Case No. 12-2674

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellees,

v.

CITY OF DETROIT; VICKIE YOST, a Detroit police officer, in her individual capacity; DANIEL BUGLO, a Detroit police officer, in his individual capacity UNNAMED DETROIT POLICE OFFICERS, in their individual capacities, GREGORY MCWHORTER, a Detroit police Sergeant; ANTHONY POTTS, a Detroit police Sergeant; CHARLES TURNER, MICHAEL BROWN, BRANDON COLE, TYRONE GRAY, SHERON JOHNSON; KATHY SINGLETON, Detroit Police Officers,

Defendants-Appellants.

On appeal from the United States District Court
Eastern District of Michigan at Detroit

BRIEF OF DEFENDANTS-APPELLANTS VICKIE YOST, DANIEL BUGLO, GREGORY MCWHORTER, ANTHONY POTTS, CHARLES TURNER, MICHAEL BROWN, BRANDON COLE, TYRONE GRAY, SHERON JOHNSON AND KATHY SINGLETON

ORAL ARGUMENT REQUESTED

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

_____Pursuant to 6th Cir. R. 26.1(a), the City of Detroit, a municipal corporation and individual employees thereof, are exempt from the requirement of filing a corporate affiliate/financial interest disclosure statement.

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Dated: March 25, 2013

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Pursuant to Sixth Circuit Rule 34(a), Defendants-Appellants Vickie Yost, Daniel Buglo, Gregory Mcwhorter, Anthony Potts, Charles Turner, Michael Brown, Brandon Cole, Tyrone Gray, Sheron Johnson, Kathy Singleton and the City of Detroit request that this Court docket this appeal for oral argument. Defendants-Appellants believe that oral argument is necessary and will enable counsel to succinctly place their clients' positions before the Court. Oral argument will be beneficial for all involved and the decisional process will be significantly aided by this Court's opportunity to pose questions concerning the facts and specific thrust of the parties' respective positions.

STATEMENT OF JURISDICTION

The Sixth Circuit Court of Appeals has appellate jurisdiction over Defendants Vickie Yost, Daniel Buglo, Gregory Mcwhorter, Anthony Potts, Charles Turner, Michael Brown, Brandon Cole, Tyrone Gray, Sheron Johnson, and Kathy Singleton's appeal of the district court's denial of qualified immunity raised in Defendants' Motion for Summary Judgment pursuant to 28 U.S.C.§1291 and §1292. (RE 115, Order Denying, Page ID# 3475, 3504-05). See Mitchell v Forsyth, 472 U.S. 511, 531, 86 L.Ed. 2d 411, 105 S.Ct. 2806 (1985). An order denying qualified immunity to a public official is immediately appealable pursuant to the "collateral order" doctrine found in 28 U.S.C. § 1292. Harrison v. Ash, 539 F.3d 510, 521 (6th Cir. 2008).

The Defendants timely Notice of Appeal was filed on December 18,2012. (RE 121, Notice of Appeal, Page ID# 3513).

STATEMENT OF THE ISSUES

I. WHETHER DEFENDANT POLICE OFFICERS ARE ENTITLED TO QUALIFIED IMMUNITY AS A MATTER OF LAW BECAUSE PROBABLE CAUSE TO ARREST DID EXIST AND, ALTERNATIVELY, IT WAS OBJECTIVELY REASONABLE FOR THE POLICE OFFICERS TO BELIEVE UNDER THE TOTALITY OF THE CIRCUMSTANCES THAT THERE WAS PROBABLE CAUSE TO ARREST, TO DETAIN, AND SEARCH THE PLAINTIFFS?

The District Court Answered, "No."

Plaintiffs-Appellees will Answer, "No."

Defendants-Appellants Answer, "Yes."

II. WHETHER DEFENDANT POLICE OFFICERS ARE ENTITLED TO QUALIFIED IMMUNITY AS A MATTER OF LAW BECAUSE PROBABLE CAUSE EXISTED TO ARREST PLAINTIFFS AND IT WAS OBJECTIVELY REASONABLE FOR THE POLICE OFFICERS TO BELIEVE THAT PROBABLE CAUSE EXISTED TO SEIZE THE VEHICLES UNDER THE NUISANCE ABATEMENT STATUTE?

The District Court Answered, "No."

Plaintiffs-Appellees will Answer, "No."

Defendants-Appellants Answer, "Yes."

STATEMENT OF THE NATURE OF THE CASE

This is an action filed under 42 U.S.C. § 1983, and the Fourth and Fourteenth Amendments of the United States Constitution arising from the detainment, search and arrest of Plaintiffs who were patrons at a "blind pig" establishment entitled the Contemporary Arts Institute of Detroit (hereinafter CAID) in the City of Detroit (City). Plaintiffs were charged with loitering in a place of illegal occupation pursuant to Section 38-5-1 of the Detroit City Code, the City's disorderly conduct ordinance. Some of the Plaintiffs' vehicles were seized for forfeiture under the Nuisance Abatement statute, MCL 600.3801.

The charges were dismissed by the Wayne County Prosecutor's Office. (R. 115, Order Page ID # 3480).

Defendant Police Officers appeal a decision of the United States District Court for the Eastern District of Michigan which denied Defendants' Motion for Summary Judgment based on qualified immunity on Plaintiffs' 42 U.S.C. §1983 claims of unlawful detainment, unlawful search and seizure of vehicles pursuant to the Nuisance Abatement statute. (R.115,118, Order Denying Summary Judgment, Notice of Appeal, Page ID # 3475, 3504-05, 3476-78). Defendants also argued that no constitutional violations occurred because of the existence of probable cause.

On February 18, 2010, Plaintiffs filed this action against Defendant City of

Detroit and Detroit police officers, 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. (R. 1, Complaint, Page ID# 1). On September 8, 2010, Plaintiffs filed their Amended Complaint alleging unlawful detention (Count One), Excessive Force(Count Two), Unlawful Search (Count Three), Malicious Prosecution (Count Four), Unreasonable seizure of Plaintiff's vehicles and property (Count Five), denying Plaintiffs due process by charging them with loitering in a place of illegal occupation in accordance with Section 38-5-1 of the Detroit City Code (Fourteenth Amendment -Count Six) and denying certain Plaintiffs due process by seizing their vehicles in accordance with the Nuisance Abatement Statute (Fourteenth Amendment -Count Seven). Plaintiffs claimed the City of Detroit has a custom, policy and practice of the aforementioned constitutional violations (Count 1-7). (R. 21, Amended Complaint, Page ID #1-46).

_____Defendants Yost and Buglo, (R. 80 ,85 Amended Motion for Summary Judgment,(AMSJ) Page ID #1176, 2277) and the City of Detroit and the remainder of the individual named Defendants (R. 84, Motion for Summary Judgment, (MSJ) Page ID #1791) filed Motions for Summary Judgment pursuant to Fed. R. Civ. Proc. 56(c). Defendants argued that no constitutional violations occurred because

Defendants conducted four surveillances of CAID and had probable cause to believe that a crime had been committed and was being committed, and to believe that Plaintiffs were knowingly loitering in a place of illegal occupation. Their vehicles were used as the mode of transportation to enable the Plaintiffs to contribute to such a nuisance. Therefore, the police officers had probable cause to seize the vehicles. Defendants argued that the police officers were shielded by the doctrine of qualified immunity because their actions were objectively reasonable. (R. 84 and R. 85, MSJ and AMSJ, Page ID #2277-2297).

The district court granted the Defendants' Motion for Summary Judgment on Plaintiffs' claims of excessive force (Count Two) , malicious prosecution (Count Three), and lack of due process (Counts Six and Seven) ,and dismissed Counts Two, Four, Six and Seven.

The district court denied Defendants' Motion for Summary Judgment on Plaintiffs' claims against the City of Detroit, and the claims against the individual Defendants for Unlawful Detainment (Count One), Unreasonable Search (Count Three) and seizing Plaintiffs' property(Count Five). The court ruled that the Defendant police officers lacked probable cause and /or reasonable suspicion to detain, arrest and search the Plaintiffs and to seize their vehicles. The court further determined that Defendants were not shielded by the doctrine of qualified immunity.

(R. 115, Opinion, Page ID # 3475-78, 3504-3505). This appeal of the denial of the police officers' qualified immunity shield was timely filed.

STATEMENT OF FACTS

Plaintiffs were patrons at the Contemporary Art Institute of Detroit (hereinafter "CAID") in the City of Detroit on the evening of May 31, 2008 and a few had been patrons on prior occasions. They attended a popular late-night event known as "Funk Night," which occurred the last Friday of each month. Funk Night occurred after hours, i.e., after 2:00 am, and involved the selling of alcohol. CAID was operating on each occasion without a license to sell alcohol at any time and did not have that license on May 31, 2008. (R.115, Opinion, Page ID# 3478).

Prior to March 29, 2008, Lieutenant Vicki Yost (Yost), the commanding officer of the Detroit Police Department's Vice Enforcement Unit, received complaints of unlicensed and after hours liquor sales and narcotic activity at the CAID located at 5141 Rosa Parks Boulevard, Detroit, Michigan (R 84, Motion for Summary Judgement (MSJ), Exh 1, Anticipatory Search Warrant #08001827; Page ID# 1822-1827; Exh 2, CAID photographs, Page ID# 1828; Exh 3, Yost dep., p. 41, lines 14-25, p. 42, lines 1-7, p. 49, lines 9-11; Page ID# 1832,1841-1843; Exh 4, Buglo dep., p. 30, lines 10-16, p. 32, lines 14-25, Page ID# 1879). This activity was occurring on the last Friday of each month and carrying over into the early morning hours of Saturday (R.84, Exh 1, p. 2, Page ID # 1822-1828). CAID referred to these events as "Funk Night" for "members only"and is considered a "blind pig" establishment. (R.

