2008 WL 11350227
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

Helene SZAJER, Zoltan Szajer, Plaintiffs,
v.
CITY OF LOS ANGELES, et al., Defendants.

CV 07–07433 SVW (PLAx)
|
Signed 11/12/2008

**Attorneys and Law Firms**

Burton Charles Jacobson, Burton C. Jacobson Law Offices, Beverly Hills, CA, Franklin S. Adler, Franklin S. Adler Law Offices, for Plaintiffs.

Craig J. Miller, Wendy C. Shapero, Los Angeles City Attorney's Office, Los Angeles, CA, for Defendants.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND DENYING PLAINTIFFS' MOTION TO CONTINUE THE TRIAL DATE AND EXTEND THE DISCOVERY CUT–OFF DATE AND MOTION TO JOIN DEFENDANTS [32, 37, 39] [JS–6]

STEPHEN V. WILSON, UNITED STATES DISTRICT JUDGE

## I. Introduction

***1** Plaintiffs Helene and Zoltan Szajer (collectively "Plaintiffs" or "Szajers," and "Helene" and "Zoltan" respectively) claim that (1) Defendants executed an illegal search and seizure at their business establishment; and (2) the City of Los Angeles is liable under Monell v. Dept. of Social Services, 436 U.S. 658, 691 (1978), for violating the Plaintiffs' Second Amendment and Fourth Amendment rights.

Defendants, City of Los Angeles, et al. ("Defendants"), bring this Motion for Summary Judgment on the grounds that (1) Plaintiffs are barred from collaterally attacking their state convictions through § 1983 claims under the doctrine of Heck v. Humphrey, 512 U.S. 477 (1994); (2) Plaintiffs have no evidence to prove the officers' seizure of various items pursuant to the warrant was based on falsified, fictitious, stale or overbroad information; (3) even if a constitutional violation occurred, the officers are entitled to qualified immunity; and (4) Plaintiffs have no evidence to prove the City of Los Angeles is liable under a Monell theory of liability.

The Court finds Plaintiffs' claim based on an illegal search and seizure to be barred as a collateral attack on their state convictions, and further finds no evidence to support Plaintiffs' claim that the City of Los Angeles is liable under a Monell theory.

## II. Facts

Plaintiffs are individuals who owned and operated a licensed retail firearms business in the City of West Hollywood, California. (FAC ¶ 3.) Defendants City of Los Angeles, Los Angeles Police Department ("LAPD") and Chief William Bratton along with Does 41 through 70 were, at all relevant times, in charge of the supervision and training of the police officers and detectives in the LAPD who are the subject of the instant litigation. (FAC ¶ 7.)

Plaintiffs' complaint is based upon violations of the civil rights of the plaintiffs, arising out of events that occurred on November 17, 2005, while Plaintiffs were engaged in their business in West Hollywood, California. (FAC ¶ 19.) On that date, Detective Michael Mersereau ("Detective Mersereau") used a confidential informant to set up an undercover purchase of ten guns. (SUF ¶ 7.) The sale included two assault weapons defined under California Penal Code section 12276.1: (1) a Springfield M1A semiautomatic centerfire rifle with a flash suppressor, and (2) a Whitney Wolverine, a semiautomatic pistol with the capacity to accept a detachable magazine with a threaded barrel. (SUF ¶ 9.) Neither weapon was registered to the informant. (SUF ¶ 10.) The informant also had a Reising submachine gun for which a permit was required. (Id.) Detective Mersereau audibly monitored the transaction between the Szajers and the informant, whereby Zoltan initially offered to pay $1,800.00 for all of the weapons, and then shortly thereafter, told the informant he could not purchase the Reising submachine gun because it might be an illegal weapon. (SUF ¶¶ 13–14.) According to the Plaintiffs, Zoltan encouraged the informant to take the Reising submachine gun to the West Hollywood Sheriff's Department. In response, the informant allegedly threw up his hands and refused to take the Reising submachine gun. (PSUF ¶15.) Zoltan then offered to take the gun to the Sheriff's department himself. (Id.) The Szajers then

purchased the remaining weapons including the M1A rifle without the flash suppressor and the Whitney Wolverine pistol for $1,600.00. (SUF ¶ 16.) As soon as the informant left the store, Zoltan called the West Hollywood Sheriff's Department and asked them to send an officer to pick up the illegal weapon. (Opp. 7.) While Zoltan was on the phone, Detective Mersereau entered the store and ordered Zoltan to put down the phone. (Opp. 8.) Based on the fact that the Szajers both purchased assault weapons and took possession of the Reising submachine gun, the officers and detectives entered the store, and detained the Szajers pending the application for the search warrant. (SUF ¶ 17.) After the entry, a deputy Sheriff from West Hollywood called Officer Richard Tompkins, and informed him of Zoltan's call. (Opp. 8.) Plaintiffs were detained from approximately 3:30 till 7:30 p.m. when they were taken into police custody. (SUF ¶ 19.)

