IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

COREY BRYANT, a minor, by and through Charles and Shari Bryant, Natural Parents; and CHARLES and SHARI BRYANT;	)	**Civil Action No. 3:12-cv-37-NBB-SAA**
Plaintiff,	)	
v.	)	
CITY OF RIPLEY, MISSSISSIPPI, et al.	)	
Defendants.	)	

MOTION TO RECONSIDER THE COURT'S RULING DENYING PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION.

COMES NOW, the Plaintiff, by and through counsel, and moves the Court, pursuant to Fed. R. Civ. Proc. 59(e), to reconsider its order (**Doc. 18**) denying Plaintiff's motion for temporary restraining order or, in the alternative, a preliminary injunction and would show unto the Court the following:

I.

On May 4, 2012, Plaintiff, a minor child, filed his motion for a temporary restraining order or, in the alternative, a preliminary injunction barring his prosecution for malicious mischief in the Youth Court of Tippah County, Mississippi on June 4, 2012. In filing the motion, Plaintiff alleged his Youth Court prosecution was brought in bad faith because the proceedings were instituted five (5) months after the property in question was allegedly vandalized and three (3) months after another minor, who was actually caught on camera vandalizing the property, was prosecuted for the same vandalism. Moreover, the prosecution's only evidence implicating Plaintiff in any act of

vandalism is (i) **an unlawful interrogation of a minor conducted outside the presence parent or attorney**[1] and (ii) **the self-serving testimony of the child who previously admitted to and was charged with vandalizing the camera**.[2] The prosecution's evidence is not just inadequate; it is unlawful. All of which casted a long shadow of bad faith – that this Court recognized – over the proceedings.

It is a rudimentary principle of constitutional law that the prosecution is barred from using the above referenced evidence in any criminal prosecution, youth court or otherwise, and the prosecution, as well as the Defendants in the matter, should know this simple truth. The fact that there is no admissible evidence suggesting Plaintiff vandalized property, coupled with the suspicious delay and timing in bringing the Youth Court prosecution, suggests the proceedings were instituted in bad faith and without an **reasonable** expectation of securing a conviction/delinquency.

II.

In denying Plaintiff's motion, the Court opined that *Younger v. Harris*[3] argued for a strong policy against federal intervention in state court criminal proceedings. The court further held that the exceptions to *Younger* were "extremely narrow and limited;" thus barring Plaintiff's right to injunction relief. The Court did, however, rule it would "consider Plaintiffs' claims of bad faith prosecution, harassment, and retaliation going forward in this suit." Though the Court recognized a successful defense of the charges would create a bad faith claim, the Court went on to find Plaintiff

---

[1] *See* Miss. Code. Ann. § 43-21-303(3) (Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian **and invite the parent, guardian or custodian to be present during any questioning**). *See also Edmonds v. State*, No. 2004-CT-02081-SCT (MSSC) (quoting Walker v. State, 235 So.2d 714-15 (Miss. 1970)).

[2] *Redding v. Safford Sch. Dist. #1*, 531 F.3d 1071, 1082-83 (9th Cir. 2008) (noting that "we do not treat all informant tips as equal in their reliability" and "**we are most suspicious of those self-exculpatory tips that might unload potential punishment on a third party**."), aff'd in part, rev'd in part, 129 S.Ct. 2633 (2009). *See also Fewless v. Board of Educ. of Wayland Union Schools*, 208 F. Supp. 2d 806, 819-820 (W.D. Mich. 2002) (strip search of student for drugs was not justified at its inception **when based on information from students with highly questionable credibility given their potential ill motives as they were serving detention for bullying the accused student**).

[3] 401 U.S. 37 (1971).

must fight this battle first in state court and then, retroactively, fight it in federal court. Such a ruling is a clear error of law because the showing of bad faith automatically triggers the *Younger* exception.

III.

While the Federal Rules of Civil Procedure do not specifically provide for a motion for reconsideration, the Fifth Circuit has held that such a motion may be entertained by a court and should be treated either as a motion to "alter or amend" pursuant to Rule 59(e) or a motion from "relief from judgment" pursuant to Rule 60(b).[4] Specifically, if the motion for reconsideration is filed and served within twenty-eight days of the rendition of judgment, the motion falls under Rule 59(e), and if it is filed and served after that time, it falls under the more stringent Rule 60(b).[5]

Under Rule 59(e), there are three possible grounds for granting a motion for reconsideration: (i) an intervening change in controlling law, (ii) the availability of new evidence not previously available, and (iii) the need to correct a clear error of law or prevent manifest injustice.[6] Plaintiff's motion is premised on the third prong. Plaintiff argues that the Court's recognition he will have a valid bad faith prosecution claim if his criminal defense is successful constitutes an recognition the prosecution was born of bad faith and the *Younger* exception applies.

IV.

