

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

IAN MOBLEY, KIMBERLY MOBLEY, Et. Al.,

Plaintiffs,

vs.

CITY OF DETROIT, VICKI YOST, DANIEL  
BUGLO, ET. AL.,

Defendants.

Honorable Victoria A. Roberts  
Magistrate Judge Mona K. Majzoub

Case No. 10-cv-10675

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**DEFENDANTS CITY OF DETROIT, MCWHORTER, POTTS,  
COLE, BROWN, SINGLETON, TURNER, JOHNSON, AND  
GRAY'S REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT**

**A. CITY OF DETROIT - NO WIDESPREAD, UNCONSTITUTIONAL PRACTICE WHICH WAS THE MOVING FORCE.**

**1. PROBABLE CAUSE EXISTED FOR CAID RAID**

It is undisputed the CAID was selling and serving intoxicating liquor without a license and after 2:00 a.m., contrary to Michigan law. Consequently, it is undisputed the CAID was a place of illegal occupation referenced in §38-5-1 of the Detroit City Code and a nuisance under the Nuisance Abatement Act, MCL §600.3801 et seq. It is also undisputed Plaintiffs were loitering in the CAID and used their vehicles as a mode of transport to contribute to the nuisance which alone is sufficient to constitute probable cause under the Act.

The only possible remaining issue is whether Defendant officers had probable cause to believe Plaintiffs knew they were loitering in a place of illegal occupation. The probable cause standard requires proof of only a probability or *substantial chance* of criminal activity, not an actual showing of such activity. Ross v Duggan, 402 F3d 575 (CA 6, 2004); US v Graham, 275 F3d 490(CA 6, 2001); US v Lattner, 385 F3d 947 (6 CA, 2004)(probable cause inquiry requires consideration of “totality of circumstances”); US v Sims, (CA 6, 1992)(probable cause is to be determined from the perspective of a reasonable law enforcement officer, and all that is required is practical, non-technical probability that incriminating evidence is involved). Based on Duggan, Defendants are not required to show that Plaintiffs possessed knowledge of the illegal activity at the CAID; the undisputed material evidence in this case shows there was substantial chance of knowledge given the totality of the circumstances:

- (1) it is undisputed Plaintiffs were present in the CAID building after 2:00 a.m. and witnessed unlawful alcohol sales during the Funk Night event;
- (2) it is undisputed no liquor license was displayed in the CAID;
- (3) it is undisputed intoxicating liquor was being sold and served in plain view in the

CAID at an open bar near the entry doorway before and after 2:00 a.m. (**Dk 84, Exh 1; Dk 84, Exh 3**, p. 57, lines 3-25; p. 58, lines 1-25; p. 59, lines 1-17; p. 63, lines 20-25; p. 64, lines 1-3; p. 69, lines 7-13; **Dk 84, Exh 4**, p. 57, lines 7-17; p. 58, lines 9-23; p. 59, lines 24-25; p. 60, lines 1-3; **Dk 84, Exh 8**, p. 26, lines 6-25; p. 27, lines 1-25; p. 28, lines 1-6; **Dk 84, Exh 11; Dk 84, Exh 12**, p. 19, line 25, p. 20; line 1-2; **Dk 84, Exh 16**, p. 20, lines 23-25; p. 21, lines 14-23; p.24, lines 8-18; **Dk 84, Exh 17**, p. 28, lines 14-25; p. 29, lines 1-6 **Dk 84, Exh 18**, p. 26, lines 8-14, lines 24-25, p. 27, line 1; **Dk 84, Exh 20**, Cole dep., p. 51, lines 1-4).;

- (4) Yost and Buglo had conducted surveillance on the CAID as documented in the anticipatory search warrant affidavit and made additional observations of illegal liquor sales during the early morning hours when the raid occurred (**Dk 84, Exh 1**, pp. 2-5; **Dk 84, Exh 3**, p.68, lines 3-7, p. 81, lines 5-25, p. 82, lines 1-6). After Paul Kaiser and Angie Wong entered the CAID at approximately 1:50 a.m.- 2:00 a.m., Paul's brother, Mark Kaiser, purchased three beers (**Dk 84, Exh 17**, p. 28, lines 14-21, p. 32, lines 2-11; **Dk 84, Exh 18**, Wong dep., p. 26, lines 8-14, lines 24-25, p. 27, line 1);
- (5) Defendants Turner, Cole, Potts, Gray, Johnson, Brown, Singleton, and McWhorter relied on the information provided by Yost and Buglo to establish probable cause; and
- (6) it is undisputed Plaintiffs were members of the CAID and several of them were admittedly familiar with the Funk Night practices and customs of the CAID which undisputedly generally operated until 5:00 a.m. during the monthly Funk Nights. Plaintiffs Angie Wong, Darlene Hellenberg, Jason Leverette-Saunders, Stephanie Hollander, Thomas Mahler, and Nathaniel Price had been present at prior CAID Funk

Nights and had intimate knowledge of the party operations and illegal activities of the CAID (**Dk 84, Exh 8**, p. 11, lines 20-24; **Dk 84, Exh 9**, p. 11, line 25, p. 12, lines 1-9, p. 27, lines 20-24; **Dk 84, Exh 15**, p. 10, lines 12-25; **Dk 84, Exh 16**, p. 7, lines 1-16; **Dk 84, Exh 18**, p. 20, lines 8-13; **Dk 84, Exh 19**, Wanda Leverette dep., p. 11, lines 7-17, p. 13, lines 1-5).

