

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

**IAN MOBLEY, KIMBERLY MOBLEY, PAUL KAISER,  
ANGIE WONG, JAMES WASHINGTON, NATHANIEL PRICE,  
JEROME PRICE, STEPHANIE HOLLANDER,  
JASON LEVERETTE-SAUNDERS, WANDA LEVERETTE,  
DARLENE HELLENBERG, THOMAS MAHLER,  
and LAURA MAHLER,**

Case No. 10-cv-10675  
Hon. Victoria Roberts

Plaintiffs,

v

**CITY OF DETROIT**, a municipal corporation, **Lieutenant VICKI YOST**,  
a Detroit police officer, in her individual capacity, **Sergeant DANIEL BUGLO**,  
a Detroit police officer, in his individual capacity, **Sergeant G. MCWHORTER**,  
a Detroit police officer, in his/her individual capacity, **Sergeant A. POTTS**,  
a Detroit police officer, in his/her individual capacity, **Sergeant CHARLES TURNER**,  
a Detroit police officer, in his individual capacity, **Officer M. BROWN**,  
a Detroit police officer, in his/her individual capacity, **Officer B. COLE**,  
a Detroit police officer, in his/her individual capacity, **Officer TYRONE GRAY**,  
a Detroit police officer, in his individual capacity, **Officer SHERON JOHNSON**,  
a Detroit police officer, in her individual capacity, **Officer K. SINGLETON**,  
a Detroit police officer, in his/her individual capacity, and  
**UNNAMED DETROIT POLICE OFFICERS**, in their individual capacities,

Defendants.

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**DEFENDANT DETROIT POLICE LIEUTENANT VICKI YOST'S AND  
DEFENDANT DETROIT POLICE SERGEANT DANIEL BUGLO'S  
REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGEMENT**

Respectfully submitted,

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Dated: May 22, 2012

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### CASE LAW

1. *Harlow v Fitzgerald*, 457 US 800 (1982)
2. *Greene v Barber*, 310 F.3d 889, 984 (6<sup>th</sup> Cir. 2002)
3. *Michigan v DeFillippo*, 443 US 31, 37, 61 L Ed 2d 343, 99 S Ct 2627 (1979)
4. *Estate of Dietrich v Burrows*, 167 F3d 1007; 1012 (6<sup>th</sup> Cir. 1999)
5. *Gardenhire v Schubert*, 205 F3d 303, 315 (6<sup>th</sup> Cir. 2000)

### **STATEMENT OF ISSUE**

Prevailing authorities provide that police officers are entitled to qualified immunity against constitutionally predicated claims so long as their conduct under the circumstances does not violate clearly established statutory or constitutional rights of which a reasonable officer would have known. Under the facts and circumstances concerning their involvement with Plaintiffs, are Yost and Buglo entitled to qualified immunity?

### **STATEMENT OF MOST CONTROLLING AUTHORITY**

Qualified immunity is an affirmative defense that shields government officials in performing discretionary functions from liability for civil damages so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v Fitzgerald*, 457 US 800 (1982); *Greene v Barber*, 310 F.3d 889, 894 (6th Cir. 2002).

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REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGEMENT**

**NOW COME**, Detroit Police Lieutenant Vicki Yost and Detroit Police Sergeant Daniel Buglo, by and through the undersigned attorney, and for their Reply to Plaintiff's Response to Motion for Summary Disposition, and states as follows:

**I. INTRODUCTION**

On February 18, 2010, Plaintiffs filed this action against Defendants, including Detroit Police Lieutenant Vicki Yost and Detroit Police Sergeant Daniel Buglo under 42 USC § 1983 claiming a

violation of their rights guaranteed under the Fourth and Fourteenth Amendments to the United States Constitution. Specifically, claiming unlawful detention, unreasonable search, malicious prosecution, unreasonable seizure of property, denial of due process, and excessive force.<sup>1</sup>

On April 19, 2012, Detroit Police Lieutenant Vicki Yost and Detroit Police Sergeant Daniel Buglo filed a Motion for Summary Disposition. On May 8, 2012, Plaintiffs filed a response in opposition of the motion. In accordance with Local Rule 7.2(c), Yost and Buglo are now filing a reply to Plaintiffs' response.