84, Exh 5, CAID Funk Night advertisements, Page ID # 1911-1912). Sergeant Buglo (Buglo) described a blind pig as "...a place that served alcohol after hours that is unlicensed." Buglo also explained that there are times when prostitution and gambling are part of blind pig activity. (R. 85, Amended Motion for Summary Judgment (AMSJ), Exhibit B - pg. 29,lines 15-18, Page ID#2348.) 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. (R. 85, AMSJ- Exhibit A - pg. 51, lines 3-19, Page ID# 2314). A "blind pig" is a regional Prohibition-Era term for a "speakeasy," an establishment that sells and serves alcoholic beverages illegally. (R. 115, Decision and Order, Page ID# 3478). Yost and Buglo conducted four (4) surveillance, undercover operations at the CAID. (R. 85, AMSJ, Exhibit A - pg. 33, Page ID# 2309; Exhibit B - pgs. 24-25, Page ID# 2347)

March 29, 2008 Surveillance

In response to the complaints, on March 29, 2008, Lieutenant Yost and Detroit Police Sergeant Daniel Buglo (Buglo) conducted a surveillance operation outside of the CAID. (R. 84, MSJ, Exh 1, p. 2, Page ID # 1822, 1827; Exh 6, Buglo DPD Preliminary Complaint Record dated 3/29/08, Page ID # 1914) to determine whether illegal activity was occurring at the location (R. 85, AMSJ, Exh A pp 45-46, Page ID#

2312-2313) At the location, the officers observed a large number of parked vehicles and many young people entering the side door of the building, heard loud music coming from inside the building, observed young white male and female CAID members concealing and drinking intoxicants, and smelled a strong odor of marijuana coming from a fenced-in outside patio area where several CAID members were gathered. (R. 84, MSJ, Exh 1, p. 2, Page ID # 1822-1827; Exh 2, Page ID # 1829-1830; Exh 3, p. 31, lines 17-25, p.32, line 1, p. 38, lines 3-10, p. 39, lines 16-18, p. 59, lines 18-25, p. 60, lines 1-12, Page ID # 1839, 1841 1846; Exh 4, pp. 34-38, lines 1-5, Page ID # 1880-1881).

April 26th Surveillance

On April 26, 2008, at 1:00 a.m., Yost and Buglo conducted an undercover operation at the CAID (R 84, Motion for Summary Judgment, Exh 1, p. 2, Page ID #1822-1827; Exh 3, p. 32, line 11-21, p. 44, line 1, p. 45, lines 1-6, Page ID # 1839, 1842; Exh 4, pp. 39-49, Page ID # 1881-1883; Exh 7, Buglo DPD Preliminary Complaint Record dated 4/26/08, Page ID # 1916. The officers entered the CAID in response to "blind pig" activity complaints (R 84, MSJ, Exh 1, p. 2, Page ID # 1822-1827; Exh 7, Page ID # 1916). Upon entry, both officers paid a $5.00 cover charge and purchased the required one month membership for $3.00 from the doorman and filled out a membership card as requested by the doorman. (R. 84, Exh

1, p. 3, Page ID # 1822-1827; Exh 3, p. 52, lines 7-11, Page ID # 1844; Exh 7, Page ID # 1916). CAID personnel entered the officers' information into a laptop computer (R 84, Exh 1, p. 3, Page ID # 1822-1827). Then the officers were allowed to enter the location. Id.

The officers approached the bar and observed member purchases of Budweiser Select beer on tap and boxed wine for sale. (R. 84, MSJ, Exh 1, p .3, Page ID # 1822-1827; Exh 4, p. 42, lines 21-25, p. 43, lines 1-12, Page ID # 1882; Exh 7, Page ID # 1916). Both officers purchased a cup of beer for $3.00 from the bartender (R. 84, Exh 1, p. 3, Page ID #1822-1827; Exh 3, p. 52, lines 15-22, Page ID # 1844; Exh 4, p. 44, lines 13-16, Page ID # 1882; Exh 7, Page ID # 1916).[1] The officers then mingled with the crowd of approximately 100 CAID members while a live band was playing (R. 84, Exh 1, p. 3, Page ID #1822-1827; Exh 7, Page ID # 1916).

After several minutes, Yost and Buglo walked out of the building into a fenced-in yard or patio area. (R. 84, Exh 1, p. 3, Page ID #1822-1827; Exh 7, Page ID # 1916). Buglo observed several CAID members with cans of beer and liquor bottles (R. 84, Exh 1, p. 3, Page ID # 1822-1827; Exh 7, Page ID # 1916). Yost and Buglo

[1]Plaintiff Jason Leverette-Saunders had attended six or seven CAID Funk Nights before the May 31, 2008, Funk Night (Exh 8, Leverette-Saunders dep., p. 13, lines 1-5). He purchased alcohol and witnessed alcohol sales by the cup inside the CAID. Id., p. 14, lines 4-23, Page ID# 1921.

also observed several members smoking what appeared to be and smelled like marijuana (R. 84, Exh 1, p. 3, Page ID # 1822-1827; Exh 3, p. 54, lines 11-24, Page ID # 1844; Exh 7, Page ID # 1916). The officers sat at a picnic table near a member named "Dan" and observed Dan take out a baggie of suspected marijuana. (R. 84, Exh 1, p. 3, Page ID #1822-1827; Exh 3, p. 54, lines 11-24, Page ID # 1844; Exh 4, p. 46, lines 8-17, Page ID #1883; Exh 7, Page ID # 1916). Dan rolled three marijuana cigarettes, lit the cigarettes, and passed the cigarettes around to other members sitting around the picnic table. (R. 84, Exh 1, p. 3, Page ID # 1822-1827; Exh 3, p. 54, lines 11-24, Page ID #1844; Exh 7, Page ID # 1916).

At approximately 2:20 a.m., Buglo purchased another beer from the bar. (R. 84, Exh 1, p. 3, Page ID #1822-1827; Exh 4, p. 48, lines 17-25, p. 49, lines 3-5, Page ID # 1883-84; Exh 7, Page ID # 1916). The officers departed the CAID at 2:30 a.m. as CAID members were standing in line to enter the building and members in vehicles were continuing to arrive in the CAID parking lot. (R. 84, Exh 1, p. 3, Page ID # 1822-27; Exh 4, p. 49, lines 11-14, Page ID # 1883-84; Exh 7, Page ID #1916).

At some point, before the May 31, 2008, raid, Lieutenant Yost spoke to Aaron Timlin, the CAID operating manager responsible for Funk Nights regarding the illegal activities she had observed. (R. 84, Exh 3, p. 91, lines 5-25, p.92, lines 1-9, 21-25, p. 93, lines 1-25, p. 94, lines 1-13, p. 98, lines 5-12, Page ID #1854-55). Timlin

rejected Yost's enforcement counseling efforts. Id.

May 24, 2008

On May 24, 2008, Buglo conducted another surveillance operation outside the CAID in furtherance of the Vice Enforcement investigation of blind pig activity. (R. 84, Exh 1, p. 3, Page ID #1822-27. Again, at the location, Buglo observed a large number of parked vehicles and several young people entering the building carrying cans of beer, heard loud music coming from inside the building, observed young white male and female CAID members concealing and drinking intoxicants, and smelled a strong odor of marijuana coming from an attached outside patio area where several CAID members were gathered. Id.[2]

Anticipatory Search Warrant

On May 29, 2008, Buglo checked with the City of Detroit Consumer Affairs Department and confirmed the CAID was not licensed to conduct business in the City of Detroit (R. 84, Exh 1, p. 4, Page ID #1822-27). Buglo also confirmed with the Michigan Liquor Control Commission that the CAID was not licensed to sell liquor in the State of Michigan. Id.

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[2] Plaintiff Darlene Hellenberg admitted in her deposition testimony that during the multiple times she had previously visited the CAID, she smelled marijuana. (Exh 9, Hellenberg dep., p. 27, line 20-25, p. 28, lines 1-7, Page ID#1937).

Subsequently, on May 29, 2008, Sergeant Daniel Buglo obtained a signed Anticipatory Search Warrant for the Contemporary Arts Institute of Detroit. Id.[3] The Warrant was approved by Assistant Wayne County Prosecutor Sarah Ann DeYoung and State of Michigan 36th District Court Magistrate Steven Lockhart (R. 84, Exh 1, pp.1-5, Page ID # 1822-27; Exh 4, p. 65, lines 5-9, Page ID #1887).

The Warrant allowed for the Vice Enforcement Unit to continue their investigation on May 30, 2008, and upon making further observations of the operation of the CAID as a place of illegal occupation[4], authorized execution of the Warrant by the Detroit Police Department. (Exh 1, pp. 1, 4, 5, Page ID #1822-27). The Warrant allowed Detroit Police officers to enter the premises, secure the premises, detain the occupants including Plaintiffs Mobley, Kaiser, Wong, Washington, Price, Hollander, Leverette-Saunders, Hellenberg, and Mahler, take

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[3]A search warrant labeled "Anticipatory" requires additional observations of illegal activities consistent with those outlined in the search warrant to be valid. In this case, "Anticipatory" refers to additional observations of alcohol sales without a liquor license or sale after 2:00 a.m. (R. 84, Exh 1, pp.1, 4, 5; Exh 3, p. 30, lines 23-25, p. 31, lines 1-4, Page ID#1822-27,1839)

[4]The "illegal occupation" at issue in this lawsuit is the CAID, an unlicensed establishment serving liquor without a Michigan liquor license or an establishment, whether licensed or not, selling liquor after legal hours (2:00 a.m.), contrary to Michigan law. Such establishment is commonly referred to as a "blind pig" (Exh 3, p. 51, lines 3-19; Exh 4, p. 29, lines 14-21; Exh 6; Exh 7, Page ID#1844,1878,1914,1916).

enforcement action against the CAID members, and seize evidence or contraband during the search. (R. 84, Exh 1, pp.1, 4, Page ID # 1882-87).

Arrest and Search on May 31, 2008

After, preparing for the undercover operation, on May 31, 2008, at approximately 12:15 a.m., the Vice Unit arrived at the Tactical Mobile Unit base to further prepare for the CAID operation. (R. 84, Exh 3, p. 61, lines 14-17, Page ID # 1846; Exh 10, Page ID # 1946).