***2** Detective Mersereau then wrote an affidavit and had a magistrate judge review an application for a search warrant. (SUF ¶ 20.) The affidavit included three incidents to establish probable cause. First, Detective Mersereau explained that on January 18, 2005, he interviewed Charles Hanks ("Hanks") concerning assault weapons believed to be owned or possessed by him. (Exh. C at 4.) The interview led to a search of a location provided by Hanks, and an unregistered assault rifle was found. A trace of the weapon showed the assault rifle was last registered to the Plaintiffs' gun shop in 1995. (Id.) Second, Detective Mersereau included that on January 18, 2005, a confidential informant "stated that in the late 1990's suspect Zoltan Szajer confided in him that he possessed 16 machine guns which he kept under the floor boards of his residence." (Opp. 6; Exh. C at 5.) Third, Detective Mersereau described the undercover operation in the affidavit by stating:

> Zolton Szajer examined the firearms with the assistance of Helene Szajer. Zoltan Szajer agreed to purchase all of the above-listed firearms including the two assault weapons and the sub machinegun for $1800.00. Several moments later Zoltan Szajer reversed himself and told CI #S45207 he thought the Reising sub machinegun might be an illegal weapon. Zoltan Szajer advised CI #S45207 to take the Reising sub machinegun to the Sheriff's department. Zoltan Szajer then offered to take the Reising sub machinegun to the Sheriff's department for CI #S45207. CI #S45207 agreed to allow Zoltan Szajer to keep the Reising sub machinegun. Helene Szajer then assisted CI #S45207 in completing the paperwork for the sale of the firearms to L.A. Guns. During this process Zoltan Szajer stated that he would have to remove the flash suppressor from the M1A rifle. The flash suppressor is the feature that defines that firearm as an assault weapon per section 12276.1 of the California Penal code. After completing the paperwork CI #S45207 was given a check for $1600.00. CI #S45207 then exited the store.

(Exh. C at 7.)

Plaintiff challenges Detective Mersereau's affidavit arguing that (1) upon accepting the M1A rifle, Zoltan took off the flash suppressor, which Plaintiffs argue made the weapon legal (PSUF ¶ 32.); (2) the threads on the barrel of the Whitney Wolverine pistol, the characteristic which defined it as an assault weapon under California law, were hidden by a knurled nut which made the threads invisible (PSUF ¶ 9.); (3) Zoltan told the informant to take the Reising submachine gun to the Sheriff's Station for disposal, but the informant refused to do so, and only then did Zoltan volunteer to properly dispose of the weapon (PSUF ¶ 15.); (4) the Szajers sold Hanks the assault weapon, but registered the weapon under another serial number (Opp. 6.); and finally (5) that the confidential informant's information from the late 1990s should have been considered stale. (PSUF ¶32.) Plaintiff argues that if the magistrate would have known these facts, he would not have found probable cause to search the retail store.

At 10:00 p.m., the magistrate judge authorized the search of Plaintiffs' residence, vacation home, and retail store.

 © 2019 Thomson Reuters. No claim to original U.S. Government Works. 

The search warrant authorized the officers to seize the following:

> All assault weapons and machine guns including: component parts used to construct assault weapons and machine guns including but not limited to frames, receivers, barrels, bolts, stocks, magazines, firing pins, extractors, ejectors, sights, floor plates, and trigger assemblies, all electronic data processing and storage devices, and computers and computers systems[.]

(SUF ¶ 21.) Pursuant to the search warrant, officers seized all assault weapons and some computers. (SUF ¶ 22.)

