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SERIO v. BALTIMORE COUNTY:

Felons Retain a Property Interest in Seized Firearms Even Though They Are Not Allowed to Possess Them

By: Patricia Mitchell

In *Serio v. Baltimore County*, the Court of Appeals of Maryland held that felons who have had firearms seized by the police retain a property interest in the firearms even though they are not allowed to possess them. *Serio v. Balt. County*, 384 Md. 373, 377, 863 A.2d 952, 954 (2004). The Court applied Article 24 of the Maryland Declaration of Rights in holding that the petitioner was entitled to due process protection against the wrongful retention of his property. *Id.* at 393-94, 863 A.2d at 964-65. The firearms were not contraband *per se* and the petitioner had not been convicted of possession of the firearms, so Baltimore County had no right to retain them without compensating the owner. *Id.* at 400, 863 A.2d at 968.

In the fall of 1998, Robert Serio ("Serio") drove his car into a guardrail, causing it to flip upside down. The passenger riding with Serio was thrown from the car and died. In June 1999, the trial court sentenced Serio to six months of incarceration after he pled guilty to the felony of manslaughter by automobile.

On the day of Serio's sentencing, Baltimore County police officers applied for a warrant to search Serio's house and seize "any firearms and any ammunition, boxes, receipts, or manuals relating to said firearms" that they found. Based on information from Serio's estranged wife and a search of the Maryland Automated Firearms System, the police alleged that Serio was a felon in possession of firearms in violation of Maryland law. After obtaining a warrant, Baltimore County police officers seized a number of firearms from Serio's home. Baltimore County later refused to return the seized firearms to Serio, even though he was never charged with the crime of illegally possessing firearms. The county also refused to give the firearms to a designee or sell the weapons and give Serio the proceeds from the sale.

In July 1999, Serio filed suit in the Circuit Court for Baltimore County against the county and one of the officers who affected the search and seizure of the firearms. His complaint challenged the

seizure of the weapons and sought their return; requested damages for any harm done to the seized firearms; and alleged misconduct on the part of the officer in obtaining and executing the search warrant. The county and officer filed a joint motion to dismiss, which was granted in November 1999. Four years of amended complaints and subsequent motions to dismiss followed.

In 2003, all the complaints had been disposed of through summary judgment, and Serio's appeal made it to the Court of Special Appeals of Maryland. The intermediate appellate court upheld the lower court's decision. Serio appealed to the Court of Appeals of Maryland, which granted certiorari.

The Court reviewed the case *de novo* and began its analysis by boiling four years of litigation into a simple statement of each side's position. *Id.* at 388-91, 863 A.2d at 961-62. Serio asserted that § 551(c) of Article 27 of the Maryland Code gave him a property interest in the firearms; that Article 24 of the Maryland Declaration of Rights gave him the right to due process; and that the lower courts erred by relying on precedent from the Eighth Circuit instead of on Maryland common law regarding forfeiture. *Id.* The county, on the other hand, maintained that the firearms were legally seized pursuant to a search warrant; properly withheld from Serio because of his status as a convicted felon; and not subject to restoration under § 551(c) of Article 27 of the Maryland Code. *Id.* at 389-90, 863 A.2d at 962.

The Court next examined § 551(c)(1) of Article 27 of the Maryland Code to see if it applied. *Id.* The relevant section reads: "If, at any time, on application to a judge of the circuit court of any county or judge of the District Court, it is found that property rightfully taken under a search warrant is being wrongfully withheld after there is no further need for retention of the property, the judge must cause it to be restored to the person from whom it was taken." *Id.*

Reviewing the plain language of the statute, the legislative intent underlying the statute, and the context in which the statute was written, the Court decided that the core of the issue was what the legislature meant by "restore." *Id.* Looking at all relevant authority, the Court determined that "restore" did not include returning property to a person via proxy. *Id.* Since Maryland law precluded Serio from personally taking repossession of his property, § 551(c) did not apply to Serio's case. *Id.*

This did not bar Serio from recovery, though. Serio's constitutional argument prevailed. *Id.* at 393-94, 863 A.2d at 964-65. As the Court explained, "[a]lthough Section 551(c) is inapplicable,

Serio did not lose his ‘property’ interest in the firearms because he is a convicted felon, and he retains due process protection against wrongful retention of his property under Article 24 of the Maryland Declaration of Rights.” *Id.* Citing persuasive cases from both the Fifth and Ninth Circuits, the Court held that Serio retained a property right in the weapons and to deprive him of them without due process was illegal. *Id.*

The basis of the due process violation was that the firearms were not contraband *per se* -- that is, inherently illegal -- but merely derivative contraband -- that is, they became illegal by the fact that they were illegally possessed. *Id.* at 395, 863 A.2d at 965. Serio was never charged with the crime of illegally possessing the otherwise legal firearms. *Id.* at 395-97, 863 A.2d at 965-66. He never had his day in court to decide whether a crime was committed. *Id.* The Court concluded that it was a due process violation to seize and retain property that was not judicially determined to be part of a crime. *Id.* Since the Court decided that Baltimore County could not retain Serio's firearms without giving him due process, it directed a reversal of the summary judgment of the Circuit Court for Baltimore County, finding in favor of Serio. *Id.* at 400, 863 A.2d at 968.

In determining that felons who have had firearms seized by the police retain a property interest in the firearms even though they are not allowed to possess them, the Court of Appeals of Maryland upheld one of the founding principles of American democracy: the state may not, without affording due process of law, seize a citizen’s personal property. By applying this rule to even the extreme case of a felon who possesses firearms in violation of state law, the Court ensures that the protection of due process will apply to all. Certainly if a felon can rest assured that his illegally possessed weaponry is safe from capricious government seizure, so too can a law abiding citizen rest well knowing his home and belongings are safe from potentially overzealous governmental actions.