It is a well-established principle of law that the losses of constitutional freedoms, even for minimal periods of time, constitute irreparable injury justifying a temporary restraining order.[7] By acknowledging the Plaintiff would have valid bad faith claims if he was successful in defending against the charges brought against him in Youth Court, the Court acknowledged the bad faith inherent in those very proceedings. In other words, the Court is recognizing the fact that the proceedings against Plaintiff are likely denying him his constitutional freedoms. The Court erred,

[4] *Teal v. Eagle Fleet, Inc.*, 933 F.2d 341, 347 (5th Cir. 1991).
[5] *Teal*, 933 F.2d at 347; see also Fed. R. Civ. P. 59(e).
[6] *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990).
[7] *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

however, when it ruled it was barred from preventing such an injury and the injury must be retroactively remedied by adding a subsequent bad faith claim to this lawsuit. This reasoning, however, fundamentally contradicts the rule of law.

It is clear "a showing of a bad faith (prosecution) is equivalent to a showing of irreparable injury for purposes of the comity restraints defined in *Younger*."[8] The Fifth Circuit has held further that "a showing of bad faith or harassment is equivalent to a showing of irreparable injury for purposes of the comity restraints defined in Younger, **because there is a federal right to be free from bad faith prosecutions**. Irreparable injury need not be independently established."[9]

Though *Younger* held the necessity of undergoing a state criminal prosecution in order to vindicate one's federal rights insufficient in and of itself to establish irreparable injury such as to justify federal intervention, the Fifth Circuit has emphasized that the Court based this holding on the principle that "(n)o citizen or member of the community is immune from prosecution, **in good faith**, for his alleged criminal acts."[10] This Circuit, therefore, has read the Court's *Younger* opinion as **implicitly recognizing that a suit to enjoin a state criminal prosecution brought in bad faith is of a different breed than a suit to enjoin a prosecution brought lawfully and in good faith**.[11] The Court explained further:

> The reason for distinguishing, for Younger purposes, between a suit to enjoin a good faith prosecution and a suit to enjoin a bad faith prosecution is that the interests of both the criminal defendant and the State differ significantly from those relied on by the Court in Younger when the injunction is sought against a state prosecution brought in bad faith. With respect to the criminal defendant, he is seeking to protect his federal "right not to be subjected to a bad faith prosecution or a prosecution brought for purposes of harassment, (a) right (that) cannot be vindicated by undergoing the prosecution."[12]

---

[8] *Shaw v. Garrison*, 467 F.2d 113, 120, (5th Cir. 1972), cert. denied,409 U.S. 1024, 93 S.Ct. 467, 34 L.Ed.2d 317.
[9] *Id.*,
[10] *Younger*, 401 U.S. at 46, *quoting Watson v. Buck*, 313 U.S. 387, 400 (1941).
[11] *Wilson v. Thompson*, 593 F.2d 1375, 1382 (1979).
[12] *Shaw*, 467 F.2d at 122 n.11 (*citing Younger*, 401 U.S. at 56).

Courts, therefore, have "distinguished cases where the prosecution itself, as opposed to possible conviction and imprisonment under an invalid statute, constitutes the alleged constitutional violation."[13] This case is clearly one in which the prosecution itself is the center of the controversy and the *Younger* exception is applicable.

V.

Make no mistake; Plaintiff is extremely mindful of the delicate balancing act the Court must perform in protecting civil liberties and respecting state autonomy. The evidence in this case, even by the Court's own opinion, suggests that the scales of justice must tip in favor of the individual's right to civil liberties; namely the federal right to be free from a prosecution brought in bad faith and with no reasonable expectation of success.

This is a bad faith prosecution. The prosecutor lacks any form of admissible evidence and the timing of the prosecution is not just suspiciously tardy, but coincides with the filing of a federal lawsuit alleging unconstitutional behavior based on the same facts that gave rise to the suspicious Youth Court charge. This alone is enough to invoke the exception to *Younger* because courts were clear that when a prosecution was undertaken with no hopes of success it was brought in bad faith.[14]

How can the prosecution have any chance of success when its only evidence is (i) an unlawful interrogation and (ii) a self-serving implication? Even this Court, by virtue of stating a bad faith claim would be considered if Plaintiff successfully defends against the charges, viewed the prosecution with implicit skepticism.[15] The only problem is this Court erred when it held the Plaintiff's only remedy is to fight the bad faith battle in state court and retroactively remedy the injury in federal court.

---

[13] *Wilson*, 593 F.2d at 1383.

[14] *Torries v. Herbert*, 11 F.Supp.2d. 806, 815 (W.D.La. 2000)

[15] *Alle v. Medrano*, 416 U.S. 802, 819 (1974); *see also Perez v. Ledesma*, 401 U.S. 82, 85 (1971); *Central Avenue News, Inc. v. City of Minot, N.D.*, 651 F.2d. 565, 570 (8th Cir. 1981) (*holding* "gravamen of bad faith prosecution is the lack of reasonable expectation that a valid conviction will result).