On December 8, 2005, Plaintiffs were charged with four counts of felony manufacturing/transporting/importing assault weapons in violation of Penal Code section 12280(A)(1), two counts of felony possession of a destructive device in violation of Penal code section 12303, one count of felony possession of a weapon in violation of Penal Code section 12020(a)(1), and six counts of felony possession of an assault weapon in violation of Penal Code section 122280(b). On June 8, 2006, Detective Merereau testified regarding the search and seizure of the weapons. In pertinent part, Detective Mersereau testified that Count 8 was premised on the illegal possession of an H and K Mark 23 .45 caliber semiautomatic pistol ("Count 8 pistol") found in a safe within Plaintiffs' residence. (SUF ¶¶ 26–28, Exh. H at 165–166.)

***3** On February 26, 2007, Plaintiffs pled no contest to Count 8 for violation of Penal Code section 12280 (b) felony possession of an assault weapon. (Exh. I.) As part of the plea agreement, defense counsel stipulated to the report and the preliminary hearing, including Detective Mersereau's June 8 testimony, as the factual basis for the plea. (SUF ¶ 29.) Plaintiffs convictions have not been overturned, expunged, or otherwise invalidated. (SUF ¶ 31.)

## III. Analysis

### A. Legal Standard for Summary Judgment

Rule 56(c) requires summary judgment for the moving party when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Tarin v. County of Los Angeles, 123 F.3d 1259, 1263 (9th Cir. 1997).

The moving party bears the initial burden of establishing the absence of a genuine issue of material fact. See Celotex Corp v. Catrett, 477 U.S. 317, 323–24 (1986). That burden may be met by " 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Id. at 325. Once the moving party has met its initial burden, Rule 56(e) requires the nonmoving party to go beyond the pleadings and identify specific facts that show a genuine issue for trial. See id. at 323–34; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1968). A scintilla of evidence or evidence that is merely colorable or not significantly probative does not present a genuine issue of material fact. Addisu v. Fred Meyer, 198 F.3d 1130, 1134 (9th Cir. 2000). Only genuine disputes "where the evidence is such that a reasonable jury could return a verdict for the nonmoving party" over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. See Anderson, 477 U.S. at 248; Aprin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001) (the nonmoving party must identify specific evidence from which a reasonable jury could return a verdict in its favor).

### B. Illegal Search and Seizure Claim as a Collateral Attack on Prior Conviction

Plaintiffs' First Claim for Relief is premised on an alleged illegal search and seizure occurring at their business. Plaintiffs allege the affidavit for the search warrant omitted material information and misled the magistrate. [1] Plaintiffs argue that had the affidavit included the omitted information, the affidavit would not have provided probable cause, and the magistrate would not have issued the search warrant.

In Heck, the Supreme Court held:

 © 2019 Thomson Reuters. No claim to original U.S. Government Works. 

> [W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

***4** 512 U.S. at 486–487 (emphasis in original). In footnote seven, the Supreme Court questioned whether the bar would apply to Fourth Amendment violations. Id. at 487 n. 7 ("Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful." (citations omitted and emphasis in original)).

Although the Supreme Court left open the question of whether Heck would apply to Fourth Amendment violations, the Ninth Circuit has held that

> a § 1983 action alleging illegal search and seizure of evidence upon which criminal charges are based does not accrue until the criminal charges have been dismissed or the conviction has been overturned. Such a holding will avoid the potential for *inconsistent determinations on the legality of a search and seizure in the civil and criminal cases* and will fulfill the Heck Court's objectives of preserving consistency and finality, and preventing "a collateral attack on [a] conviction through the vehicle of a civil suit."

Harvey v. Waldron, 210 F.3d 1008, 1015 (9th Cir. 2000) (quoting Heck, 512 U.S. at 484–485) (emphasis added); see also Whitaker v. Garcetti, 486 F.3d 572, 583–585 (9th Cir. 2007) (holding plaintiffs' claims for illegal search and seizure were barred because it would undermine the validity of their guilty pleas).

Defendants argue that Plaintiffs' claim is a collateral attack on the Plaintiffs' convictions because it challenges the validity of the search warrant that led to Plaintiffs' convictions. Plaintiffs pled no contest to felony possession of an assault weapon found at their residence. [2] (Exh. I at 201–211.) In order to enter a plea of no contest, California Penal Code section 1192.5 requires a trial court to satisfy itself that "there is a factual basis for the plea." Id. As part of the plea, Plaintiffs' defense counsel stipulated to the record as a factual basis for the plea. (SUF ¶29.) In doing so, defense counsel stipulated to Detective Mersereau's testimony that the Count 8 pistol was seized during the search of the residence. (SUF ¶¶ 26–28, Exh. H at 165–166.) Further, police executed the search of the residence pursuant to the same search warrant and affidavit which Plaintiffs' are now challenging. (Exh. C at 2.) Therefore, Defendants argue that in challenging the search warrant, Plaintiffs will be challenging the legality of the search that led to their convictions.