At approximately 1:45 a.m. - 1:55 a.m., Yost and Buglo arrived at the CAID, in an undercover capacity, to confirm the illegal blind pig activity. (R. 84, Exh 3, p.55, line 25; p. 56, lines 1-10, Page ID #1845; Exh 10, Page ID # 1946; Exh 11, DPD Crime Rpt #0805310096.1, Page ID #1959-65). Several Plaintiffs such as Darlene Hellenberg, Stephanie Hollander, Ian Mobley, James Washington, and Jason Leverette-Saunders were already in attendance at the CAID when the officers arrived. (R. 84, Exh 8, p. 18, line 25; p. 19, line 1, Page ID # 1922; Exh 9, p. 17, lines 2-10, Page ID #1935; Exh 12, Hollander dep., p. 18, lines 10-11, Page ID # 1971; Exh 13, Mobley dep., p. 25, lines 16-19, Page ID #1984; Exh 14, Washington dep., p. 20, lines 16-22, Page ID #1995; Exh 15, Nathaniel Price dep., p. 17, lines 23-24, Page ID #2007). Other Plaintiffs such as Thomas Mahler, Nathaniel Price, Angie Wong and Paul Kaiser arrived after the Yost and Buglo, at approximately 2:00 a.m. (R. 84, Exh 16, Mahler

dep., p. 18, lines 11-14, Page ID # 2016; Exh 17, Kaiser dep., p. 33, lines 6-7, Page ID # 2034) After Paul Kaiser and Angie Wong entered the CAID, Paul's brother, Mark Kaiser, purchased three beers (R. 84, Exh 17, p. 28, lines 14-21, p. 32, lines 2-11, Page ID # 2033; Exh 18, Wong dep., p. 26, lines 8-14, lines 24-25, p. 27, line 1, Page ID # 2054). Plaintiffs Angie Wong, Darlene Hellenberg, Jason Leverette-Saunders, Stephanie Hollander, Thomas Mahler, and Nathaniel Price had been present at prior CAID Funk Nights. (Exh 8, p. 11, lines 20-24, Page ID # 1920; Exh 9, p. 11, line 25, p. 12, lines 1-9, p. 27, lines 20-24, Page ID # 1933,1937; Exh 15, p. 10, lines 12-25, Page ID #2004; Exh 16, p. 7, lines 1-16, Page ID #2013; Exh 18, p. 20, lines 8-13, Page ID # 2052; Exh 19, Wanda Leverette dep., p. 11, lines 7-17, p. 13, lines 1-5, Page ID # 2063-64).

To enter the CAID on May 31, 2008, the doorman required Yost and Buglo to pay a $5.00 cover charge and purchase a $3.00 monthly membership (R. 84, Exh 11, Page ID #1959-1965). After Yost and Buglo entered the CAID, they stood by the bar, smelled a strong odor of marijuana, and observed alcohol was being sold to members, before and after 2:00 a.m., in the absence of a State of Michigan Liquor License. (R. 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, Page ID #1845-48; Exh 4, p. 57, lines 7-17; p. 58, lines 9-23; p. 59, lines 24-25; p. 60, lines 1-3, Page ID #1885-86; Exh 8, p. 26, lines 6-25;

p. 27, lines 1-25; p. 28, lines 1-6, Page ID #1924; Exh 11, Page ID # 1959-65; Exh 12, p. 19, line 25, p. 20; line 1-2, Page ID # 1971; Exh 16, p. 20, lines 23-25; p. 21, lines 14-23; p.24, lines 8-18, Page ID # 2016-17; Exh 17, p. 28, lines 14-25; p. 29, lines 1-6, Page ID #2033; Exh 18, p. 26, lines 8-14, lines 24-25, p. 27, line 1, Page ID #2054). According to Defendant Brandon Cole, there was a sign displaying an alcoholic beverage price list at the bar. (R. 84, Exh 20, Cole dep., p. 51, lines 1-4, Page ID # 2083).

Ordinance and Statute at Issue

The disorderly conduct ordinance under which Plaintiffs were ticketed on May 31, 2008 was City Code § 38-5-1. It then read:

> Any person who shall make or assist in making any noise, disturbance, or improper diversion or any rout or riot, by which the peace and good order of the neighborhood is disturbed, or any person who shall consume alcoholic beverages on any street or sidewalk, or who shall engage in any indecent or obscene conduct in any public place, or who shall engage in an illegal occupation, or who shall loiter in a place of illegal occupation, shall be guilty of a misdemeanor.[5]

May 31, 2008 arrest con'd

At approximately 2:10 a.m., Yost made the decision, and advised approximately 40 assembled police officers including the Defendants and two Narcotic crews

[5]After suit was filed, the ordinance was amended to prohibit loitering in a place of illegal occupation "with the intent to engage in such illegal occupation".

positioned outside the building, to execute the Warrant. (R.84, Exh 3, p.68, lines 3-7, p. 81, lines 5-25, p. 82, lines 1-6, Page ID #1848,1851-52). The small Narcotics entry team entered the CAID building at approximately 2:20 a.m., followed immediately by many Tactical Mobile officers, and the small number of remaining Vice Enforcement Unit officers (R. 84, Exh 10, Page ID #1946). Several Tactical Mobile officers also took security positions around the perimeter of the building.

Although Officer Kathy Singleton assisted as a member of a Narcotics crew, she does not recall the particulars of the entry into the CAID location. (R. 84 Exh 24, Singleton dep., p. 29, lines 23-25, p. 30, lines 1-25, p. 31, lines 1-13, Page ID # 2160-61). When Sergeant Gregory McWhorter arrived at the CAID, he initially stayed outside the building to supervise and manage his Tactical Mobile crew members conducting perimeter security and subsequently went inside the CAID doorway to check on his crew members responsible for securing the doorway area. (R. 84, Exh 22, p. 49, lines 9-25, p. 50, line 1, Page ID # 2113-2114). Sergeant Anthony Potts entered the CAID after the Narcotics entry team and supervised his Tactical Mobile crew members segregating the male members from the female members. (R. 84, Exh 23, p. 69, lines 6-11, Page ID # 2145-48). Officer Brandon Cole merely entered the building a couple of minutes behind the Narcotics crew, did a quick sweep of the interior of the building, and then exited the building and maintained a perimeter security post outside

the building. (R. 84, Exh 20, p. 50, lines 5-6, 17-25, Page ID #2083).

Officer Tyrone Gray entered the CAID with the entry team and was responsible for clearing the various parts of the building of any danger to the entering police officers and subsequently monitoring the CAID members. (R. 84, Exh 25, Gray dep., p. 42, lines 22-25, p. 43, lines 1-4, Page ID #2182). After the location was secured by the entry team and Tactical Mobile units, Sergeant Charles Turner supervised the seizure of evidence from the CAID and supervised the prisoner processing table. (R. 84, Exh 26, Turner dep., p. 42, lines 1-2, Page ID #2211). Officer Sheron Johnson assisted in securing the female CAID members by searching them and, subsequently, worked at the prisoner processing table. (R. 84, Exh 27, Johnson dep., p. 52, lines 22-24, p. 55, lines 18-25, p. 56, lines 1-17, Page ID # 2236-37).

During the execution of the Warrant, 134 people were detained including Plaintiffs Ian Mobley, Paul Kaiser, Angie Wong, James Washington, Nathaniel Price, Stephanie Hollander, Jason Leverette-Saunders, Darlene Hellenberg, and Thomas Mahler. (R. 84, Exh 10, Page ID #1946; Exh 11, Page ID # 1959-65). Most, if not all, of the detained individuals were issued misdemeanor citations and released in lieu of arrest. (R. 84, Exh 10, Page ID #1946; (R. 84, Exh 11, Page ID #1959-65). Four individuals were cited for "Engaging in an Illegal Occupation" or operating a blind pig in violation of Section 38-5-1 of the Detroit City Code. (R. 84, Exh 10, Page ID #

1946; Exh 11, Page ID # 1959-65). These operators were Joseph Timlin (doorman and host), Christopher Shoemaker (doorman), Jennifer Schraeder (bartender), and Brandon Walley (houseman). The remaining occupants, including the Plaintiffs, were cited for "loiter in a place of illegal occupation" or loitering in a blind pig, contrary to Section 38-5-1 of the Detroit City Code.[6] (R. 84, Exh 10, Page ID # 1946; Exh 11, Page ID # 1959-65).

During the criminal proceedings, the operators of the CAID entered guilty pleas. Just before the trial date, all citations against the remaining occupants were dismissed without prejudice by the City of Detroit prosecutor based on insufficient evidence of proof beyond a reasonable doubt for the offense alleged. (R. 84, Exh 28, Mahler misdemeanor ordinance violation ticket, Page ID# 2252).

During the execution of the Warrant, Detroit Police officers seized 44 vehicles under the Michigan Nuisance Abatement Statute including vehicles owned by Plaintiffs Kimberly Mobley, Jerome Price, Wanda Leverette-Saunders, and Laura Mahler. (R. 84, Exh 10, Page ID# 1946; Exh 21, Page ID# 2096). According to the Warrant Return, the

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[6] 93% of the occupants were non-residents of the City of Detroit (Exh 10; Exh 11). Nearly half or approximately 48% of the patrons were under 21 years of age according to the identification presented to police officers (Exh 10; Exh 11). At least two of the patrons were minors indicating there was no legal drinking age or adult age restrictions for membership or admission (Exh 3, p. 77, lines 3-7; Exh 10; Exh 11) (Page ID# 1850, 1946,1959-65).

officers also seized large amounts of beer and wine, and United States currency as proceeds from the unlawful activity. (R. 84, Exh 1, Return To Search Warrant, Page ID# 1822-27; Exh 29, DPD Crime Rpt #0805310096.2, Page ID#2256).

The Wayne County Prosecutors Office handled the civil nuisance abatement actions and ultimately returned the vehicles to the Plaintiff vehicle owners with the exception of Plaintiff Jerome Price. (R. 84, Exh 30, Wayne County Prosecutor Release of Vehicle form, Page ID#2265). Plaintiff Jerome Price's vehicle was stolen from the tow yard. He filed a claim and received a monetary settlement from the towing company. (R. 84, Exh 31, Jerome Price dep., p. 27, lines12-16, Page ID#2274). Plaintiffs Laura Mahler, Wanda Leverette, Angie Wong, Darlene Hellenberg, Jerome Price paid fees ranging from $400.00 - $1200.00 for the return of their vehicles; Plaintiff Kimberly Mobley did not pay a fee for the return of her vehicle.

SUMMARY OF ARGUMENT

Defendants' Motion for Summary Judgment should have been granted because they did not violate the constitutional rights of Plaintiffs, as under the totality of the circumstances, probable cause existed to detain, arrest and search the Plaintiffs for loitering in a place of illegal occupation.

This Court should reverse the district court's denial of summary judgment to Defendants because Defendant Police Officers were entitled to qualified immunity as a matter of law on Plaintiffs' claims of unlawful detention and search of the Plaintiffs and seizing of their vehicles.

