

IN THE MAGISTRATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

FOREST COVE APARTMENTS, LLC, )  
)  
Plaintiff, )  
)  
v. )  
)  
TAMEKA TAYLOR, )  
)  
Defendant. )

CIVIL ACTION

File No. 12ED003259

**FINAL ORDER**

The above-styled action having come before this court on its regular trial calendar on January 10, 2013 and both parties being represented by counsel, after hearing evidence this Court does hereby make the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

On September 27, 2012, the U.S. Marshals used a battering ram to enter Ms. Tameka Taylor's apartment pursuant to an arrest warrant for a third person unrelated to this case. That arrest warrant only gave the Marshals the authority to arrest the person named in it. The U.S. Marshals did not have a search warrant to search Ms. Taylor's apartment. It is undisputed that the person named in the arrest warrant was unknown to Ms. Taylor and her guest, Mr. Darrice Smith, the person not sought by the warrant, was present, though he was not a tenant or an occupant named on the residential lease.

Immediately after entering the home of Ms. Taylor, the U.S. Marshals asked Ms. Taylor and Mr. Smith for valid identification, which they produced.

Although the U.S. Marshals discovered that the person named in the arrest warrant could not be found at Ms. Taylor's apartment, they did not immediately leave. As Ms. Taylor and Mr.

Smith testified, the U.S. Marshals then placed Mr. Smith in handcuffs and conducted a search of Ms. Taylor's apartment even though, at that point, the object of the arrest warrant, Darrice Smith, was not to be found. During the search, the Marshals discovered 0.9 oz. of marijuana in a baggie inside a jar in Ms. Taylor's kitchen cabinet. The Marshals found money next to the marijuana. The Marshals also found a firearm that was unregistered, but not reported as stolen.

Sometime after the U.S. Marshals entered and obtained identification, officers from the Atlanta Police Department (APD) entered Ms. Taylor's apartment. The APD officers did not have an arrest warrant, nor did they have a search warrant. Ms. Taylor and her witness stated that the APD entered between a half hour to an after the U.S. Marshals entered and conducted their search. The APD officer who testified agreed that the U.S. Marshals were in Ms. Taylor's apartment before APD entered—though he could not say how long or what occurred before he entered. He testified that he obtained written consent, signed by Ms. Taylor, sometime after he entered her apartment.

Ms. Taylor admitted during her testimony that the APD officer gave her a piece of paper to sign when he was on his way out of her apartment. Ms. Taylor testified that she not know what she signed because she had no opportunity to read it at the time. Further, Ms. Taylor testified that the officer threatened her with arrest if she did not sign, though the APD officer disputed this point.

Mr. Darrice Smith admitted that the items belonged to him. The Atlanta Police Department arrested Mr. Smith and charged him with possession of marijuana with intent to distribute (a felony) and possession of a firearm during the commission of a felony (a felony). The District Attorney's office later declined to proceed with Mr. Darrice Smith's prosecution.



Ms. Tameka Taylor was not arrested that night, nor have any charges been brought against her since that night.

The Plaintiff's property manager was present at Ms. Taylor's apartment during the incident. According to his testimony, he was there "to assist" the officers. This testimony indicates or allows the Court to infer that the apartment management was working in collaboration with the Marshals and APD, which suggests that there exists a close relationship.

On November 20, 2012, Forest Cove Apartments gave Ms. Taylor notice that it was terminating her lease for violation of her lease agreement. Sometime after September 27, 2012, Forest Cove Apartments notified Ms. Taylor that Mr. Smith was not allowed back on the property. On December 5, 2012, Forest Cove filed a dispossessory against Ms. Taylor for holding over. Ms. Taylor answered on December 31, 2012. This Court conducted its evidentiary hearing on January 10, 2013.

## II. APPLICABLE LAW

A search of a person's home is per say unreasonable under the Fourth Amendment if police do not have a valid warrant to search it—"subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Consent is one exception to the rule, but the evidence discovered is still inadmissible as fruit of the poisonous tree if the consent was a direct result of the illegal entry and illegal search. *Segura v. United States*, 468 U.S. 796, 804 (1984). Under the exclusionary rule, evidence seized in violation of the Fourth Amendment may not be admitted in a criminal proceeding. *Mapp v. Ohio*, 367 U.S. 643 (1961).

The question in this matter is the extent to which evidence which may not be used in a criminal proceeding, because it is appropriate for suppression, may be used in a civil action.



Under the Supreme Court's balancing test, in deciding whether to extend the suppression doctrine to a civil proceeding, a court has to determine whether the likelihood of deterring future unlawful police conduct outweighs the costs of suppressing the evidence. *U.S. v. Janis*, 428 U.S. 433 (1976). If the deterrent effect does outweigh the cost, then the court should suppress the evidence.

The Georgia Supreme Court recognized that civil courts are not required to suppress illegally seized evidence "in all proceedings or against all persons." *State v. Thackston*, 289 Ga. 412, 413 (2011). However, that case also does not proscribe the use of the suppression doctrine in the civil context. The Court reaffirms the notion that the U.S. Supreme Court's balancing test is necessary to determine whether suppression is appropriate in a given civil case.