Again, this is a bad faith prosecution and because of this fact Plaintiff should not be required to play Russian roulette with his civil liberties in Youth Court. There is no lawful and admissible evidence suggesting Plaintiff committed the crime and the charges were suspiciously timed to coincide with the time period Plaintiff was free to file his lawsuit. Given the past actions of the Defendants, **especially interrogating Plaintiff with a parent or attorney**, there is cause for concern that justice might be fleeting during the Youth Court prosecution. Plaintiff, thus, should not be required to take a chance in Youth Court and retroactively address his grievances in federal court. *Younger* made it clear that under this situation – one in which the prosecution itself is brought in bad faith – the Court must step in to protect civil liberties. To hold otherwise would frustrate the dictates of constitutional law and established precedent. Put another way, if the federal courts were precluded from enjoining the state proceedings brought in bad faith:

> State officials disposed to suppress speech could easily do so by bringing oppressive criminal actions pursuant to valid statutes rather than by enacting invalid statutes or using other parts of the state legal machinery, and § 1983 would give no effective relief unless they happen to warn their victims in advance. In *Dombrowski* and cases of its nature, [13] the substance of the complaint is exactly this: that state officials are using or threatening to use prosecutions, regardless of their outcome, as instrumentalities for the suppression of speech….
>
> When a significant chilling effect on free speech is created by a bad faith prosecution, the prosecution will thus as a matter of law cause irreparable injury regardless of its outcome, **and the federal courts cannot abstain from issuing an injunction**.[16]

This is exactly what is happening to Plaintiff.

If the Youth Court proceedings in this case are just, the prosecution has no chance of securing a victory against Plaintiff because its evidence is unlawful and tainted. Plaintiff, nonetheless, should not be forced to roll the dice in Youth Court and hope the right outcome is obtained. When a prosecution is brought in bad faith it is not the responsibility of the Plaintiff to fight the charges in

[16] *Sheridan v. Garrison*, 415 F.2d 707 (5th Cir. 1969), cert. denied, 396 U.S. 1040, 90 S.Ct. 685, 24 L.Ed.2d 685.

state court and then seek redress in federal court; it is the responsibility of the federal court to prevent the bad faith fight from occurring in the first place. Only then are civil liberties protected from the bad faith of those claiming to protect the public trust.

VI.

For the reasons stated above, Plaintiff respectfully prays that this Court reconsider its order denying the issuance of a temporary restraining order. Moreover, Plaintiff asks the Court for oral argument so these fundamental issues of constitutional law can be addressed prior to Plaintiff's June 4, 2012, trial date in the Youth Court of Tippah County.

At minimum, there is sufficient evidence to suggest the Youth Court proceedings brought against Plaintiff were brought in bad faith. Plaintiff requests a temporary restraining order issue barring the June 4, 2012, proceeding and the Court set a time and date, within ten (10) days, for a preliminary injunction to be held. This will enable the Court to hear all the evidence associated with this case.

More importantly, no harm will come of this request. Just as the court in *Westin* opined, "[T]he only possible harm to the public interest by granting the injunction would be the delay caused by the resolution of the underlying suit, and in truth the court does not believe that this represents any harm to the public at all. If [Plaintiff] ultimately wins his civil suit, the public interest will have been served by the granting of the preliminary injunction preventing unjust retaliation against [Plaintiff] by state officers."[17]

VII.

Because of the straightforward nature of this motion, Plaintiff asks to be relieved of submitting a supporting memorandum.

[17] *See Westin*, 760 F.Supp. at 1570 (threatened injury to district attorney's attempt to take case to a grand jury minimal since, if federal lawsuit was lost, a grand jury could hear evidence against Westin).

WHEREFORE, in light of the above-stated reasons, Plaintiff prays that this Court reconsider its decision denying Plaintiff's motion for a temporary restraining order.

Respectfully submitted,

/s/Joseph R. Murray, II, Esq.
Joseph R. Murray, II
MURRAY LAW FIRM, PLLC.
MS Bar #101802
104 South Commerce Street
Ripley, MS 38663
(662) 993-8010

W. Brent McBride
MS Bar # 101442
P.O Box 84
Tupelo, MS 38802

CERTIFICATE OF SERVICE

I, Joseph R. Murray, II, attorney for Plaintiff, do hereby certify that I have filed the forgoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

John Samuel Hill
jhill@mitchellmcnutt.com, lmcmillen@mitchellmcnutt.com

Stephen Pierce Spencer
sspencer@mitchellmcnutt.com, bpierce@mitchellmcnutt.com

Walter Brent McBride
mcbridelawfirm@bellsouth.net

William M. Beasley
beasleyb@phelps.com, kirklanp@phelps.com

William M. Beasley , Jr
beasleyw@phelps.com, kirklanp@phelps.com, thorntob@phelps.com

/s/Joseph R. Murray, II, Esq.

Joseph R. Murray, II
MS Bar #101802
HARRISON LAW OFFICE, PLLC
114 East Jefferson Street
Ripley, MS 38663
(662) 837-6193 (telephone)
(662) 837-7535 (facsimile)
jmurray@melissaharrisonlaw.com

W. Brent McBride
MS Bar # 101442
McBride Law Firm, PLLC
P.O Box 84
Tupelo, MS 38802