

felon.

Hurley checked the Shrewsbury computer system, which indicated that Elbery did not have an F.I.D. Sampson checked with Worcester. He was told that Elbery had no F.I.D. and that his license to possess a firearm had been revoked.

At this point, the Shrewsbury Police had probable cause to obtain a warrant to search Elbery's vehicle.

The existence of probable cause is to be evaluated on the basis of the collective information of the law enforcement officers engaged in a particular investigation.

United States v. Diallo, 29 F.3d 23, 25-26 (1st Cir. 1996) (internal citations and quotation marks omitted). The Supreme Court has defined probable cause to search as "a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983).

In this case, the Shrewsbury Police had probable cause to believe that Elbery was violating Massachusetts General Laws, ch. 269, §§ 10 (a) and (h), which prohibit possession of a firearm without an F.I.D. and possession of a firearm outside of an individual's residence or business without a license to carry. Generally, possession includes constructive, as well as actual, possession. See Commonwealth v. Sadberry, 692 N.E.2d 103, 105 (Mass. App. Ct. 1998). A person who is not in direct physical

control of something, but has the ability and intention to exercise control of it, is in constructive possession of it. Id. Thus, the evidence is sufficient to support the conclusion that it was reasonable for the defendants to believe that Elbery possessed the weapons that were in his automobile and, because of the information received from the inquiries made in Shrewsbury and Worcester, it was illegal for him to possess them.

After the search of Elbery's vehicle resulted in the seizure of the weapons, it could properly be found that it was permissible under both federal and state law for one or more of the defendants to arrest Elbery without a warrant. Under Massachusetts law, where, as a reasonable factfinder could conclude in this case, "the police had sufficient information to constitute probable cause to believe, and did believe, that a person had committed a felony . . . they had a right to arrest him without a warrant." Julian v. Randazzo, 403 N.E.2d 931, 934 (Mass. 1980). In addition, where the police officers had probable cause to make an arrest, the state law tort of false imprisonment has not been committed. See Rose v. Town of Concord, 971 F. Supp. 47, 50 (D. Mass. 1997). Similarly, to prove that a warrantless arrest violated his federal Fourth Amendment rights, a "plaintiff must show at a minimum that the arresting officers acted without probable cause." Mann v. Cannon, 731 F.2d 54, 62 (1st Cir. 1984); see also United States v. Watson,

423 U.S. 411, 421 (1976).

Moreover, the evidence does not permit the granting of Elbery's motion for summary judgment on his claim that his arrest and imprisonment violated his federal Fourteenth Amendment right to Due Process. The Fourth Amendment "governs the legitimacy of his arrest and its incidents." Brady v. Dill, 187 F.3d 104, 108 (1st Cir. 1999). The Fourteenth Amendment issue:

is whether [Elbery's] post arrest procedural guarantees were abridged. To prevail on such a battleground, [Elbery] must do more than show that the [police officers] made a mistake.

Id. In the instant case, there is no allegation, let alone evidence, that Elbery was not afforded "the full panoply of post-arrest rights that the Constitution demands." Id. at 109. Moreover, the existence of adequate state law remedies for any proven tort of false arrest or malicious prosecution means that Elbery may not recover under 42 U.S.C. § 1983 for an alleged violation of his right to procedural Due Process. See Reid v. New Hampshire, 56 F.3d 332, 341 (1st Cir. 1995). To the extent, if any, that Elbery alleges violations of his right to substantive Due Process, Albright v. Oliver, 114 S. Ct. 807 (1994), bars his claim. See Young v. Knox County Deputy, 68 F.3d 455, 1995 WL 610338 *1 (1st Cir. 1995) (unpublished decision).

The existence of evidence sufficient to prove probable cause

also defeat's Elbery's state law malicious prosecution claim. Elbery was charged with possessing a firearm without an F.I.D. in violation of Massachusetts General Law ch. 269, § 10(h) and also with violating § 10(a) of that statute, which prohibits possessing outside his residence or place of business a firearm without a license to carry it. As described earlier, the evidence is sufficient to prove that when Elbery was charged it was reasonable, although evidently not right, for the defendants to believe Elbery did not have an F.I.D. Moreover, the evidence indicates that the E-Z storage was neither Elbery's business nor his residence. Generally, a "residence" is defined as "[a] personal presence at some place of abode with no present intention of definite and early removal" Black's Law Dictionary at 1176 (5th ed.). An "abode" is one's home. Id. at 7. In addition, the lease for the E-Z storage area prohibited Elbery from residing there. There is no evidence that he did so, or that he used the storage area as a place of business. Therefore, the evidence at this point is sufficient to prove that there was probable cause to support the prosecution of each of the charges against Elbery.

Similarly, Elbery is not entitled to summary judgment on his claim that his Fourth and Fourteenth Amendment rights were violated as a result of a malicious prosecution. Procedural Due Process does not provide a basis for a federal claim based on malicious