

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Jonathan Corbett,  
Plaintiff

v.

Transportation Security Administration,  
United States of America,  
Alejandro Chamizo,  
Broward County  
Defendants

**12-CV-20863 (Lenard/O'Sullivan)**

**PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANT  
BROWARD COUNTY'S MOTION  
TO DISMISS AND CROSS-  
MOTION FOR LEAVE TO  
AMEND**

**I. SUMMARY**

On March 2<sup>nd</sup>, 2012, Plaintiff Jonathan Corbett ("CORBETT") filed the complaint in this action alleging violations of his constitutional and statutory rights at the hands of federal Transportation Security Administration and Broward County employees. On March 21<sup>st</sup>, 2012, Defendant Broward County ("BROWARD") filed a motion to dismiss alleging improper service and failure to state a claim upon which relief can be granted.

For the succeeding reasons, BROWARD's motion is without merit, with the exception of pointing out that the Broward Sheriff's Office should be joined to the complaint and Count 21 of the complaint should be reassigned from BROWARD to Broward Sheriff's Office. CORBETT herein cross-moves for leave to amend to cure the same.

## **II. ARGUMENT**

### ***A. BROWARD'S CLAIM OF INSUFFICIENT PROCESS IS PREMATURE***

On March 2<sup>nd</sup>, 2012, immediately after filing the complaint in this action, CORBETT mailed a Waiver of Service to BROWARD, along with copies of the complaint and summons, as per Fed. R. Civ. P., Rule 4(d). BROWARD denies receiving such a waiver. See Deft. BROWARD's Motion to Dismiss, p. 5.

However, this argument is entirely premature. Fed. R. Civ. P., Rule 4(m) provides 120 days for the Plaintiff to effect proper service on a defendant. As of the date of filing this document, only 36 days have passed. If BROWARD does not want to sign a waiver, notwithstanding that BROWARD may have waived its right to contest improper service by filing a motion to dismiss for failure to state a claim, CORBETT will cheerfully ensure that BROWARD is personally served within that time frame.

### ***B. COUNT 18 STATES A CLAIM WHETHER OR NOT THE RECORDS REQUESTED CONSTITUTE SENSITIVE SECURITY INFORMATION***

BROWARD's argument in favor of dismissing Count 18 is that they could not release records because they constitute Sensitive Security Information. See Deft. BROWARD's Motion to Dismiss, pp. 6, 7. However, Count 18 does not allege liability against BROWARD for simple failure to release the records, but rather for lying to CORBETT about their existence. See Complaint, paragraph 138.

The facts in CORBETT's complaint support this. Paragraph 77 of his complaint alleges that BROWARD told him that the records did not exist, which was not true. This is entirely different from telling CORBETT that the records exist but could not be released. Regardless of whether the records were releasable<sup>1</sup>, there is no statutory authority for BROWARD to falsely claim that they do not exist, and in doing so, they failed to meet their obligations under the Florida Public Records Act. Accepting CORBETT's allegations as true, a colorable claim against BROWARD has been stated in Count 18.

*C. COUNT 20, SUPPORTED BY THE FACTS IN THE COMPLAINT, CLEARLY ARTICULATES ALL ELEMENTS OF CIVIL CONSPIRACY*

BROWARD points out that there four elements to civil conspiracy. *See* Deft. BROWARD's Motion to Dismiss, p. 7. All of these are articulated by the complaint. The first element is an agreement between two or more parties. BROWARD admits that it conferred with the TSA regarding CORBETT's record release request in order to decide what action should be taken. *See* Deft. BROWARD's Motion to Dismiss, p. 8. The first element is therefore met.

The second and third elements are that the discussion culminates in an agreement to commit an unlawful act and then an overt act in furtherance of that objective is undertaken. In the complaint, and clarified in the preceding section of this opposition, the unlawful act alleged is that BROWARD failed to comply with the Florida Public Records act because it lied to

---

<sup>1</sup> Should the Court find it necessary to determine whether the records constituted Sensitive Security Information for the purposes of this motion, CORBETT respectfully requests leave to file a supplemental brief on that issue.

CORBETT. Again, the unlawful act claimed is not the denial of the record request, but the false denial that records existed.