## **II. STATEMENT OF FACTS**

The Detroit Police Department's Vice Enforcement Unit received complaints regarding illegal activity at 5141 Rosa Parks; the Contemporary Art Institute of Detroit ("CAID"). (*See DK #85 - Exhibit A - Inspector Vicki L. Yost Deposition Transcript - pg. 41, ln. 16*) (*See DK #85 - See Also Exhibit B - Sergeant Daniel Buglo Deposition Transcript - pgs. 30, lines 10-25, pg. 31, lines 1-7, and 66, lines 4-8*)

Based upon the complaints, Lt. Vicki Yost ("Yost") and Sgt. Daniel Buglo ("Buglo") began an undercover operation to determine whether illegal activity was occurring at the location. (*See DK #85 - Exhibit A - pg. 45, lines 24-25, and pg. 47, lines 4-8*) In total, Yost and Buglo conducted four (4) surveillance, undercover operations at the CAID. (*See DK #85 - Exhibit A - pg. 33, lines 17-20*) (*See Also DK #85 - Exhibit B - pg. 24, line 25 and pg. 25, lines 1-2*)

The first surveillance occurred on March 29, 2008. At approximately 1:40 am, Yost and Buglo conducted surveillance to determine whether there was "blind pig activity" at the CAID. (*See DK #85 - Exhibit B - pg. 29, lines 11-21*) Buglo described a blind pig as "...a place that served

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<sup>1</sup>Count Two of the Complaint does not contain an excessive force claim against Yost or Buglo

alcohol after hours that is unlicensed.” Buglo also explained that there are times when prostitution, and gambling are part of a blind big activity. (*See DK #85 - Exhibit B - pg. 29, lines 15-18*) Yost explained that a blind pig is an establishment where there is the illegal sale or consumption of alcohol without a license, sale of alcohol to minors, or sales of alcohol after 2:00 am. (*See DK #85 - Exhibit A - pg. 51, lines 3-19*).

On March 29, 2008, Yost and Buglo did not enter the CAID. At 1:40 am, the officers began their surveillance from their vehicle. (*See DK #85 - Exhibit B - pg. 33, lines 7-9*) The officers parked on the east side of Rose Parks Blvd., directly across from the building in question. (*See DK #85 - Exhibit B - pg. 34, lines 6-9*) The officers observed people arriving in cars and going into the building. (*See DK #85 - Exhibit B - pg. 34, lines 6-16*) The officers noted a white male exited a vehicle, with what appeared to be fifth of liquor in his pants pocket. (*See DK #85 - Exhibit B - pg. 35, lines 1-6*) (*See DK 385 - See Also Exhibit A - pg. 31, lines 22-25*) Yost testified that during the March 29, 2008 surveillance, she smelled Marijuana emanating from the location. (*See DK #85 - Exhibit A - pg. 31, lines 24-25 and pg. 59, lines 12-13*)

The second undercover contact with the location occurred on April 26, 2012. (*See DK #85 - Exhibit B - pg. 39, ln. 1*). At 1:00 am, Yost and Buglo entered the location to conduct surveillance. (*See DK #85 - See Exhibit B - pg. 39, lines 19-22 and 43, line 14*)

Buglo testified that when they entered the establishment, he was patted down by a heavysset man at the door. (*See DK #85 - See Exhibit B - pg. 39, lines 19-25 and pg. 40, lines 1-5*) The officers paid a five dollar cover charge. (*See DK #85 - See Exhibit B - pg. 41, lines 5-7*) The officers also paid three dollars for a one month membership. (*See DK #85 - Exhibit A - pg. 57, lines 3-9*) (*See DK #85 - See Also Exhibit B - pg. 41, lines 12-14*)



Buglo noted that the establishment was selling alcohol without a liquor license, which he believed to be illegal. (*See DK #85 - Exhibit B - pg. 43, ln. 23 and pg. 47, lines 13-15*) Prior to conducting surveillance, Yost contacted the Michigan Liquor Control Commission and was advised that the CAID did not have a liquor license. (*See DK #85 - Exhibit B - pg. 44, lines 6-11.*)