Plaintiffs argue that they are only challenging the retail store search, from which no conviction arose. Heck analysis, however, focuses on the underlying facts that led to the conviction, not the conviction itself. "Heck, in other words, says that if a criminal conviction arising out of the same facts stands and is fundamentally inconsistent with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed." Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996). Here, Plaintiffs conviction is based on the Count 8 pistol seized pursuant to the search warrant. For Plaintiffs' challenge not to be Heck-barred, Plaintiffs would have to not challenge anything that would necessarily imply the search of the residence was illegal.

***5** Under Greenstreet v. County of San Bernardino, if a search warrant has multiple locations, there must be probable cause for each location. 41 F.3d 1306, 1309 (9th Cir. 1994). Theoretically, challenging a search and seizure at one location would not necessarily imply the invalidity of a search and seizure at a second location. If the location where the search that led to the conviction has sufficient evidence to support probable cause notwithstanding the evidence being challenged, a successful challenge of the

second location would not necessarily imply the invalidity of the search of the location that led to the conviction.

Here, the affidavit can be divided into three sections for the purpose of determining probable cause: (1) the unregistered rifle last traced to the gun shop in 1995, (2) the informant's assertion that in the late 1990s Zoltan told the informant that he had guns beneath his floorboard and ammunition in his garage, and (3) the events of the November 17 undercover operation. Based on these three sections, the magistrate judge found probable cause to search both the residence and the retail store.

The unregistered rifle last traced to the gun shop in 1995 and the November 17 undercover operation are clearly the basis for establishing probable cause to search the retail store. The magistrate, however, must have predominantly relied on the information regarding the undercover operation since California courts have held that "[i]n the absence of other indications, delays exceeding four weeks are uniformly considered insufficient to show present probable cause." Hemler v. Superior Court, 44 Cal. App. 3d 430, 434 (1975). Therefore, the unregistered rifle last traced to the retail store in 1995 would not have been sufficient to establish probable cause that the retail store was currently trafficking in assault weapons. The magistrate must have focused on the November 17 undercover operation to establish probable cause that Plaintiffs were currently trafficking assault weapons. See People v. Hulland, 110 Cal. App. 4th 1646, 1652 (2003) ("If circumstances would justify a person of ordinary prudence to conclude that an activity had continued to the present time, then the passage of time will not render the information stale.").

Similarly, the only piece of information that relates to Plaintiff's residence is the informant's assertion that in the late 1990s Zoltan told the informant that he had guns beneath his floorboard and ammunition in his garage. The informant's assertion regarding the residence was at least five years old at the time of the search. Thus, the residence information was so stale that it is inconceivable to this Court that the magistrate would find probable cause on that piece of information alone. Therefore, like with the retail store, the magistrate must have relied to some extent on the November 17 undercover operation to determine whether there was probable cause that Plaintiffs were currently possessing illegal weapons at their residence. Therefore, if the Court were to find that Detective Mersereau's description of the November 17 undercover operation was so lacking as to make the search of the retail store illegal, that finding would also undermine the probable cause to search the residence.

Neither the parties nor the Court could find a similar case interpreting Heck where a search warrant was being challenged for the search of one location, but not for another location. However, cases where a plaintiff brings a 1983 claim after being charged with multiple counts are instructive. For instance, in Cummings v. City of Akron, plaintiff Clifford Cummings had previously been charged in state court with two counts of assaulting a police officer, as well as, resisting arrest, illegal cultivation of marijuana, possession of marijuana, and obstructing official business. 418 F.3d 676, 680 (6th Cir. 2005). Cummings pled not guilty to all charges, and filed a motion to suppress all evidence obtained from the officers' entry into Cummings' residence. Id. The trial court granted the motion to suppress, and the Ohio Court of Appeals affirmed. Id. On remand, Cummings pled no contest to a reduced charge of misdemeanor assault on an officer, and all other charges were dropped. Id. Cummings then brought a 1983 claim against the officers involved in his state court charges. Id. Cummings alleged the officers used excessive force and executed an illegal search and seizure. Id. The Sixth Circuit held that Heck precluded a claim of excessive force because its success would invalidate the assault charge to which he pled no contest. Id. at 682. In comparison, the court held that Cummings was not Heck-barred from bringing the illegal search and seizure claim. Id. at 683. The court differentiated between the excessive force claim and the illegal seizure claim on the basis that the excessive force claim could have been brought as a defense to the charge of assaulting a police officer. Id. The court found that Cummings should have raised the excessive force claim as a defense in his criminal proceedings, whereas Cummings could not have raised the defense of an illegal seizure as a defense in assaulting an officer. Id. The court reasoned that because "Cummings' assault conviction cannot be disturbed whether he was legally or illegally seized," it was not Heck-barred. Id. at 684.