No reported Georgia cases have determined whether to extend the suppression doctrine in the context of civil dispossessory proceedings. However, other jurisdictions have extended the suppression doctrine to the dispossessory context. *See, e.g. Tejada v. Christian, as Chairman and Member of the NYC Housing Authority*, 71 A.D.2d 527, 528-29 (N.Y. App. Div. 1979); *Ackert v. Figueroa*, NYLJ page 27, col. 1, (Civ. Ct. New York Cty Apr. 8, 1997).

### III. CONCLUSIONS OF LAW

The U.S. Marshals violated Ms. Taylor's Fourth Amendment rights when they conducted a warrantless search of her apartment without her consent. The Fourth Amendment required that they leave the apartment as soon as they discovered that the person named in their arrest warrant Darrice Smith, either did not live there or could not be found at the residence. According to both Ms. Taylor and Mr. Smith, the U.S. Marshalls obtained their identification immediately after entering the apartment and before executing the search. Further, even if the U.S. Marshals had found the individual, the warrant gave the Marshals the authority to *arrest* the person named in



it, not *search* the apartment generally (the exception being something seen or found to be in plain sight, sometimes referred to as the “plain view” doctrine). Once the Marshals obtained Ms. Taylor’s and Mr. Smith’s valid identification, they had a legal obligation to leave—every act that they and future officers committed after that point were violations of her Fourth Amendment rights.

The APD officers further violated Ms. Taylor’s Fourth Amendment rights when they crossed the threshold into her apartment without a valid warrant. The APD’s very presence in the apartment after the unsuccessful search for Mr. Darrice Smith by the Marshals, was entirely predicated on the illegal search by the Marshals. By the time APD entered, it was already known that the person named in the Marshals arrest warrant was not at the apartment. Even if, as the officer testified, the APD were the agency to conduct the search, they still needed to obtain a valid consent to search *before* entering Ms. Taylor’s apartment. Ms. Taylor, Mr. Smith, and the APD officer all testified that Ms. Taylor did not sign the consent until sometime after the APD entered her apartment. Even if the APD officer had obtained the consent before any search commenced (which Ms. Taylor disputes), the consent would be considered fruit of the poisonous tree because it was obtained as a direct result of the Marshals failure to leave after receiving identification and the subsequent illegal entry by APD.

It is within this Court’s discretion to determine whether illegally obtained evidence should be suppressed in this civil dispossessory proceeding. This Court must first decide the likelihood of deterring future unlawful police conduct. Although suppression in a criminal proceeding may provide the greatest deterrence to illegal police conduct, suppression in a dispossessory proceeding can also deter unlawful police conduct where property management has used the police to effectuate their entry on the property. In those cases, the entities are



working together with the common goal of removing from the area (in this case, through the eviction process) tenants they deem to be problematic. Removing tenants who themselves violate the law or allow others to do so is an appropriate cause for landlords and for this Court, but such is not unlimited in its scope.

Further, this court can consider the importance of deterring unlawful police conduct given the high stakes involved. Here, Ms. Taylor and her daughter would lose their home and a housing subsidy worth \$10,416/year. Further, the likelihood of their being able to qualify for subsidized housing after this point is slim or nonexistent. Without this assistance, Ms. Taylor and her daughter face almost certain homelessness. Thus, this Court determines that it has an interest in discouraging unlawful police conduct where the consequences to victims of that conduct are so drastic. Had there been a search warrant directed at the location because of probable cause to believe illegal drugs or contraband had been there, the result in this action likely would be different.

This Court determines that in this case the cost of suppressing the illegally obtained evidence is low. This was Ms. Taylor's first reported lease violation in over six years at the complex. Also, it is undisputed that the items discovered actually belonged to her guest, Mr. Smith. Finally, the Plaintiff has subsequently barred Mr. Smith from the premises, removing any threat he poses.

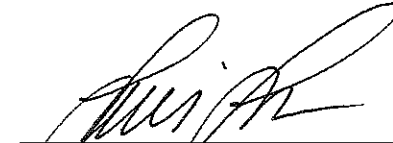
#### IV. HOLDING

This Court determines that the evidence was found in violation of Ms. Taylor's Fourth Amendment rights and should be suppressed in this proceeding. Without the evidence obtained by the U.S. Marshals and Atlanta Police Department on September 27, 2012, the Plaintiff has no valid evidence or legally supported reason to terminate Defendant's lease.

A handwritten signature in black ink, appearing to be the initials 'ST' or similar, located at the bottom right of the page.

WHEREFORE, it is hereby Ordered that Plaintiff's Proceeding Against Tenant Holding  
Over be DISMISSED with prejudice.

This the 7 day of May, 2013.

  
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Lorris Levenson  
Judge, Magistrate Court of Fulton County

Proposed Final Order Prepared by:

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the  
opposing party in the foregoing matter with a copy of this  
pleading by depositing in the United States Mail a copy of  
same in a properly addressed envelope with adequate postage  
thereon.

This 7th day of May 2013