The officers bought beer at the CAID's bar. They paid three dollars each for the beer. (*See DK #85 - Exhibit B - pg. 44, ln. 14*) Wine was also being sold. (*See DK #85 - Exhibit B - pg. 42, lines 21-24*)

The officers walked through the inside of the establishment and then outside into the fenced-in portion of the property. (*See DK #85 - Exhibit B - pg. 45, lines 21-25*)

Yost and Buglo joined patrons at a picnic table in the outside, fenced-in area. (*See DK #85 - Exhibit B - pg. 46, lines 8-15*) One of the patrons produced a bag of Marijuana, rolled a cigarette, and passed it to the other persons at the table. (*See DK #85 - Exhibit B - pg. 46, lines 16-17*)

At 2:20 am, Buglo purchased another beer from the bar. (*See DK #85 - Exhibit B - pg. 48 - lines 19-23*) The officers left the CAID at 2:30 am. When leaving, the officers noted that there were approximately ten people standing outside, in line to get into the CAID. (*See DK #85 - Exhibit B - pg. 49 lines 15-18*)

On May 24, 2008 at 2:05 am, Buglo conducted surveillance from outside the CAID. (*See DK #85 - Exhibit B - pg. 71, lines 22-25*) In reviewing the Anticipatory Search Warrant and Affidavit marked as *DK #85 - Exhibit C*, Buglo noted that he observed approximately 60 vehicles parked at the location, heard voices, and smelled "a strong odor of marijuana on the south side of the location."

On or about May 29, 2008, Buglo submitted the Anticipatory Search Warrant to the Wayne

County Prosecutor's office, along with the Affidavit. The affidavit outlined the illegal activity observed during the undercover operation at the CAID. (*See DK #85 - Exhibit C*) The Anticipatory Search Warrant was signed by Wayne County Prosecutor DeYoung and Magistrate Lockhart at 36<sup>th</sup> District Court. (*See DK #85 - Exhibit B - pg. 65, lines 5-9*) (*See DK #85 - Also Exhibit C*)

Prior to the May 31<sup>st</sup> surveillance/raid, Yost contacted the owner of the CAID, Aaron Timlin regarding the sale of alcohol at the CAID without a liquor license. (*See DK #85 - Exhibit A – pg. 94, lines 10-25*)

Yost advised Timlin that the sale of alcohol at the Friday gatherings was illegal. Yost advised Timlin of the necessary steps that were required, if the CAID wanted to legally sell alcohol at the CAID. Yost advised Timlin to obtain a 24 hour license. (*See DK #85 - Exhibit A – pg. 95, line 25*)<sup>2</sup> Had Timlin obtained the 24-hour license, the raid would not have occurred. (*See DK #85 - Exhibit A – pg. 98, lines 8-12*)

Timlin did not obtain a 24-hour license. Hence, the fourth undercover surveillance occurred on May 31, 2008.

Yost and Buglo again entered the CAID and paid the three dollar membership fee. (*See DK #85 - See Exhibit B - pg. 57, lines 9-17*) Buglo again purchased a beer. (*See DK #85 - Exhibit B -pg. 58, ln. 9*) The odor of Marijuana was present. (*See DK #85 - Exhibit B - pg. 58, ln. 17*)

At approximately 2:20 am, Yost called for the execution of the search warrant based upon the continued sell of alcohol after 2:00 am<sup>3</sup> and patrons loitering in a place of illegal occupation. (*See DK #85 - Exhibit A - pg. 84, lines 10-21*) (*See Also DK #85 - Exhibit B - pg. 73, lines 13-19*)

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<sup>2</sup> Under the Michigan Liquor Control Code, a non-profit organization can obtain a 24 hour Special Liquor License for a one (1) day. Such licenses cannot exceed 12 per year. MCL 436.1111(10).

<sup>3</sup> Rule 436.1403(1) of the Michigan Liquor Control Commission prohibits the sell of alcohol between 2:00 am and 7:00 am on any day.

