221 (3d Cir. 1985), a New Jersey law regulating the solid waste disposal industry required, among other things, certain officers and employees in the industry to submit to fingerprinting as a condition for obtaining or keeping a hazardous and solid waste license. The Court stated that the fingerprinting requirement

can hardly be said to involve a violation of a privacy interest protected by the federal constitution. Involuntary fingerprinting in connection with the investigation of crime has been established to fall outside the protection of the fourth amendment. . . . The fingerprinting requirement in [the New Jersey statute] is not involuntary in the fourth amendment sense. It is required only as a condition for obtaining or keeping a license to engage in a business that the state may license.

Id. at 234.

In this case, as in Trade Waste, the fingerprinting is required only as a condition for obtaining or keeping a license to engage in an activity that the state may license. Because

Rodgers has no privacy interest in his fingerprints, there could be no violation with respect to the second level of analysis. Accordingly, this court finds no merit in Rodgers' Fourth Amendment claim.

**B. The Fourteenth Amendment Equal Protection Claim**

Rodgers indicates that his equal protection rights are being violated because he and others in Philadelphia must submit their fingerprints in order to receive a gun license while applicants outside Philadelphia are not subject to such a requirement. The equal protection clause of the Fourteenth Amendment states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. § 1. The Equal Protection Clause “relates to equality between persons as such, rather than between areas and . . . territorial uniformity is not a prerequisite.” McGowan v. Maryland, 366 U.S. 420, 427 (1961). As long as all persons within the jurisdictional reach of the regulation are equally affected by the law, it does not matter that those in a different jurisdiction are subjected to a different regulation. Salsburg v. Maryland, 346 U.S. 545, 551 (1954).

In this case, the state legislature has vested local police with the authority to conduct criminal investigation and background checks of people who apply for gun licenses. 18

Pa.C.S.A. § 6109(d).<sup>3</sup> All persons similarly situated within Philadelphia are subject to the same

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<sup>3</sup> Section 6109(d) states:

The sheriff to whom the application is made shall investigate the applicant's record of criminal convictions, shall investigate whether or note the applicant is under indictment for or has ever been convicted of a crime punishable by imprisonment exceeding one year, shall investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety and shall investigate whether the applicant would be precluded from receiving a license under subsection (e)(1) or section 6105(h) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) and shall conduct a criminal background, juvenile delinquency or mental health check following the procedures set forth in section 6111 (relating to firearm ownership).

requirement. Because Rodgers does not contend that he is being treated differently from anyone within the jurisdictional reach of the fingerprinting requirement, i.e., within Philadelphia, he does not have an equal protection claim.

#### **IV. CONCLUSION**

Because there was no seizure and because the fingerprinting requirement does not implicate the Fourth Amendment, Rodgers' Fourth Amendment claim has no basis. Moreover, Rodgers does not indicate that he is being treated differently from anyone else subject to the fingerprinting requirement. Accordingly, his Fourteenth Amendment equal protection claim is without merit. An appropriate order follows.

#### **ORDER**

AND NOW, this 1<sup>st</sup> day of April, 2005, upon consideration of defendants' motion for judgment on the pleadings (Doc. # 23), and plaintiff's motion for judgment on the pleadings and response to defendants' motion for judgment on the pleadings (Doc. # 25), it is hereby ORDERED that: (1) defendants' motion is GRANTED; and (2) plaintiff's motion is DENIED. It is FURTHER ORDERED that JUDGMENT IS ENTERED in favor of defendants and against plaintiff with respect to the Fourth Amendment and the Fourteenth Amendment equal protection claims.

/s/  
LAWRENCE F. STENGEL, J.