In each of the four surveillances of the CAID, including the day of the raid, Defendants Yost and Buglo observed the sell of alcohol without a license , prior to and after 2:00 a.m., smelled the strong odor of marijuana and even observed patrons smoking marijuana and passing it around for others to smoke , heard loud music and observed high traffic in the area. Based on their training and experience and the totality of the circumstances, Yost and Buglo reasonably believed that the CAID was a blind pig and that patrons were aware that the illegal establishment was operating without a liquor license. Yost's and Buglo's experience and training, along with objective observations, allowed them to reasonably believe under the totality of the circumstances the Plaintiffs knew this was a place of illegal occupation and that

probable cause existed to detain or arrest them. See United States v. Pasquarille, 20 F.3d 682,685 (6th Cir. 1994). The smell of marijuana in the patio area also served as a basis for probable cause to detain and search the Plaintiffs. The search of the patrons was objectively reasonable under the circumstances as they objectively believed their actions were taken pursuant to a lawful arrest, or alternatively reasonable suspicion of a crime. United States v. McCray, 102 F.3d 239 (6th Cir. 1996)(inventory search incident to arrest is an exception to the warrant request and inherently "reasonable"). Significantly Plaintiffs Hellenberg, Wong, Leverette-Saunders, Hollander, Mahler and Price had patronized CAID on more than one occasion and observed the smoking of marijuana (Hellenberg) and the sell of liquor and it could be reasonably inferred that they were aware that the establishment did not have a liquor license. Accordingly based on the collective knowledge of the officers, the Defendants actions in detaining, arresting and searching the Plaintiffs were objectively reasonable in believing that a crime was being committed or had been committed and making a determination that probable cause existed.

Defendant police officers are still entitled to qualified immunity "if a reasonable officer could have reasonably believed that probable cause existed to arrest the Plaintiffs for the charge or any charge" in light of clearly established law and the information the arresting officers possessed. Hunter v. Bryant, 502 U.S. 224, 228-29

112 S. Ct. 534, 116 L. Ed. 2d 589 (1991); See Nails v. Riggs, 195 Fed. Appx. 303, 311 (6th Cir. 2006) It is objectively reasonable for police officers in this case to use their experience, in the context of the totality of the factual circumstances of this case, to infer that the Plaintiffs were aware that liquor was being sold without a license. Probable cause does not require proof beyond a reasonable doubt. Rarely will a patron admit that they knew liquor was being sold without a license, and their ignorance of the law that one can not sell liquor after 2 a.m is no excuse.

The district court's ruling that the mere presence of Plaintiffs at the blind pig did not constitute probable cause should not foreclose the protection of qualified immunity from the officers in the context of this case. See Parsons v City of Pontiac, 533 F3d 492,501 (6th Cir 2008). See Smith v. Patterson, 430 Fed Appx. 438 (6th Cir. 2011) (unpublished opinion); Scott v Kelley, 2012 U.S. Dist Lexis 18170 (E.D. Ky. 2012), Officers of reasonable competence could disagree about whether probable cause existed and if reasonable minds differ as to whether the factual circumstances established probable cause then Defendants are entitled to qualified immunity. See Malley v Briggs, 475 U.S. 335, 334-45, 106 S.Ct. 1092, 1098, 89 L Ed 2d271 (1986).

The seizures of the vehicles were justified on the ground that Plaintiffs' cars were forfeitable contraband within the meaning of Michigan's Nuisance Abatement Statute MCL 600.3801. An objectively reasonable police officer would have believed

that the act of seizing the vehicle pursuant to the Nuisance Abatement Statute was lawful. Defendants should not lose their qualified immunity when under the totality of the facts, there were reasonably objective facts that lead them to believe that a crime had been committed or was being committed.

STANDARD OF REVIEW

The Sixth Circuit Court of Appeals reviews de novo a district court's denial of qualified immunity. Klein v Long, 275 F.3d 544, 549 (6th Cir. 2001)

This Court reviews de novo the district court's granting of summary judgment pursuant to Fed.R.Civ.P.56(c). Wathen v. General Elec. Co., 932 F.2d 495, 500 (6TH Cir. 1991). This standard of review applies to all argument herein. Mixed questions of law and fact are reviewed de novo. Williams v. Mehra, 186 F.3d 685, 689 (6th Cir. 1999).

A motion under Rule 56 tests the evidence in support of the claim rather than the pleadings, to determine if genuine issues as to any material facts exist. See City Management Corp. v. U.S. Chemical Co., Inc., 43 F.3d 244, 250 (6TH Cir. 1994). Summary judgment against the non-movant is appropriate where the non-movant fails to make a showing sufficient to establish the existence of a material disputed fact. Celotex Crop. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). The court must view all facts and inferences drawn from the evidence in the light most favorable to the non-moving party. Matsushita Elec. Inc. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-588, 89 L.Ed.2d 538, 106 S.Ct. 1348 (1986). Although the trial court views the evidence in a light most favorable to nonmovants, Terry Barr Sales Agency, Inc. v. All-Lock Co., 96 F.3d 174, 178 (6TH Cir. 1996) (citation omitted), the

nonmovant must nonetheless present significant probative evidence to support his or her claim. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249; 91 L.Ed 2d 202, 106 S.Ct. 2505 (1986). "The mere existence of a scintilla of evidence in support of the [nonmovants] position will be insufficient and will not forestall summary judgement ; there must be evidence on which the jury could reasonably find for the [nonmovants]." Anderson, 477 U.S. at 251-252. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly granted motion for summary judgment. Id. at 247-48.

Irrelevant or unnecessary factual disputes do not create genuine issues of material fact. St. Francis Health Care Ct., v. Halala, 205 F.3d 937, 943 (6th Cir. 2000). Evidence submitted in opposition to a motion for summary judgment must be admissible. U. S. Structures Inc. v. J P Structures, 130 F.3d 1185, 1189 (6th Cir. 1997).

The party who bears the burden of proof must present a jury question as to each element of the claim. Davis v. McCourt, 226 F.3d 506, 511 (6TH Cir. 2000). Failure to prove an essential element of a claim renders all other facts immaterial for summary judgment purposes. Elvis Presley Enters, Inc. v. Elvishly Yours, Inc., 936 F2d 889, 895 (6th Cir.1991). _____

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BECAUSE PROBABLE CAUSE EXISTED TO DETAIN AND ARREST PLAINTIFFS AS A MATTER OF LAW, AND ALTERNATIVELY, DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY AS A MATTER OF LAW BECAUSE THEIR ACTIONS WERE OBJECTIVELY REASONABLE UNDER THE TOTALITY OF THE CIRCUMSTANCES.

Plaintiffs claim that they were arrested for their mere presence at CAID and, therefore no probable cause existed and that the police officers did not ascertain whether patrons knew they were in a place of illegal occupation. The district court ruled that the police did not have probable cause to believe that the patrons knew that the owners did not have the proper licenses to sell and serve alcohol and no probable cause existed to detain or to arrest them. Therefore, the police officers lacked probable cause to arrest Plaintiffs and violated the Fourth Amendment prohibition against illegal searches, arrests, and seizures and are not entitled to qualified immunity. (R. 115, Opinion, Page ID#3477,3480-81). Plaintiffs do not challenge that the DPD had probable cause to obtain the Anticipatory Search Warrant, but assert the warrant did not authorize the search and detention of any person. Further, Plaintiffs argue that the seizure of the vehicles constitute an unlawful taking of property because the police office lacked probable cause to believe the vehicle had been used for an unlawful

purpose. (Id.)

The district court erred in finding a constitutional violation in the detention, arrest, and search of Plaintiffs and in denying Defendants qualified immunity. The police officers' actions were objectively reasonable under the totality of the circumstances. Therefore, even assuming that a constitutional violation occurred, Defendants were entitled to qualified immunity on all of Plaintiffs' claims.

A. Probable Cause to Detain and Arrest Existed Under The Totality of The Circumstances.

A review of the record establishes that probable cause existed as a matter of law. The district court erred in its determination that probable cause did not exist to search, detain and arrest Plaintiffs.

The "validity of an arrest does not depend on whether the suspect actually committed a crime" or the ultimate finding of his innocence. Michigan v. DeFillippo, 443 U. S. 31, 36, 61, 99 S. Ct. 2627, 61 L. Ed. 2d 343 (1979); Criss v. City of Kent, 867 F.2d 259, 262-263 (6th Cir. 1988). Therefore, the fact that a Plaintiff was later acquitted, or that the Plaintiffs in the instant case charges were dismissed is irrelevant to the determination of whether probable cause existed. Accordingly, "in order for a wrongful arrest claim to succeed under §1983, a plaintiff must prove that the police lacked probable cause." Fridley v. Horrighs, 291 F.3d 867 (6th Cir. 2002).

Whether an officer is authorized to make an arrest ordinarily depends, in the first instance, on state law. Michigan v. DeFillippo, 443 U.S. 31,36. Yost and Buglo determined that based on the four surveillances wherein they observed the above described activities, that there was probable cause to arrest under City Code § 38-5-1, for loitering in a place of illegal occupation, then read as follows:

> Any person who shall make or assist in making any noise, disturbance, or improper diversion or any rout or riot, by which the peace and good order of the neighborhood is disturbed, or any person who shall consume alcoholic beverages on any street or sidewalk, or who shall engage in any indecent or obscene conduct in any public place, or who shall engage in an illegal occupation, or who shall loiter in a place of illegal occupation, shall be guilty of a misdemeanor.

Yost's and Buglo's first hand observations of the unlawful selling of alcohol and smell of marijuana and its use created probable cause to detain or arrest the Plaintiffs. Where probable cause exists a police officer is allowed to make an arrest without a warrant for a misdemeanor committed in his presence. United States v. Reed, 220 F.3d 476, 478 (6th Cir. 2000).

A police officer has probable cause to make an arrest when, at the moment of the arrest, the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information, are sufficient to warrant a prudent and fair-minded person's belief that the plaintiff had committed a felony. Michigan v. DeFillippo, supra at 443 U.S. 31, 37, 99 S. Ct. 2627, 2632; Peet v City of Detroit, 502

F.3d 557, 563 (6th Cir. 2007); Crockett v. Cumberland College, 316 F.3d 571 (6th Cir. 2003). The inquiry "depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest." Devenpeck v. Alford, 543 U. S. 146, 125 S. Ct. 588, 160 L. Ed. 2d 537 (2004). In determining whether an arrest is supported by probable cause the court must look at the "totality-of-the-circumstances." United States v. Romero, 452 F.3d 610, 615-16 (6th Cir. 2006), cert. denied, 549 U.S. 1237, 127 S. Ct. 1320, 167 L. Ed. 2d 130 (2007); Harris v. Bornhorst, 513 F.3d 503, 511 (6th Cir. 2008), cert. denied, 128 S. Ct. 2938, 171 L. Ed. 2d 865 (2008).

In reviewing whether probable cause existed, the court observes the totality of the circumstances, giving due weight to the inferences police officers could draw from their general experience. United States v Sherill, 27 F.3d 344, 347 (8th Cir. 1994). "Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity, or even a prima facie showing of wrongdoing." Illinois v. Gates, 462 U. S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); United States v. Trujillo, 376 F.3d 593, 603 (6th Cir. 2004); Criss v City of Kent, 867 F.2d 259, 262 (6th Cir. 1988). While Defendants were required to show more than mere suspicion, they were not required to "possess evidence sufficient to establish a prima facie case at trial, much less evidence sufficient to establish guilt beyond a reasonable

doubt." United States v. Romero, 452 F.3d supra at 615-616.

