

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 3:06-CV-12238-KPN

DAVID BUNN; JUDITH BUNN; CHRISTENA)
DODGE; DANIEL COLLINS; JAMIE DODGE,)
COUGAR JOHN BUNN; PHOENIX DODGE)
per proxima amici CHRISTENA DODGE,)
JUSTICE DODGE, *per proxima amici*)
CHRISTENA DODGE,)
Plaintiffs)

vs.)

CHIEF KEVIN GLEASON, OFFICER KENNETH)
FITZGERALD, AGENT SCOTT E. HALEY,)
HOLLAND POLICE OFFICER JOHN DOE 1,)
HOLLAND POLICE OFFICER JOHN DOE 2,)
HOLLAND POLICE OFFICER JOHN DOE 3,)
HOLLAND POLICE OFFICER JOHN DOE 4,)
HOLLAND POLICE OFFICER JOHN DOE 5,)
HOLLAND POLICE OFFICER JOHN DOE 6,)
EASTERN HAMPDEN TASK FORCE AGENT)
JOHN DOE 1, EASTERN HAMPDEN TASK)
FORCE AGENT JOHN DOE 2, EASTERN)
HAMPDEN TASK FORCE AGENT)
JOHN DOE 3, EASTERN HAMPDEN TASK)
FORCE AGENT JOHN DOE 4, EASTERN)
HAMPDEN TASK FORCE AGENT)
JOHN DOE 5, in their official and)
individual capacities)
Defendants.)

) OCTOBER 17, 2008

**PLAINTIFFS' STATEMENT OF FACTS IN DISPUTE IN
SUPPORT OF THEIR MEMORANDUM IN OPPOSITION
TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

1. Detective Sergeant Scott E. Haley ("Agent Haley") of the Palmer Police
Department is the Agent in Charge of the Eastern Hampden County Drug Task
Force. Deposition of Scott E. Haley, May 30, 2008, attached hereto as Exhibit A,
at p. 7.

ADMIT.

2. In or about January or February of 2003, Sergeant Moran of the Holland Police Department informed Chief Kevin Gleason of the Holland Police Department that Sergeant Moran had been given information that residents of the Bunn Home were selling marijuana. Deposition of Kevin Gleason, May 6, 2008, attached hereto as Exhibit B, at pp. 70-74. This information did not relate to a specific resident of the Bunn home. Exhibit B at p. 71.

ADMIT that Officer Moran provided Chief Gleason with information regarding the residents of the Bunn Home. DENY, that the information was unrelated to David Bunn. David Bunn was the target of the investigation. Chief Gleason knew that David Bunn was a pro-marijuana activist and began an investigation against David Bunn as the target of the investigation. Chief Gleason based his information on rumors from the community but did not have any information that anyone in the Bunn Home was selling drugs. Gleason Depo., pp. 110, 113 -115. Exhibit 1.

3. Either Chief Kevin Gleason or Sergeant Moran of the Holland Police Department contacted Agent Haley and informed him “that they had a problem with a marijuana dealer on the lake, and that they had a lot of information and an informant to supply it.” Exhibit A at pp. 19-20. See Exhibit B at p. 70.

DENY. Chief Gleason or Moran under the supervision of Chief Gleason contacted the Eastern Hampden Task Force. Gleason Depo., p. 70. ADMIT that Chief Gleason or Officer Moran under the supervision of Chief Gleason sought assistance in investigating the Bunn Home. Gleason Depo., p. 72.

4. The decision as to whether or not to proceed with an investigation when Agent

Haley is contacted by a local police department rests solely in his hands. Exhibit A at p. 21.

ADMIT that that is Agent Haley's policy in his Task Force. DENY that Agent Haley has the authority to determine how Chief Gleason proceeds with the residents in his community and whether a resident of his community should be arrested or whether an application for a search warrant should be made for a property located in Holland. Gleason had responsibilities before, during and after the Raid. Gleason Depo. 68, 79-80. Haley Depo., p. 67.

5. Agent Haley initiated an investigation into marijuana sales 90 Maybrook Road Holland, MA (the "Bunn Home") which he was in charge of. Exhibit A at pp. 27-29, 56-58, 61, 66-67, 71-72, 74.