***6** Here, similar to Cummings excessive force claim, Plaintiffs could have brought a suppression motion regarding the Count 8 pistol in state court on the same grounds they are arguing today. Success on such a challenge would have undermined the Count 8 charge.

 © 2019 Thomson Reuters. No claim to original U.S. Government Works. 

St. Germain v. Isenhower is also instructive. 98 F. Supp. 2d 1366, 1367 (S.D. Fla. 2000). There, the plaintiff was previously acquitted of burglary and kidnapping, but convicted of the lesser-included offenses of misdemeanor battery and false imprisonment. Id. Although the plaintiff claimed he only sought relief regarding the acquitted charges, the court found his claims Heck-barred. Id. at 1372. The court reasoned that the plaintiff "allege[d] unlawful behavior (e.g., perjury) that would also undermine his convictions on the lesser included offenses," and thus, "the difficulty of parallel litigation over the issues of probable cause and guilt and the danger of conflicting resolutions arising out of the same or identical transaction exist[ed] in [the] case just as they did in Heck." Id.; see also Higgins v. City of Tulsa, Okla., 103 Fed. Appx. 648, 651 (10th Cir. 2004) (affirming Heck-bar for claims related to charge of which the plaintiff was not convicted, where a "reasonable reading" of the complaint implied the invalidity of his state convictions—the "gist" of the complaint was "that the pretrial and trial process was fraught with government misconduct" which led to his convictions and sentence); Manthey v. Hunter, 81 Fed. Appx. 560, 561 (6th Cir. 2003) (holding although the plaintiff argued he sought to recover based on charges on which he was acquitted, not charges of which he was convicted, such a claim was Heck-barred because he "did not restrict his [allegations of unlawfulness] to that aspect of defendants' actions"); Baker v. City of Hollywood, 2008 WL 2474665, *6 (S.D. Fla, June 17, 2008) (holding that although the plaintiff's claim concerned charges on which he was acquitted, and that were separate from the offenses of which he was convicted, the plaintiff's allegations if true, "would impugn the constitutionality of the entire trial, and thus undermine his conviction"); Fitzpatrick v. Gates, 2001 WL 630534, *3 (C.D. Cal. April 18, 2001) (although the plaintiff pled guilty to operating a vehicle without the owner's consent, he was not Heck-barred from challenging the officer's use of excessive force since the "underlying facts of [his conviction] were complete before his encounter with the police began").

Here, Plaintiffs allege that the magistrate would not have issued a search warrant for the retail store had Detective Mersereau not misrepresented and omitted pertinent facts regarding the November 17 undercover operation. Plaintiffs success on this allegation would show a lack of probable cause to search the retail store, but it would also show a lack of probable cause to search of the residence.

The purpose of the Heck-bar is preventing "a collateral attack on [a] conviction through the vehicle of a civil suit." Heck, 512 U.S. at 484–85. In Whitaker, the Ninth Circuit found that a challenge to a search that led to a conviction was Heck-barred. 486 F. 3d at 583 ("[Plaintiffs] challenge the search and seizure of the evidence upon which their criminal charges and convictions were based. Heck and Harvey bar such a collateral attack through the vehicle of a civil suit."). The Ninth Circuit explicitly explained that Fourth Amendment challenges were Heck-barred in order to "avoid the potential for inconsistent determinations on the legality of a search and seizure in the civil and criminal cases ...." Harvey, 210 F.3d at 1015. Here, it might have been conceivable that Plaintiffs could have challenged the search of the retail store, had the search of the residence not relied on the very same evidence. However, both the residence and retail searches relied on Detective Mersereau's description of the November 17 operation as the basis for probable cause of current illegal activity. Accordingly, if the Court were to find that the search of the retail store was unlawful, such a finding would necessarily imply that the search of the residence also was unlawful.

