

**In Federal Court Lawsuit Alleging False Arrest of Armed Private Security Guard, Recent Holding Finds Material Facts Preclude Application of Qualified Immunity**

On December 14, 2011, the District Court for the District of New Jersey issued a decision in *Thomas v. Delaware River Port Authority et al.*, Civ. No. 10-5514 (JS). The court denied the individual defendant's motion for summary judgment based on qualified immunity due to what the court found to be disputed material facts in the record.

The plaintiff, Richard Thomas, an armed security guard, was on the Port Authority Transit Corporation ("PATCO") train on his way home from work in May 2010 when he was stopped by a police officer with the Delaware River Port Authority ("DRPA"), Robert Sexton. At the time of the stop, Thomas, licensed in both Pennsylvania and New Jersey to carry a firearm, was wearing his employer-issued firearm in an unconcealed gun holster on his person. When Thomas was approached by the DRPA officer, he presented the officer with his New Jersey permit and other documentation. The New Jersey permit allowed Thomas to carry a firearm "during working hours only." The parties dispute whether Thomas informed the officer that he was "on duty" when the encounter first began.

However, after establishing that Thomas had finished his work shift shortly before their encounter, the officer contacted his police supervisor for direction. At or about the same time, Thomas was permitted to use the restroom unsupervised, while he was still armed, and return to Officer Sexton's vehicle. After his call with the supervisor, the officer disarmed Thomas, handcuffed him, and sat him in the police car. Thomas was then transported to DRPA headquarters, handcuffed to a bench, and his wallet searched. During that time, DRPA police established that Thomas' weapon had not been reported stolen. Thomas was released without any criminal charges being filed after DRPA police were advised that the Camden County Prosecutor's office did not intend to pursue any criminal charges. Upon subsequent court proceedings regarding Thomas' permit, it was agreed among Thomas, the DRPA, and the Camden County Prosecutor's Office that Thomas would transport his weapon to work in a concealed holster. The court did not formally amend Thomas' permit, but noted that Thomas' employer "never told anybody that you were going to be in Pennsylvania. That's where the whole thing started, because - so we never realized it was an issue."

Thomas filed suit against the DRPA and the officer in October 2010, alleging violations of the Fourth and Fifth Amendments, including a municipal liability claim that his arrest was the result of a policy and practice of the DRPA, a bi-state agency. Defendants filed a motion for summary judgment arguing, *inter alia*, entitlement to summary judgment based on qualified immunity. The court declined, without prejudice, to find qualified immunity.

The court dismissed defendant's first argument that Thomas was only detained, and determined that the officer's interactions with Thomas constituted an arrest. The court then found that a factual issue existed for a jury determination as to whether there was probable cause for his arrest because of the ambiguities in the permit and the questions that arose during the officer's initial interview with Thomas about his working hours.

The court then moved to the qualified immunity analysis. Because there was an issue of material fact as to whether Thomas told the officer he was "on duty" when the officer first expressed suspicion about plaintiff's NJ Permit, the court could not determine whether the officer's subjective belief that he had probable cause was objectively reasonable. The court also declined to rule on the qualified immunity issue because it found there were material questions as to whether there were alternatives to Thomas' arrest that were available to the officer. Finally, the court determined that a jury could find that it was not objectively reasonable to arrest Thomas until after a more thorough investigation had been completed. Whether the right in question was clearly established was not examined.

The Thomas decision illustrates how courts can struggle with the application of a unique set of facts to the two-part qualified immunity analysis. Our experience has shown that courts are reluctant to dismiss cases based on qualified immunity when there are perceived disputed material historical facts, without addressing whether the alleged constitutional right is clearly established in the first place. Clients defending such claims need to be keenly aware of such issues.

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If you have questions about or would like to discuss the Thomas decision or a related matter, please contact John C. Connell, Esquire, at (856) 354-3074 or [jconnell@archerlaw.com](mailto:jconnell@archerlaw.com), Carlton L. Johnson, Esquire, at (215) 279-9696 or [cjohnson@archerlaw.com](mailto:cjohnson@archerlaw.com), or Jeffrey M. Scott, Esquire, at (215) 279-9692 or [jscott@archerlaw.com](mailto:jscott@archerlaw.com).

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