DENY. Agent Haley did not take over the investigation or authority from Chief Gleason as to the investigation, search and seizure or the decision to file a criminal complaint against the plaintiffs and the Bunn Home. Gleason Depo.,p. 79-80. Haley Depo., p. 67, 68.

6. Agent Haley was responsible for overseeing the confidential informant who allegedly purchased marijuana at the Bunn Home. Exhibit A at pp. 27-29.

According to Agent Haley, the confidential informant was "mine." Id. at p. 29.

DENY. Chief Gleason supervised the initial contact with the confidential informant, Chief Gleason introduced Agent Haley to the confidential informant, Chief Gleason personally met with the confidential informant and Chief Gleason maintained contact with the confidential informant during the investigation. Gleason Depo., pp. 25, 80, 81, 91-94, 100.

7. On February 25, 2003, David Bunn was treated as an outpatient at Harrington Memorial Hospital. He was first seen at 1:16 p.m. and discharged at 2:30 p.m.

See medical records attached hereto as Exhibit C.

ADMIT.

8. Harrington Memorial Hospital is located in Southbridge, Massachusetts. Id.

ADMIT.

9. On February 25, 2003, at approximately 6:00 p.m., Agent Haley and Sergeant Moran directed a confidential informant to make a controlled “buy” of marijuana at the Bunn Home. Exhibit A at p. 44.

ADMIT that Sergeant Moran, under the supervision of Chief Gleason, drove an individual to the Bunn Home and watched the individual walk up the driveway to the Bunn Home. DENY that the individual made a controlled buy of marijuana. The substance that the individual showed Agent Haley and Officer Moran was never tested and the driveway to the Bunn Home is winding and the view of the home from the street is obscured. Haley Depo., pp. 25, 104, 126.

10. On March 14, 2003, David Bunn was treated as an outpatient at Harrington Memorial. He was first seen at 8:10 a.m. and discharged at 10:15 a.m. See medical records attached hereto as Exhibit D.

ADMIT.

11. On March 14, 2003, Agent Haley directed a confidential informant to make a controlled “buy” of marijuana at the Bunn Home. Exhibit A at pp. 38-39. The confidential informant reported buying marijuana from David Bunn in the kitchen of the Bunn Home. Id. at p. 39.

ADMIT that Agent Haley drove an individual to the Bunn Home and watched the individual walk up the driveway to the Bunn Home. DENY that the individual made a

controlled buy of marijuana. DENY that Agent Haley was alone, Chief Gleason was present during the surveillance of the Bunn Home on March 14, 2008. The substance that the individual showed Agent Haley and Chief Gleason was never tested and the driveway to the Bunn Home is winding and the view of the home from the street is obscured.

Gleason Depo., pp. 25, 93-94, 100. Haley Depo., 25, 104, 126.

12. David Bunn was an in-patient at Harrington Memorial Hospital from March 20, 2000 through March 25, 2000, on which date David Bunn had major surgery.

Complaint at ¶ 27(c).

ADMIT.

13. A confidential informant reported to Agent Haley that Daniel Collins sold marijuana to him/her on March 23, 2003. Exhibit A at pp. 40-41, 46-49.

DENY. Exhibit 2, the Task Force Evidence From lists David G. Bunn, Daniel L., Judith A. as suspects for this controlled buy.

14. Prior to each “buy” the confidential informant was frisked so as to determine that he/she had no money or illegal drugs on his/her person. Exhibit A at pp. 36-41; Exhibit B at pp. 90-95.

ADMIT.

15. The confidential informant’s pockets were entirely emptied and their contents held by Agent Haley prior to and during each “buy.” Id.

ADMIT.

16. Agent Haley would then give the confidential informant previously photocopied currency and deliver the confidential informant to the end of the Bunn Home’s driveway. Id.

ADMIT that Agent Haley drove an individual to the Bunn Home and watched the individual walk up the driveway to the Bunn Home.

17. Agent Haley then watched the confidential informant walk up the driveway of the Bunn Home. Id.

ADMIT that an individual was brought to the property and walked up the driveway. Haley Depo., p. 25, 126.

18. In each case, the confidential informant returned and handed over marijuana. Id.

DENY that the individual delivered marijuana to Chief Gleason or Agent Haley. The substance was never tested. Haley Depo., p. 104.

19. The confidential informant was then taken to a separate area and again frisked and then interviewed. Id.

DENY the existence of a confidential informant.