Yost and Buglo

Plaintiffs claim that Yost and Buglo violated their Fourth Amendment Constitutional rights. Plaintiffs claim that on May 31, 2008, they were unlawfully detained, unreasonably searched, maliciously prosecuted and their vehicles were unlawfully seized at the direction of Defendants Yost and Buglo. Further, that Defendants lacked individualized probable cause to detain and arrest them. Further, there was no objectively reasonable basis for them to believe that their actions were supported by probable cause. Therefore, the court ruled that Yost and Buglo and the other police officers violated Plaintiffs' Fourth Amendment rights and are not entitled to qualified immunity.

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, (6th 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 (6th 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 and the Anticipatory Search warrant, 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 sale 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 a.m. which is against the law.[7] 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 Plaintiff,s 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.

Probable cause does not require evidence that is completely convincing or even evidence that would be admissible; all that is required is that the evidence be sufficient

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[7]R 436.2114 of the Michigan Administrative Code prohibits the sale of liquor between 2:00 a.m. and 7:00 a.m. MCL 436.1909 makes it a criminal offense to violate a rule or regulation passed under the Act.

to lead a reasonable officer to conclude that the arrestee has committed a crime. Harris v. Bornhurst, 513 F.3d 503, (6th Cir.2008). Probable cause to arrest does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt. United States v. Glasser, 750 F.2d 1197, 1205 (3rd Cir. 1984). Furthermore, probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction. United States v. Romero, 452 F.3d 610, 615-616.(6th Cir.) (probable cause does not require evidence that proves beyond a reasonable doubt); Lyons v. City of Xenia, 417 F.3d 656, 757 (6th Cir. 2005). Accordingly, the district court failed to assess probable cause from the perspective of a reasonable police officer on the scene, rather than with 20/20 vision of hindsight. Klein v. Long, 275 F.3d 544,550 (6th Cir. 2007).

The totality of the facts and circumstances established probable cause. Probable cause must be based on more than ill defined hunches. However, it is settled law that officers may draw on their experience and training and objective observations to draw their own inferences from and deductions about the cumulative information available to them that might elude an untrained person. United States v. Pasquarille, 20 F.3d 682,685 (6th Cir. 1994). Yost's and Buglo's experience and training, along with objective observations, allowed them to reasonably believe under the totality of the circumstances that the Plaintiffs knew this was a place of illegal occupation and that

probable cause existed to detain or arrest them.

McWhorter, Cole, Brown, Potts, Singleton, Turner, Johnson, Gray, and Other Defendants' Lawful Search and Arrest

Contrary to the allegations in Plaintiffs' Complaint, the Detroit police officers had reasonable suspicion and probable cause to search, detain, and ticket Plaintiffs. See Terry v Ohio, 392 US 1, 20, n.16; 88 S Ct 1868; 20 L Ed 2d 889 (1968)("reasonable suspicion" that criminal activity is afoot required for lawful seizure). The police officers had more than a mere "hunch" that a crime was being committed. It is undisputed the CAID Plaintiffs were loitering in an unlicensed establishment. The establishment was unlawfully selling liquor to its members before and after 2:00 a.m. (R. 84, MSJ, Exh 1, Page ID# 1822-27; 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, Page ID# 1845-47; Exh 4, p. 57, lines 7-17; p. 58, lines 9-23; p. 59, lines 24-25; p. 60, lines 1-3, Page ID# 1885-86; Exh 8, p. 26, lines 6-25; p. 27, lines 1-25; p. 28, lines 1-6, Page ID# 1924; Exh 11, Page ID#1959-65; R. 84, Exh 12, p. 19, line 25, p. 20; line 1-2, Page ID# 1971; Exh 16, p. 20, lines 23-25; p. 21, lines 14-23; p.24, lines 8-18, Page ID# 2016-17; Exh 17, p. 28, lines 14-25; p. 29, lines 1-6, Page ID#2033; Exh 18, p. 26, lines 8-14, lines 24-25, p. 27, line 1, Page ID#2053-54; R. 84, Exh 20, Cole dep., p. 51, lines 1-4, Page ID# 2083).

The defendant police officers relied on the information provided to them by Yost and Buglo and the information contained in the Anticipatory Search Warrant, as a basis for probable cause. McWhorter, Cole, Brown, Potts, Singleton, Turner, Johnson, and Gray were entitled to rely on the collective knowledge of Yost and Buglo and all officers involved in the criminal investigation, rather than solely from the officer who made the arrest. Collins v Nagle, 892 F2d 489, 495 (6th Cir. 1989);United States v. Killebrew, 594 F.2d 1102,1105(6th Cir. 1979). Hearsay evidence is permissible and first hand observation is not required. United States v Helton, 314 F3d 812 (6th Cir. 2003); United States v Graham, 275 F.3d 490 (6th Cir. 2001); United States v Smith, 510 F3d 641 (6th Cir, 2007). Under Michigan law hearsay or multiple hearsay may be relied upon by an officer to establish probable cause. People v. Whittie, 121 Mich. App. 805, 811; 329 N.W.2d 497 (1982). In fact, when one officer receives information from another officer, it is presumed to be credible. People v. Sellars, 153 Mich. App. 22, 27; 394 N.W.2d 133 (1986); lv. den. 426 Mich. 879 (1986). In this case, the officers rightfully relied upon the information Yost and Buglo conveyed to them, as well as what they observed, as the factual basis for the arrest of Plaintiffs. Therefore, the officers had probable cause to detain, search, and arrest Plaintiffs for loitering in the blind pig.

The Anticipatory Search Warrant authorized Detroit Police officers to seize

evidence or contraband during the search (R. 84, MSJ, Exh 1, pp.1, 4, Page ID# 1822-27). Further, the patdown and inventory searches of the Plaintiffs were lawful because they were either conducted for officer safety or incident to a lawful arrest depending on the situation of the Plaintiff at issue. Terry, 392 US at 21-22, supra (limited patdown search allowed for officer safety); United States v McCray, 102 F3d 239 (6th Cir. 1996)(inventory search incident to lawful arrest is an exception to the warrant request and inherently "reasonable" even if do not suspect a weapon). The police had more than a mere "hunch" under the totality of the circumstances. Liquor was being sold without a license prior to and after 2:00 a.m. and patrons were smoking marijuana especially those in the fenced area. Many Plaintiffs had been to this blind pig more than once. Persons in the fenced area, as well as in other areas of CAID, could have had marijuana in their pockets or a weapon. Police had articulable facts to detain, arrest and search the Plaintiffs based on their experience. See generally United States v Elllis, 497 F.3d 606, 612-613 (6th Cir 2007).

The district court ignored the fact that officers are permitted to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them. Id. The court may determine if the cumulative facts give rise to a reasonable suspicion even if each individual factor is entirely consistent with innocent behavior if examined separately. United States v.

Perez, 440 F.3d 363, 371 (6th Cir. 2006). McWhorter, Cole, Brown, Potts, Singleton, Turner, Johnson, and Gray were authorized by the Anticipatory Search Warrant and had reasonable suspicion and probable cause to search, detain, and ticket Plaintiffs, and to seize Plaintiffs' vehicles.

The district court determined that Defendants arrested the Plaintiffs because they were merely present at the CAID and therefore probable cause was lacking to justify an arrest and searching of the Plaintiffs. It is established that mere presence cannot establish that one is guilty of a crime. However, it has been held that "mere presence" under the totality of the circumstances can be enough to establish probable cause justifying an arrest. People v. Degraffenreid, 19 Mich App 702,708 fn2; 173 NW2d 317 (1969). See People v. Lamb, 2002 Mich App Lexis 2168; ____ NW2d ____ (2002). (unpublished opinion). Therefore, the police, based on their experience and training, had probable cause to believe that the Plaintiffs, particularly those Plaintiffs who have been there before such as Hellenberg, Wong, Leverette-Saunders, Hollander, Mahler, and Price, had to be aware that marijuana was being smoked and passed around and therefore this was an illegal place. Further, it could be assumed that they knew that liquor was sold without a license.

_____The district court relied on Harris v Bornhorst ,513 F3d 503, 515 (6th Cir. 2008) to hold that mere presence at a crime scene does not constitute probable cause to arrest,

and therefore the police officers did not have probable cause. However, in the context of this case that law should not foreclose the existence of probable cause to arrest. See Smith v Patterson et al, 430 Fed Appx 438,441 (6th Cir 2011) (unpublished opinion); Scott v Kelley, 2012 U.S. Dist LEXIS 18170 (E.D. Ky. 2012).

The proper focus is whether the facts and circumstances within the police officer's knowledge was reasonably trustworthy to believe that probable cause existed and to believe that the individuals knew that CAID was an illegal establishment; not whether there was a chance that the patrons might not know it was an illegal establishment. The experience of the police is a factor that should have been considered by the court in determining whether probable cause existed. United States v Sherill, supra; United States v. Pasquarille, supra, 20 F3d at 685; The district court judge seemed to narrowly focus on whether there was a possibility the patrons believed that the club could have been legally operating, instead of all the circumstances and knowledge available through the eyes of the experienced police officers to reasonably believe they were aware of the lack of a liquor license. Probable cause to believe that a person has committed any crime will preclude an unlawful arrest claim, even if the person was arrested on additional or different charges for which there was not probable cause. Devenpeck v. Alford, supra 543 U.S. 146, 142, 153-155 (2004); United States v. Harness, 456 F3d 752, 755 (6th Cir. 2006). Plaintiffs were in a "blind pig"; it was

reasonable that the young persons purchased liquor after 2:00 a.m. and were aware that there was no liquor license and that it was illegal to purchase liquor after 2:00 a.m. In the fenced area Yost and Buglo smelled the strong odor of marijuana, and even observed it being smoked .Yost had reasonable suspicion to question and detain those in the group. In the Sixth Circuit, the odor of marijuana alone is sufficient to establish probable cause that marijuana is present and justifies a warrrantless search. United States v. 118, 170.00 in United States Currency, 69 Fed .Appx 714, 716 (6th Cir. 2003). Just because the Defendants did not focus on the presence of marijuana as a basis for establishing probable cause to detain, arrest and to pat down Plaintiffs, does not negate the existence of probable cause for their actions. See People v. Atterberry, 431 Mich. 381; 429 NW2d 574(1986).