*and pg. 89, lines 2-5)*

### III. LAW/ARGUMENT

In response to Defendant Yost's and Buglo's Motion for Summary Judgment, Plaintiffs argue that Yost and Buglo lacked individualized probable cause to detain and ticket the 130 patrons at the CAID. Further, there was no objectively reasonable basis for Yost and Buglo to believe that their actions were supported by probable cause. Therefore, Yost and Buglo violated Plaintiffs' Fourth Amendment rights and are not entitled to qualified immunity.

For a police officer to have probable cause to arrest, there must be facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, under the circumstances, that the suspect has committed, is committing or is about to commit an offense. *Michigan v DeFillippo*, 443 US 31, 37, 61 L Ed 2d 343, 99 S Ct 2627 (1979).

Probable cause requires only the "probability of criminal activity" not a prima facie showing. *Criss v City of Kent*, 867 F.2d 259, 262 (6<sup>th</sup> Cir. 1988). The probability of criminal activity is assessed under a reasonableness standard based upon "an examination of all facts and circumstances within an officer's knowledge at the time of an arrest." *Estate of Dietrich v Burrows*, 167 F3d 1007, 1012, (6<sup>th</sup> Cir. 1999)

Probable cause is assessed "from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight." *Gardenhire v Schubert*, 205 F.3d 303, 315 (6<sup>th</sup> Cir. 2000). The Fourth Amendment does not require that a police officer *know* a crime occurred at the time the officer arrests or searches a suspect. *Id.* at 315.

In examining all facts and circumstances within Yost's and Buglo's knowledge at the time

of the raid, their conduct was reasonable under the circumstances. Based upon their undercover surveillance activity, Yost and Buglo believed that there was the probability of criminal activity at the CAID, when they witnessed, on at least three occasions: 1) the sell of beer and wine at the CAID without a liquor license, 2) the smoking and smell of Marijuana at the CAID, and 3) the sell of beer and wine at the CAID after 2:00 pm. This same activity occurred on May 31, 2008, which lead to the raid at approximately 2:30 am.

The owners of the CAID and the patrons, including Plaintiffs were violating state law. The patrons, including Plaintiffs knew or should have known that the CAID was operating without a liquor license in violation of state law. In addition, the patrons, including Plaintiffs knew or should have known that the sale of alcohol after 2:00 am was illegal in the State of Michigan. Hence, the patrons were loitering in a place of illegal occupation. (*See DK #85 - Exhibit A – pg. 129-130*)

Yost also believed that any vehicle, which patrons used to transport themselves to the CAID to engage in illegal activity could be seized under the Michigan Nuisance Abatement statute, being MCL 600.3801. Yost testified that she reached this conclusion based upon her review of the statute and consultation with the Wayne County Prosecutor's office. (*See DK# 85, Exhibit A – pg. 131, lines 1-24*)

#### IV. CONCLUSION

Predicated upon the facts of the instant case, the legal principals set forth, and for the legal reasons set forth herein, Plaintiffs fail to set forth a genuine issue of material fact to establish a cause of action against Defendants Yost and Buglo as they are entitled to qualified immunity.

**WHEREFORE**, Detroit Police Lieutenant. Vicki Yost and Detroit Police Sergeant Daniel Buglo respectfully request that this Honorable Court grant their Motion for Summary Judgment and

dismiss this action against them.

Respectfully submitted,

s/Lee'ah D. B. Giaquinto

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Date: May 22, 2012

**CERTIFICATE OF SERVICE**

**Lee'ah D. B. Giaquinto**, certifies that on May 22, 2012, she served a copy of **DEFENDANT LIEUTENANT VICKI YOST'S AND DEFENDANT SERGEANT DANIEL BUGLO'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT** and this **CERTIFICATE OF SERVICE** on the above-named attorney of record by electronically filing the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing. I declare that the statements above are true to the best of my information, knowledge, and belief.

Respectfully submitted,

**s/ Lee'ah D. B. Giaquinto**  
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Dated: May 22, 2012