20. The confidential informant's personal property was then returned to him/her. Id.

DENY the existence of a confidential informant.

21. Agent Haley learned through the confidential informant that David Bunn was experiencing health problems, that he was "in and out of the hospital" and that he was in the hospital as of March 23, 2003. Exhibit A at pp. 110-112.

ADMIT that David Bunn was in the hospital on March 23, 2003.

22. Agent Haley determined whether and when to file an application for a search warrant for the Bunn Home. Exhibit A at pp. 56-58.

ADMIT that Agent Haley signed the affidavit and application for the Search Warrant.

DENY that Agent Haley was the decision maker. At no point did the Drug Task Force or Agent Haley take over the investigation of 90 Maybrook, which lead to the drafting of the

Search Warrant of 90 Maybrook, from Chief Gleason or the Holland Police Department. Gleason Depo., p. 79-80. Chief Gleason assisted in the preparation of the Search Warrant by providing information to Agent Haley that was not subsequently confirmed by Agent Haley. Agent Haley relied on the information that Chief Gleason provided to him. Haley Depo., p. 74.

23. Agent Haley was the affiant whose affidavit was submitted in support of an application for a search warrant to search the property located at the Bunn Home. See Application for Search Warrant (“Application”), attached hereto as Exhibit E; Affidavit in Support of Application for Search Warrant (“Affidavit”), attached hereto as Exhibit F.

ADMIT.

24. Agent Haley sought and obtained a no knock warrant as he does in most cases because, “in most cases where drugs are involved, drugs can also come with guns ...” Exhibit A at pp. 122-123; Search Warrant (“Warrant”), attached as Exhibit G. See also, Exhibit A at p. 53 (“It’s very common for drug dealers to store handguns and guns, rifles, assault rifles, assorted stuff with their drugs, very common, more so than not”).

ADMIT that Agent Haley obtained a no knock warrant. DENY that Chief Gleason or Agent Haley had any evidence to support that there were any weapons in the Bunn Home. The Raid was unusually calm and orderly and the residents of the Bunn home were cooperative during the Raid. Haley Depo. 68, 124.

25. Agent Haley was also the sole signatory to the Application. Neither defendant herein submitted an affidavit in support of the Application or signed the

Application. See Exhibit E; Exhibit F.

ADMIT.

26. Agent Haley did not review the Affidavit or the Application with Chief Gleason or Officer Fitzgerald and neither Chief Gleason nor Officer Fitzgerald helped to prepare either the Affidavit or the Application. Exhibit A at pp. 56-58. See also, Deposition of Kenneth J. Fitzgerald, May 16, 2008, attached hereto as Exhibit H, at pp. 38-39; Exhibit B at pp. 19-20; 97-98.

DENY Chief Gleason assisted in the preparation of the Search Warrant by providing information to Agent Haley that was not subsequently confirmed by Agent Haley. Agent Haley relied on the information that Chief Gleason provided to him. Gleason Depo., pp. 85, 86, 98, 102, 108, 109. Haley Depo., p. 74.

27. Neither Chief Gleason nor any of the officers under his supervision have ever been part of the Eastern Hampden County Drug Task Force. Exhibit B at pp. 48 49.

ADMIT.

28. Chief Gleason has never prepared a search warrant, search warrant application or affidavit in support of a search warrant application. Exhibit B at p. 17.

ADMIT.

29. The execution of the warrant at the Bunn Home is the only search warrant which has been executed in the Town of Holland during Chief Gleason's approximately six year tenure as police chief. Exhibit B at pp. 8, 18.

ADMIT.

30. Chief Gleason has never recruited a confidential informant during his tenure as police chief and had no contact with the confidential informant at issue before contacting Agent Haley. Id. at p. 26, 74.

ADMIT.

31. The only controlled drug “buy” that Chief Gleason has ever participated in was in connection with the investigation of the Bunn home. Exhibit B at p. 25.

ADMIT.

32. In 2003, Officer Fitzgerald was a part-time police officer for the Town of Holland. Exhibit H at pp. 8-9.

ADMIT.

33. Officer Fitzgerald was not involved in the investigation of the Bunn family or the Bunn Home. Exhibit H at pp. 11-12.

ADMIT.

34. Approximately 1-3 days prior to March 27, 2003, Chief Gleason asked Officer Fitzgerald if he would be available on the morning of March 27, 2003 to assist in the execution of a search warrant. Exhibit H at pp. 13-14.