B. The Officers' Actions were Objectively Reasonable and They were Entitled to Qualified Immunity.

It is Defendants' position that the facts alleged do not show a violation of a constitutional right. However, even if Yost, Buglo, and the police officers had no probable cause to believe that the Plaintiff committed the crime of loitering in a place of illegal occupation, Defendant police officers are still entitled to qualified immunity "if a reasonable officer could have reasonably believed that probable cause existed to arrest the Plaintiffs for the charge or any charge" in light of clearly established law and

the information the arresting officers possessed. Hunter v. Bryant, 502 U.S. 224, 228-29 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991); Anderson, supra, 483 U.S. at 64. See Nails v. Riggs, 195 Fed. Appx. 303, 311 (6th Cir. 2006)(citing Hunter v. Bryant, 502 U.S. 224, 228, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991) and Greene v. Reeves, 80 F.3d 1101, 1107 (6th Cir. 1996). The immunity inquiry should acknowledge that "reasonable mistakes can be made as to the legal constraints on particular police conduct." Saucier v. Katz, 533U.S. 194, 205, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). "If the officer's mistake as to what the law requires is reasonable, . . the officer is entitled to the immunity defense." Id. "Even law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." Hunter, 502 U.S. at 227.

Even where the prerequisites to a § 1983 cause of action are established, a governmental defendant may be immune from civil damages. Under Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982), the doctrine of qualified immunity holds that "governmental officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id.at 816-818. This is an objective standard, eliminating from consideration inquiry about the officer's subjective state of mind. Id.

at 816-818; Holt v Arctic, 843 F.2d 242 (6TH Cir. 1988). The resolution of the qualified immunity issue is solely a legal issue for the court. Tucker v. City of Richmond, 388 F.3d 216, 219 (6th Cir. 2004).

Qualified immunity ensures that only conduct that unquestionably violates the constitution will subject officials to personal liability. Harlow v. Fitzgerald, supra, 457 U.S. 800, 806, 814-16. An official is entitled to qualified immunity if the alleged "conduct does not violate clearly established. . . constitutional rights of which a reasonable person would have known." Id. At 818. Thus, qualified immunity provides "ample room for mistaken judgments 'by protecting' all but the plainly incompetent or those who knowingly violate the law,'" Hunter v. Bryant, 502 U.S. 224, 228-29, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991) (quoting Malley v. Briggs, 475 U.S. 335, 343, 106 S.Ct. 1092, 89 L Ed 2d 271 (1986)), and "applies regardless of whether the government official's error is a mistake of law, . . . fact, or . . . mixed question[] of law and fact." Pearson v. Callahan, 555 U.S. 223, 129 S.Ct. 808, 815, 172 L. Ed 2d 565 (2009) (internal quotation marks and citation omitted).

The Court applies a three-step qualified immunity test[8] to determine whether an official is entitled to qualified immunity. A plaintiff must prove a violation of a

[8]Some panels use only a two-step analysis. Dorsey v. Barber, 517 F3d 389,394 (6TH Cir. 2008) See Armstrong v. City of Melvindale, 432 F.3d 695 (6TH Cir. 2006).

constitutionally protected right; second, plaintiff must plead that the right was so clearly established that a reasonable official would have known that his behavior violated a right; and third, the plaintiff must allege sufficient facts and support for such allegations by sufficient evidence to indicate that what the official allegedly did was objectively unreasonable in light of clearly established rights. Higgason v. Stephens, 288 F.3d 868 (6th Cir. 2002); Peete v. Metro Govt of Nashville, 486 F.3d 217, 219 (6th Cir. 2007); Sample v. Bailey, 409 F.3d 689, 693 n.3 (6th Cir. 2005).

The defendant is entitled to qualified immunity unless the plaintiff can satisfy each of those requirements. Radvansky v. City of Olmsted Falls, 395 F.3d 291, 302 (6th Cir. 2005). [T]he burden is on [the plaintiff] to show that the individual defendants are not entitled to qualified immunity." Miller v. Admin. Office of Courts, 448 F.3d 887, 894 (6th Cir. 2006). To satisfy this burden, a plaintiff must show that the right was clearly established in a "particularized" and "relevant[] sense" such that "[t]he contours of the right [were] sufficiently clear that a reasonable official would understand that what he is doing violates that right" at the time of the alleged action. Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L. Ed. 2d 523 (1987). Thus, the unlawfulness of an action must be apparent. Id.

Whether qualified immunity applies turns on the "objective legal reasonableness" of the official's action, not in a broad sense, but viewed on a fact-specific, case-by-case

basis. Armstrong v City of Melvindale, 432 F.3d 695, 699 (6TH Cir. 2006); O'Brien v. City of Grand Rapids, 23 F.3d 990, 999 (6th Cir. 1994). Significantly, if officers of reasonable competence could disagree on the issue of whether a particular conduct is unconstitutional, then immunity should be granted. Thomas v. Cohen, 304 F.3d 563, 580 (6th Cir. 2002).

Rather than conduct its examination with the wisdom of hindsight, this Court has directed courts to keep in mind the existing state of law at the time of the allegedly unconstitutional conduct, its relative clarity, and the appropriate balance to be struck between the interest in vindicating citizens' constitutional rights and in the effective performance of public duties. Meyers v. City of Cincinnati, 979 F.2d 1154, 1157 (6th Cir. 1992).

Not every arrest without probable cause requires a finding that the officer is not protected by qualified immunity. Anderson v. Creighton, 483 U. S. 635, 641, 107 S. Ct. 3034, 97 L.Ed. 2d 523 (1987); See Saucier v. Katz, 533 U.S. 194, 203, 121 S. Ct. 2151, 150 L.Ed. 2d 272 (2001). Thus, even if Yost and Buglo and the other officers made a mistaken judgment about the existence of probable cause and the application of the Nuisance Abatement statute the mistake does not undermine the qualified immunity defense. Qualified immunity still operates to grant them qualified immunity for reasonable mistakes as to the legality of their actions for the arrest, and prosecution of

Plaintiffs. Anderson, supra. Yost, Buglo and the officers actions were objectively reasonable in light of the information they possessed at the time of the arrest. They had observed the selling of alcohol, smelled marijuana and observed the smoking of the marijuana and it being passed around. This detention and/or arrest and search of the Plaintiffs was objectively reasonable as a matter of law. Each of the defendants is therefore entitled to qualified immunity.

The district court's ruling that the mere presence of Plaintiffs at the blind pig did not constitute probable cause should not foreclose the protection of qualified immunity from the officers in the context of this case. See Parsons v. City of Pontiac, 533 F3d 492,501 (6th Cir 2008). The facts of this case warrant the police officers determining that probable cause existed in the context of this case to arrest Plaintiffs.

In Smith v Patterson, supra 430 Fed. Appx. at 441, the officers learned that a gang member , joined by eight others, had shot and killed a woman. The officers reasonably believed that four teenagers in a car had committed or was committing the crime. The court held that in the context of the facts of the case that the clearly established rule articulated in Harris, supra, that mere presence did not establish probable cause would not apply and that the officer's qualified immunity would be preserved. Scott v. Kelley, supra (court may not ignore the context of the case in making a probable cause determination.)

Yost and Buglo conducted four (4) surveillance, undercover operations at the CAID, after receiving complaints regarding illegal activity at 5141 Rosa Parks. (R. 85, AMJ, Exhibit A - pg. 33, 41, Page ID# 2309,2311); (R. 85, Exhibit B - pgs. 24-25, 30-31, 66; Page ID #2347,2349,2358) Prior to conducting surveillance, Yost learned from the Michigan Liquor Commission that the CAID did not have a liquor license. (R. 85, Exhibit B - pgs. 44-45, Page ID# 2352)

During the April 26th, May 24th and the May 31st surveillance, Yost and Buglo observed beer and wine being sold after 2:00 am. The officers also saw and smelled a strong odor of marijuana during their surveillance. They actually saw persons smoking marijuana and passing the same around.

After the officers completed the undercover operation, they believed that the had enough evidence to support their conclusion that probable cause existed that a crime was being committed at 5141 Rosa Parks Blvd., i.e., the operation of a blind pig and persons loitering in a place of illegal occupation, pursuant to Detroit City Code Section 38-5-1. Buglo submitted a search warrant with supporting affidavit to the Wayne County Prosecutor's office. Magistrate Lockhart of 36th District signed the warrant.

Even if the Court concludes that Detroit City Code Section 38-5-1 was flawed, the officers still could detain the patrons because under Michigan law a police officer had sufficient facts at the moment of the arrest that would justify a fair-minded person

of average intelligence to believe that the Plaintiffs has committed a crime. People v. Thomas, 191 Mich App 576;478 N.W.2d 712 (1991), appeal denied 439 Mich 981 (1992), certiorari denied 506 US 904 (1992). Although Section 38-5-1 did not contain language regarding an individual having the "intent" to engage in an illegal occupation at the time of the incident involving the CAID, it was objectively reasonable for Buglo and Yost believed that it was common knowledge to persons residing in the State of Michigan that being in an unlicensed establishment where alcohol is being sold after 2:00 am is prohibited. (R. 85, AMSJ, Exhibit A - pg. 81 and 85, Page ID#2321-22) Hence, given this knowledge, a fair-minded person or police officers of average intelligence would believe that the patrons at the CAID, after 2:00 am on May 31, 2008 were loitering in a place of illegal occupation and knew or should have known that they were doing so.

Based upon their undercover surveillance activity, Yost and Buglo objectively believed that probable cause existed that the owners of the CAID and the patrons were violating state law. The patrons, who attended the blind pig, especially those who have attended more than once and observed the selling of alcohol and smoking of marijuana, should have known that the sale of alcohol after 2:00 am is illegal in the State of Michigan, were loitering in a place of illegal occupation. (R. 85, AMSJ, Exhibit A – pg. 129-130, Page ID# 233-34). On May 31, 2008, patrons, including Plaintiffs were

in the CAID, where liquor was being sold after 2:00 am. Plaintiffs knew or should have known that this activity was in violation of state of law. Hence, there was probable cause to believe that Plaintiffs were committing a crime.

Qualified immunity acknowledges "that mistakes can be made as to the legal constraints on particular police conduct." Anderson v. Creighton, 483 U. S. 635, 641, 107 S. Ct. 3034, 97 L.Ed. 2d 523 (1987). The Supreme Court has recognized that it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and that officials should not be held personally liable. Anderson, 483 U.S. at 641. Qualified immunity leaves " ample room for mistaken judgments protecting " all but plainly incompetent or those who knowingly violated the law." Malley v. Briggs, supra , 475 U.S. 335, 341 (1986); Humphrey v. Mabry, 482 F.3d 840, 846 (6th Cir. 2007).