At the time of the raid, the police officers had probable cause to believe the CAID plaintiffs knew they were in a blind pig and several of the CAID members drove their vehicles or their parents' vehicle to the CAID with full knowledge it was an operating blind pig. (**Dk 84, Exh 8**, p. 11, lines 20-24; **Dk 84, Exh 9**, p. 11, line 25, p. 12, lines 1-9, p. 27, lines 20-24; **Dk 84, Exh 15**, p. 10, lines 12-25; **Dk 84, Exh 16**, p. 7, lines 1-16; **Dk 84, Exh 18**, p. 20, lines 8-13; **Dk 84, Exh 19**, Wanda Leverette dep., p. 11, lines 7-17, p. 13, lines 1-5). But it is irrelevant whether Plaintiffs knew or did not know their use of the vehicles were contributing to the nuisance. There was probable cause to believe the CAID Plaintiffs knew they were contributing to a nuisance and the deterrence purposes of the Statute were served by the seizure of Plaintiffs' vehicles.

Further evidence of probable cause is the undisputed fact that most of the Plaintiffs failed to contest the seizure of their vehicles in the nuisance abatement proceedings. They merely admitted responsibility by paying the required fees to the Wayne County Prosecutors Office for the return of the vehicles.

## 2. PROBABLE CAUSE EXISTED FOR PAST RAIDS/NO EVIDENCE OF CAUSATION

Not only do Plaintiffs fail to show a lack of probable cause for the CAID raid, but there is no evidence of lack of probable cause for any previous raid. Although officers would generally detain and ticket loiterers during previous raids of places of illegal occupation, there is no evidence the officers lacked probable cause to believe the loiterers knew they were loitering in a place of illegal

occupation. Further, Plaintiffs' §1983 claim against the City of Detroit must be dismissed because there is no evidence of a widespread practice of unconstitutional acts in prior raids which were the *moving force* in the CAID raid.

3. THERE IS NO EVIDENCE OF EXCESSIVE FORCE IN PAST RAIDS/NO EVIDENCE OF CAUSATION

Plaintiffs complain of excessive force during the detention of the loiterers in the CAID. But they provide no evidence of excessive force during prior raids which would have to be the moving force behind the alleged unconstitutional acts of the officers at the CAID.

4. THERE IS NO EVIDENCE OF PRACTICE OF ALLOWING CONCEALMENT IN PAST RAIDS/NO CAUSATION

Plaintiffs admit partial concealment by the narcotics officers of their faces during a raid is not itself an unconstitutional practice. Instead, they argue the practice may lead to excessive force. But they provide no evidence such concealment led to excessive force during the raid at the CAID or during any other prior raid. In fact, during the two - three hour period of processing, Plaintiffs had every opportunity, but failed to report any violent officers to supervisors and/or immediately file a citizens complaint of excessive force after they were released from the CAID so that the alleged officers involved could be readily identifiable.

5. THERE IS NO EVIDENCE OF FAILURE TO TRAIN/DISCIPLINE

Although Defendants provided hundreds of records detailing the individual defendants' training and disciplinary histories, Plaintiffs admit in their Response Brief that there is absolutely no evidence of a lack of training or discipline regarding proper officer conduct and procedures or that such deficiencies caused the alleged constitutional violations at the CAID.

**B. OFFICERS HAD PROBABLE CAUSE/NO EXCESSIVE FORCE**

1. OFFICERS REASONABLY RELIED ON THE OBSERVATIONS OF YOST AND BUGLO AS PROBABLE CAUSE

It is undisputed McWhorter, Brown, Potts, Cole, Singleton, Turner, Johnson, and Gray reasonably relied on the reports of Yost and Buglo in the search warrant affidavit and on the night of the CAID and are, therefore, immune from liability regarding all unconstitutional seizure claims.

2. NO EVIDENCE OF EXCESSIVE FORCE BY THE NAMED OFFICERS

There is absolutely no evidence any defendant officer used any excessive force or even touched any of the Plaintiffs. Therefore, summary judgment is proper and all excessive force claims must be dismissed against the individual defendants with prejudice.

Based on the foregoing, Defendants City of Detroit, McWhorter, Potts, Brown, Cole, Singleton, Turner, Johnson, Gray requests that this honorable Court grant Defendants' Motion for Summary Judgment and dismiss this lawsuit with prejudice.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

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Dated: May 22, 2012

I hereby certify that on May 22, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

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