The fourth element is damage to the plaintiff resultant of the conspiracy. As a result of this conspiracy, CORBETT was misled into believing that the records he sought did not exist and was denied his rights under the Florida Public Records Act. Again, the Court need not reach whether or not the records were releasable at this time, as sufficient injury stems from CORBETT's right to know whether documents exist, beyond CORBETT's right to receive the documents.

*D. CORBETT WILL DEFER TO BROWARD'S CLAIM THAT THE BROWARD SHERIFF'S OFFICE MUST BE NAMED IN COUNT 21.*

BROWARD alleges that the Broward Sherriff's Office, "for purposes of liability," is a separate entity from BROWARD. *See* Def. BROWARD's Motion to Dismiss, p. 8. Despite the fact that this seems to be a moot point, since BROWARD pays the Sherriff's legal bills and would ultimately pay any judgment favoring CORBETT in this action regardless of which party is named, CORBETT is willing to defer to BROWARD's claim that the Sheriff's office is the proper party, and respectfully cross-moves this court for leave to amend the complaint in order to effect this change.

E. *“REASONABLE SUSPICION” DID NOT EXIST AT THE TIME THE BROWARD SHERIFF’S OFFICE RAN A WARRANT CHECK ON CORBETT*

Staying within the four corners of CORBETT’s complaint, there is nothing to suggest that an officer would have had reasonable suspicion to detain CORBETT, ask for identification, or run a warrant check. Any assertion that reasonable suspicion existed would be based on disputed facts and cannot be entertained in a Rule 12(b)(6) motion.

As explained in the complaint, the exercise of one’s rights to refuse a search cannot justify “reasonable suspicion” to conduct a search. *See* Complaint, p. 9, footnote 7. *See also* *U.S. v. Fuentes*, 105 F.3d 487, 490 (9<sup>th</sup> Cir. 1997) (“Mere refusal to consent to a stop or search does not give rise to reasonable suspicion or probable cause.”); *U.S. v. Freeman*, 479 F.3d 743, 749 (10<sup>th</sup> Cir. 2007) (“Refusal to consent to a search—even agitated refusal—is not grounds for reasonable suspicion.”). BROWARD’s argument is tantamount to a police officer pulling over a motorist and asking the motorist if he may search the vehicle, and then, once the motorist denies consent, saying, “Well, the fact that you wouldn’t let me search your vehicle makes me suspicious, so now I have grounds to search your vehicle.” This logic would render the Fourth Amendment worthless.

Finally, it should be noted that BROWARD’s assertion TSA screeners can ever have authority to detain someone, beyond the power that any citizen has to effect a citizen’s arrest, is legally unsupported. *See* Deft. BROWARD’s Motion to Dismiss, p. 9. TSA screeners ***are not law enforcement officers***, even though they pretend to be sometimes<sup>2</sup>, and have no powers of

---

<sup>2</sup> *See* “TSA officer charged with impersonating police officer during Roselle Park traffic stop,” NJ.Com, March 7<sup>th</sup>, 2011, [http://www.nj.com/news/index.ssf/2011/03/tsa\\_officer\\_charged\\_with\\_imper.html](http://www.nj.com/news/index.ssf/2011/03/tsa_officer_charged_with_imper.html). *See also* Complaint, paragraph 47, where a TSA employee unlawfully detained CORBETT, essentially falsely acting as a law enforcement officer.

arrest. The Broward Sheriff's Office does not get a free pass on making an independent assessment as to whether suspicion or cause exists simply because a TSA screener opines that it does.

### **III. CONCLUSION**

Based on the foregoing, BROWARD's Motion to Dismiss, as it pertains to all issues except the naming of the Broward Sheriff's Office, should be **denied**, CORBETT's cross-motion for leave to amend should be **granted**, and BROWARD's Motion to Dismiss, as it pertains to the naming of the Broward Sheriff's Office, should be **denied as moot** since CORBETT's amended complaint will cure the issue raised.

Dated: Miami, Florida

April 7<sup>th</sup>, 2012

Respectfully submitted,

---

Jonathan Corbett

Plaintiff, *Pro Se*

100 Lincoln Road, #726

Miami Beach, FL 33139

E-mail: jcorbett@fourtentech.com