It is important to point out that if reasonable minds differ as to whether the factual circumstances established probable cause, then Defendants are entitled to qualified immunity. So long as "officers of reasonable competence could disagree on this issue, immunity should be recognized." Malley v Briggs, supra at 475 U.S. 335, 341, 271, 106 S. Ct. 1092. In Perez v. Oakland County, 466 F.3d 416, 427 (6th Cir 2007), the court noted that "if reasonable officers could disagree about the lawfulness of the conduct in question, immunity must be recognized." See generally, Haynes v.

City of Circleville, 474 F3d 357, 362 (6th Cir. 2007).

Law enforcement is under no obligation to give credence to a suspect's explanation of innocence or to forgo arrest pending further investigation of the facts when probable cause is established. Gardenhire v Schubert, 205 F3d 303, 316 (6th Cir. 2000);Schertz v Waupaca County, 875 F2d 578, 553 (7th Cir. 1989); Criss v City of Kent, 867 F.2d 259, 263 (6th Cir. 1988). Police officers were entitled to draw upon their experience in the context of this case to determine if the patrons had knowledge that this was a place of illegal occupation. United States v. Sherill, supra. Rarely in these cases does the patron say "Yes I knew it was a blind Pig and was selling liquor without a license." Therefore, their innocent statement that "I did not know that liquor was being sold without a license" would not negate the existence of probable cause in the context of this case. One infers knowledge by the totality of the circumstances. One looks, in respect to probable cause, at what occurred at the time of the arrest, not what 20/20 hindsight reveals. Radvansky v. City of Olmstead Falls, 395 F3d 291, 302 (6th Cir. 2005). While no officer should make a hasty unsubstantiated arrest or ignore clear exculpatory evidence, Yost and Buglo's personal knowledge and observations gave the police officers the basis for probable cause to detain and/or arrest and then to search them pursuant to a lawful arrest.

A rational officer considering the evidence in the totality of the circumstances

could have concluded he had probable cause. In the context of this case the unlawfulness of the Defendants' actions is not apparent and was not apparent. Case law did not provide fair warning that their conduct was violative of the law in the context of this case. See Hope v. Pelz 536 U.S. 730, 740-41, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002). No cases hold that when officers observe persons in a blind pig after 2:00 a.m. in the morning purchasing liquor and openly smoking marijuana which is illegal, that police officers cannot infer that the patrons know that they are in a place of illegal occupation.

The district court erred in denying Defendants the protection of qualified immunity as a matter of law. Even if Defendants' judgment was mistaken, under the totality of the circumstances the police officers are entitled to the protection of qualified immunity. Their actions under the totality of the circumstances did not fall below an objective standard of reasonableness and do not meet the threshold for a constitutional violation.

II. THERE WAS PROBABLE CAUSE TO SEIZE THE VEHICLES UNDER THE NUISANCE ABATEMENT STATUTE, AND ALTERNATIVELY, THE POLICE OFFICERS' SEIZURE OF THE VEHICLES WERE OBJECTIVELY REASONABLE AND THEREFORE THEY ARE SHIELDED BY QUALIFIED IMMUNITY.

There is no evidence McWhorter, Potts, Cole, Brown, Singleton, or Gray took

any action regarding the vehicle seizures. Johnson and Turner had probable cause to seize the vehicles, or alternatively are entitled to qualified immunity. Based on the totality of the factual circumstances there was probable cause to believe that Plaintiffs committed the misdemeanor of loitering in a place of an illegal occupation. Their objective reasonable belief was a result of four surveillances and observing the same activities on the day of the raid, such as operating without a liquor license and the selling of liquor after 2:00 a.m., the strong odor of marijuana and observing others smoke marijuana. The police officers had probable cause to arrest Plaintiffs. Plaintiffs admitted they that the vehicles were used as their mode of transportation. Objective factors lead to the reasonable belief that Plaintiffs should have known that this was a place of illegal occupation due to the sale of liquor without a license prior to and after 2:00 pm, and the strong odor of marijuana. Therefore the officers had probable cause to believe the vehicles had been knowingly used as a mode of transportation to contribute to the nuisance of unlicensed after hours liquor sales at the CAID.

The seizures were justified on the ground that Plaintiffs' cars were forfeitable contraband within the meaning of Michigan's Nuisance Abatement Statute. MCL 600.3801. Therefore, the officers were authorized to abate the nuisance as a deterrent measure under the Michigan Nuisance Abatement Statute, MCL §600.3801, and Michigan v Bennis, 516 U.S. 442, 116 S Ct 994; 134 L Ed 2d 68 (1994). See Ross v

Duggan, 402 F3d 575 (6th Cir. 2004)(vehicles allowed to be seized even if illegal conduct occurred outside vehicles).

The act constituting the nuisance is the sale or use of liquor without a license or and the visible smoking of marijuana along with loud noise in the place of illegal occupation. The car itself contributes to the nuisance because it was used to travel to the building of illegal occupation. The vehicle contributed to a "public nuisance" because Plaintiffs used the vehicle to go to the blind pig for drinks and/ or to smoke marijuana. Yost 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, 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. (R.85, Exhibit A – pg. 131, Page ID# 2334) Yost testified that she consulted with Brian Moody, Deputy Chief of the Wayne County Prosecutor's Forfeiture Unit and other assistant prosecutors regarding seizing vehicles under the nuisance abatement statute. (Id , Page ID# 2334).

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 and it could be reasonably inferred that they were aware that

liquor was sold without a license. (R.84, Exh 8, p. 11, lines 20-24, Page ID# 1920; Exh 9, p. 11, line 25, p. 12, lines 1-9, p. 27, lines 20-24, Page ID#1933,1937; Exh 15, p. 10, lines 12-25, Page ID#2004; Exh 16, p. 7, lines 1-16, Page ID# 2013;Exh 18, p. 20, lines 8-13, Page ID# 2052; Exh 19, Wanda Leverette dep., p. 11, lines 7-17, p. 13, lines 1-5, Page ID#2063-64).

The nuisance existed and Plaintiffs admitted that they had used the vehicles as transportation to attend the CAID event and contribute to the nuisance. As college students and college graduates or citizens in our society, certainly Plaintiffs had knowledge that it is illegal to sell liquor without a license and to sell liquor after 2:00 a.m.

In Michigan v. Bennis, supra, 116 S. Ct. 994, the United States Supreme Court upheld the seizure of vehicles from vehicle owners with no knowledge of illegality or "innocent" owners because, although the civil forfeiture of property used in commission of a crime may sometimes also contribute to an offender's overall punishment for that underlying crime, the premiere purpose of civil forfeiture is deterrence of future crime, not punishment for past crime. 516 US at 451-452. Even if an innocent owner loses his/her property, at least two purposes are advanced: (1) elimination of the offending property for future use as a public nuisance; and (2) discouragement of future uses of similar property for similar

illegal activities. Id.

For probable cause purposes, it is irrelevant whether the CAID Plaintiffs knew or did not know their use of the vehicles were contributing to the nuisance. The issue is whether there were reasonable facts that would lead a reasonable police officer to believe that a crime had been committed and that there was probable cause to believe they knew they were loitering in a place of illegal occupation.

As argued in Argument I proving that the Plaintiffs had knowledge that CAID was a blind pig or illegal place of occupation is mostly proved circumstantially in most cases. The totality of the circumstances leads to the inference that Plaintiffs had knowledge that this was a place of illegal operation. Plaintiff's reliance on In re Maynard's Petition , 333 Mich 543, 53 N.W.2d 370 (1952) does not undermine Defendants' argument. In Maynard the court concluded the vending machines owned by another were not subject to seizure for the violation of the liquor laws by the owner of the premises. In the instant case we have a Nuisance Abatement statute that makes certain conduct , including conduct involving liquor and drugs in a building, illegal and a nuisance.

Even if the Court finds that Yost , Buglo and the other Defendants made a mistake in regard to their analysis of the facts and the applicable law under the Nuisance Abatement Statute, their mistake was reasonable, and they are entitled to

qualified immunity. Reasonable police officers could disagree as to whether the seizure of the vehicle were authorized. The case law, even if one chose to rely on Maynard, which is not directly applicable to this case, does not show that under the factual circumstances Defendants should have known that the unlawfulness of their actions were apparent. See Saucier v. Katz, 533 U.S. 194, 201, 121 S. Ct. 2151,150 L. Ed. 2d 272 (2001).

While the constitutional rights not be subjected to unlawful search and seizure may be clearly established rights, a reasonable officer in the same situation as either of the Defendants in this case would not have recognized that their actions in seizing the vehicles under the Nuisance Abatement was violating those rights in the instant case . Plaintiffs cannot establish that an objectively reasonable officer faced with the same circumstances as Defendants would have recognized that the conduct violated a clearly established constitutional right. The final test for qualified immunity is whether an objectively reasonable officer under the circumstances would have known that the officers' conduct violated the constitution in light of the preexisting law. Id. at 202. "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* 201-202. Thus, if reasonable officers could disagree about the lawfulness of the

conduct in question, immunity must be granted. See Key v. Grayson, 179 F.3d 996, 1000 (6th Cir 1999). Yost was informed by a Wayne County Prosecutor that are actions were lawful so she did not arbitrarily take action.

The decisions of other courts can also clearly establish the law but they must point unmistakably to the unconstitutionality of the conduct and be so clearly foreshadowed by applicable direct authority as to leave no doubt in the mind of a reasonable officer that his conduct was unconstitutional." Summar v. Bennett, 157 F.3d 1054, 1058 (6th Cir. 1998) (internal citation omitted). No such law existed in this case for the facts at hand. "While there need not be a case with the exact same fact pattern ,or circumstances, the question is whether the defendants had 'fair warning' that their actions were unconstitutional." in this context. Cummings v. City of Akron, 418 F.3d 676, 687 (quoting Hope v. Pelzer, 536 U.S. 730, 741, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002). Defendants should not lose their qualified immunity shield when reasonably objective factors existed for the reasonable police officer to believe that Plaintiffs knew that a liquor license was lacking at the establishment, or that it was illegal to sell liquor after 2:00 a.m. and/or that smoking marijuana is illegal.

RELIEF

For the reasons stated above, Defendant police officers respectfully requests this Honorable Court to reverse the district court's order denying Defendants' Motions for Summary Judgment and remand the case for the court to enter an order dismissing Plaintiff's claims because the Defendants are entitled to qualified immunity.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Brief of Defendants-Appellants complies with Federal Rule of Appellate Procedure 32(a)(7)(C), in that except for the corporate disclosure statement, table of contents, table of authorities and statement with respect to oral argument, the brief contains 12891 words. This brief has been prepared in Wordperfect X3, using proportionally spaced typeface; Times New Roman; and a 14-point font size.