***7** Further, Plaintiffs have advanced no circumstances to suggest how their state conviction could stand if the Court were to find that the affidavit were found to be invalid. Plaintiffs have not shown that there would have been an independent source or inevitable discovery of the Count 8 pistol. Because the probable cause for the search of the residence was founded on the same evidence as the probable cause for the search of the store, Plaintiffs' claim for illegal search and seizure of the store is Heck-barred.

**C. Monell Claim**

"Generally, a municipality is liable under Monell only if a municipal policy or custom was the 'moving force' behind the constitutional violation. In other words, there must be 'a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.' " Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d 950, 957 (9th Cir.) (citations omitted) (quoting City of Canton v. Harris, 489 U.S. 378, 385 (1989)).

Plaintiffs' theory of relief under Monell is two-fold. First, Plaintiffs allege a policy of the LAPD to violate the Second Amendment, and second, Plaintiffs allege the Defendants failed to properly train and supervise officers. Plaintiffs "conceded that the actual evidence of an illegal and

unconstitutional policy on the part of the City of Los Angeles to violate the Second Amendment by eliminating all firearm outlets in the city is skimpy." (Opp. 23.) Plaintiffs' evidence that the City of Los Angeles had a policy to violate the Second Amendment consists of Zoltan's observation "that the number of gun stores in Los Angeles had dropped from approximately 60 to a handful in the past 15 years," and his testimony "concerning the hoops he would have had to jump through to get official permits to operate a gun store in Los Angeles and that those hoops made it virtually impossible to proceed." (Opp. 17.) Mere speculation, however, will not allow a claim to survive summary judgment. Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1028 (9th Cir. 2001) ("A plaintiff's belief that a defendant acted from unlawful motive, without evidence supporting that belief, is no more than speculation or unfounded accusation about whether the defendant really did act from an unlawful motive.").

Further, Plaintiffs present no evidence that can support a Monell claim for failure to properly train. Plaintiffs allege that Defendants violated their constitutional rights through the illegal search and seizure, unlawful arrest, and alleged planting of tracer ammunition. As the Plaintiffs concede, "[w]e may be discussing *only* the Szajers but the cumulative effort of the perversions listed above clearly establish the need for better training and much closer supervision." (Opp. 24 (emphasis added).) Plaintiffs are asking the Court to extrapolate from the Plaintiffs' experience to find the Defendants liable for a general failure to train. The Supreme Court, however, has held that municipal liability based upon failure to train cannot be derived from a single incident. Oklahoma City v. Tuttle, 471 U.S. 808, 823–824 (1985).

As Plaintiffs have not presented any evidence to show a pattern or custom beyond their own experience, summary judgment for Defendants is appropriate.

**IV. Additional Motions Before the Court**

Plaintiffs have two additional motions before the Court. First, Plaintiffs bring a Motion to Continue the Trial Date and Extend the Discovery Cut-off Date pursuant to Federal Rule of Civil Procedure 56(f). Plaintiffs argue that more discovery would allow them to expand on their evidence to challenge the search warrant. Because the Court finds that Plaintiffs' challenge to the search of the retail store is Heck-barred, Plaintiffs' Rule 56(f) Motion is denied. Second, Plaintiffs bring a Motion to Join Defendants. Because the Court grants summary judgment on both the search and seizure claim and the Monell claim, Plaintiffs' Motion to Join Defendants is also denied.

**V. Conclusion**

***8** Based on the above reasoning, Defendants' Motion for Summary Judgment is GRANTED, and Plaintiffs' Rule 56(f) Motion and Motion to Join Defendants are DENIED.

IT SO ORDERED.

**All Citations**

Not Reported in Fed. Supp., 2008 WL 11350227

Footnotes

1 Plaintiffs also allege the search warrant was overbroad because there were no assault weapons visible in the store prior to the arrival of the search warrant, and that the "stale" information was the only probable cause to search for assault weapons. (Opp. 15.) This argument ignores the assault weapons sold to Plaintiffs in the undercover operation. Thus, whether or not the search warrant was overbroad is really just a repetition of whether or not Defendants had probable cause to execute the search in the first place.

2 A plea of no contest has the same effect as a guilty plea or guilty verdict for purposes of a Heck analysis. See Nuno v. County of San Bernardino, 58 F. Supp. 2d 1127, 1135 (C.D. Cal. 1999).

End of Document © 2019 Thomson Reuters. No claim to original U.S. Government Works.