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Designation of Record on Appeal

Sixth Circuit
Case Number: **12-2674** Case Name: **Ian Mobley, et al. v. City of Detroit, et al.**

Linda D. Fegins, counsel for **City of Detroit** designates the following documents for inclusion in the electronic Record on Appeal:

Lower Court Case No.: **10-0-cv-10675**
Eastern District of **Michigan**

DATE	RE#	PAGE ID#	Description of Pleading, Transcript or Other Filing. It is not necessary to list the Presentence Investigation Report or Sealed Documents, which counsel provides, pursuant to 6TH Cir. R. 10 and 30.
2/18/2010	1	1	COMPLAINT filed by Wanda Leverette, et al.
2/25/2010	9	61	ANSWER to Complaint with Affirmative Defenses with Jury Demand *Reliance with Demand For Compulsory Joinder of Claims with Demand For Reply To Affirmative Defenses* by Detroit, City of.
4/2/2010	13	141	ANSWER to Complaint with Affirmative Defenses with Jury Demand *with Demand For Joinder of Claims* by Vicki Yost, Daniel Buglo.
9/8/2010	21	193	AMENDED COMPLAINT with Jury Demand filed by All Plaintiffs against All Defendants.

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12/6/2010	30	273	ANSWER to Amended Complaint with Affirmative Defenses with Jury Demand *Reliance with Demand For Compulsory Joinder of Claims* by M Brown, Daniel Buglo, B Cole, Detroit, City of, Tyrone Gray, Sheron Johnson, G McWhorter, A Potts, K Singleton, Vicki Yost.
4/1/2011	47	514	ANSWER to Amended Complaint with Affirmative Defenses with Jury Demand Reliance with Demand For Compulsory Joinder of Claims by Charles Turner.
4/16/2012	80	1176	MOTION for Summary Judgment for Daniel Buglo and by Vicki Yost. (Attachments: # Index of Exhibits, # 2 Exhibit Yost Deposition Transcript, # 3 Exhibit Buglo Deposition Transcript, # 4 Exhibit Search Warrant and Affidavit)

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4/17/2012	84	1791	MOTION for Summary Judgment by M Brown, B Cole, Detroit, City of, Tyrone Gray, Sheron Johnson, G McWhorter, A Potts, K Singleton, Charles Turner. (Attachments: # Index of Exhibits Index of Exhibits, # 2 Exhibit 1 - Anticipatory Search Warrant/Return To Search Warrant, # 3 Exhibit 2 - CAID Photographs, # 4 Exhibit 3 - Yost Deposition Transcript, # 5 Exhibit 4 -Buglo Deposition Transcript, # 6 Exhibit 5 - CAID Funk Night Flyers, # 7 Exhibit 6 - Buglo Preliminary Complaint Record dated March 29, 2008, # 8 Exhibit 7 - Buglo Preliminary Complaint Record dated April 26, 2008, # Exhibit 8 - Leverette-Saunders Deposition Transcript, # 10 Exhibit 9 - Hellenberg Deposition Transcript, # 11 Exhibit 10 - DPD Vice Enforcement Activity Log dated May 30-31, 2008, # 12 Exhibit 11 - DPD Crime Report #0805310096.1, # 13 Exhibit 12 - Hollander Deposition Transcript, # 14 Exhibit 13 - Ian Mobley Deposition Transcript, # 15 Exhibit 14 - Washington Deposition Transcript, # CHAR16 Exhibit 15 - Nathaniel Price Deposition Transcript, # 17 Exhibit 16 - Thomas Mahler Deposition Transcript, # 18 Exhibit 17 - Paul Kaiser Deposition Transcript, # 19 Exhibit 18 - Wong Deposition Transcript, # 20 Exhibit 19 - Wanda Leverette Deposition Transcript, # 21 Exhibit 20 - Cole Deposition Transcript, # 22 Exhibit 21 - DPD Crime Report #0805310096.3, # 23 Exhibit 22 - McWhorter Deposition Transcript, # 24 Exhibit 23 - Potts Deposition Transcript, # 25 Exhibit 24 - Singleton Deposition Transcript, # 26 Exhibit 25 -

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4/19/2012	85	2277	Amended MOTION for Summary Judgment *Daniel Buglo and* by Vicki Yost. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Yost Deposition Transcript, # 3 Exhibit Buglo Deposition Transcript, # 4 Exhibit Search Warrant and Affidavit)

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5/8/2012	92	2426	RESPONSE to 84 MOTION for Summary Judgment, 85Amended MOTION for Summary Judgment *Daniel Buglo and [Combined Response In Opposition to both Motions]* filed by All Plaintiffs. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1-Korobkin Declaration w/attachments, # 3 Exhibit 2-Jason Leverette-Saunders Deposition excerpts, # 4 Exhibit 3-Wanda Leverette Deposition excerpts, # 5 Exhibit 4-Laura Mahler Deposition excerpts, # 6 Exhibit 5-Darlene Hellenberg Deposition excerpts, # 7 Exhibit 6-CAID Funk Night Advertisement, # 8 Exhibit 7-Ian Mobley Deposition excerpts, # 9 Exhibit 8-James Washington Deposition excerpts, # 10 Exhibit 9-Sgt. Buglo Deposition excerpts, # 11 Exhibit 10-Anticipatory Search Warrant & Affidavit, 5/29/08, # 12 Exhibit 11-Detroit Police Department Crime Report, 5/31/08, # 13 Exhibit 12-Lt. Yost Deposition excerpts, # 14 Exhibit 13-Declaration of Aaron Timlin, # 15 Exhibit 14-CAID Surveillance DVD (excerpts)- to be filed in the traditional manner, # 16 Exhibit 15-Stephanie Hollander Deposition excerpts, # 17 Exhibit 16-Paul Kaiser Deposition excerpts, # 18 Exhibit 17-Thomas Mahler Deposition excerpts, # 19 Exhibit 18-Nathaniel Price Deposition excerpts, # 20 Exhibit 19-Angie Wong Deposition excerpts)

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5/8/2012	93	2795	EXHIBIT *s 20 thru 39* re 92 Response to Motion,,,,, by All Plaintiffs (Attachments: # 1 Exhibit 20-Detroit Police Department Activity Logs re: CAID Raid, # 2 Exhibit 21-Sgt. Turner Deposition excerpts, # 3 Exhibit 22-Sgt. Potts Deposition excerpts, # 4 Exhibit 23-Sgt. Cole Deposition excerpts, # 5 Exhibit 24-Officer Gray Deposition excerpts, # 6 Exhibit 25-Detroit Ordinance No. 29-10 (2010), # 7 Exhibit 26-Officer Johnson Deposition excerpts, # 8 Exhibit 27-Sgt. McWhorter Deposition excerpts, # 9 Exhibit 28-Officer Singleton Deposition excerpts, # 10 Exhibit 29-MLCC Club Licensee Information, # 11 Exhibit 30-Declaration of Nathaniel Price, # 12 Exhibit 31-Declaration of Angie Wong, # 13 Exhibit 32-Dismissal Orders, # 14 Exhibit 33-Mahler Notice of Impoundment of Vehicle, # 15 Exhibit 34-Kimberly Mobley Deposition excerpts, # 16 Exhibit 35-Defendants' Answers to Plaintiffs' 1st Set of Interrogatories, #11, # 17 Exhibit 36-Nuisance Abatement Revenue w/cover letter, 12/15/10, # 18 Exhibit 37-Detroit Police Department Follow-Up Report, 6/2/08, # 19 Exhibit 38-Jerome Price Deposition excerpts, # 20 Exhibit 39-Defendants' Responses to Plaintiffs' 1st RFAs, #3)

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5/8/2012	94	3003	EXHIBIT *s 40 thru 48* re 92 Response to Motion,,,,,, by All Plaintiffs (Attachments: # 1 Exhibit 40-Return to Search Warrant, # 2 Exhibit 41-Declaration of Darlene Hellenberg, # 3 Exhibit 42-Supplemental Declaration of Nathaniel Price, # 4 Exhibit 43-4th & 5th Brown Deposition notices with cover letters, # 5 Exhibit 44-Rule 56(d) Declaration, # 6 Exhibit 45-Declaration of Paul Kaiser, # 7 Exhibit 46-Photo of boot print, # 8 Exhibit 47-Defendants' Answers to Plaintiffs' Interrogatories, # 3, 14, 19 & 20, # 9 Exhibit 48-Defendants' 3rd Supplemental Responses to Plaintiffs' 1st Requests for Documents, #15)
5/22/2012	99	3172	REPLY to Response re 85 Amended MOTION for Summary Judgment *Daniel Buglo and Vicki Yost* filed by Vicki Yost.
5/22/2012	100	3173	REPLY to Response re 84 MOTION for Summary Judgment filed by M Brown, B Cole, Detroit, City of, Tyrone Gray, Sheron Johnson, G McWhorter, A Potts, K Singleton, Charles Turner.
5/22/2012	101	3179	REPLY to Response re 85 Amended MOTION for Summary Judgment *Daniel Buglo and Vicki Yost* filed by Vicki Yost.

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12/4/2012	115	3475	ORDER Granting In Part And Denying In Part 81 Motion for Partial Summary Judgment; Granting In Part And Denying In Part 84 Motion for Summary Judgment; Granting In Part And Denying In Part 85 Motion for Summary Judgment. Signed by District Judge Victoria A. Roberts.(Lver)
12/18/2012	118	3513	NOTICE OF APPEAL by Sheron Johnson, M Brown, K Singleton, G McWhorter, Tyrone Gray, Daniel Buglo, Charles Turner, Detroit, City of, Vicki Yost, A Potts, B Cole.

Case No. 12-2674

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellees,

v.

CITY OF DETROIT; VICKIE YOST, a Detroit police officer, in her individual capacity; DANIEL BUGLO, a Detroit police officer, in his individual capacity UNNAMED DETROIT POLICE OFFICERS, in their individual capacities, GREGORY MCWHORTER, a Detroit police Sergeant; ANTHONY POTTS, a Detroit police Sergeant; CHARLES TURNER, MICHAEL BROWN, BRANDON COLE, TYRONE GRAY, SHERON JOHNSON; KATHY SINGLETON, Detroit Police Officers,

Defendants-Appellants.

On appeal from the United States District Court
Eastern District of Michigan at Detroit

CERTIFICATE OF SERVICE

I certify that on March 25, 2013, the foregoing Brief was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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