ADMIT.

35. Prior to that time, Officer Fitzgerald was unaware that there had been an investigation related to the Bunn Home. Exhibit H at p. 14.

ADMIT.

36. Officer Fitzgerald was not aware that other officers were using a confidential informant at any time while he was employed by the Town of Holland and he has

never taken part in a significant surveillance as a police officer. Exhibit H at p. 35-36.

ADMIT.

37. Officer Fitzgerald never reviewed the search warrant or Agent Haley's affidavit. Exhibit H at pp. 38-39.

ADMIT.

38. Officer Fitzgerald does not remember ever meeting Agent Scott Haley. Exhibit H at pp. 12.-13.

ADMIT.

39. On March 27, 2003, members of the Eastern Hampden County Drug Task Force, the Massachusetts State Police and the Holland Police Department executed a search warrant at the Bunn Home. See Exhibit A at pp. 58-59.

ADMIT.

40. On March 27, 2003, Marijuana and marijuana paraphernalia were found in Christena Dodge's nightstand. Deposition of Christena Dodge, May 1, 2008, attached hereto as Exhibit I, at pp. 52-54.

ADMIT that Mrs. Dodge was wearing her father's jacket the night before which had a small tin of marijuana in a pocket and she placed it in her nightstand on March 26, 2003. Officer Fitzgerald took the tin and placed it in a crib and took pictures of it during the Raid. Mrs. Dodge Depo., pp. 53-59.

41. David Bunn regularly kept marijuana in a locked box in his bedroom and marijuana was found in David and Judith Bunn's bedroom on March 27, 2003.

Deposition of Judith Bunn, April 30, 2008, attached hereto as Exhibit J at pp. 6768; Deposition

of David Bunn, April 30, 2008, attached hereto as Exhibit K, at pp. 61-62.

ADMIT.

42. David Bunn has a history of arrests for drug offenses. Exhibit K at p. 80.

ADMIT.

43. Agent Haley supervised the execution of the search warrant at the Bunn Home. Exhibit A at p. 61.

ADMIT that Agent Haley and Chief Gleason were present at the Raid of the Bunn Home. Haley Depo., p. 67. Gleason Depo., pp. 68,79, 80.

44. Agent Haley did not instruct the law enforcement personnel who executed the search warrant to enter the Bunn Home with their guns drawn but expects that officers executing a search warrant will do so. Exhibit A at p. 62.

ADMIT.

45. Chief Gleason entered Daniel Collins' bedroom while he was sleeping. Deposition of Daniel Collins, May 16, 2008, attached hereto as Exhibit L at p. 53. Chief Gleason walked Daniel Collins upstairs in handcuffs and sat him at the kitchen table, although it is unknown who placed him in handcuffs. Exhibit L at pp. 53, 56.

ADMIT.

46. Mr. Collins did not have any conversation with Chief Gleason at that time. Exhibit L at p. 56.

ADMIT.

47. Chief Gleason's weapon was drawn for a limited period of time during the search;

once Chief Gleason was told that all of the occupants of the Bunn Home were secured, he holstered his weapon. Exhibit B at p. 138.

ADMIT.

48. At some point during the search, Daniel Collins saw Officer Fitzgerald walk into the house, talk to a few police officers present, and walk back outside. Exhibit L at pp. 64-65.

ADMIT.

49. Daniel Collins was allowed to use the bathroom during the execution of the Warrant and for most of the event he was seated at the kitchen table. Exhibit L at pp. 67-68.

ADMIT.

50. Jamie Dodge was also handcuffed and required to sit at the kitchen table during the search. Deposition of Jamie Dodge, May 1, 2008, attached hereto as Exhibit M, at pp. 38-39.

ADMIT.

51. At one point, he was allowed to retrieve a pack of cigarettes from his bedroom. Exhibit M at p. 43.

ADMIT.

52. Jamie Dodge has no memory of any action or inaction of either Chief Gleason or Officer Fitzgerald's during the execution of the Warrant. Exhibit M at pp. 76-77.

ADMIT.

53. Mr. Dodge threatened unidentified officers who kicked his son's crib that he would break their jaws if they un-handcuffed him. Deposition of Jamie Dodge,

May 1, 2008, attached hereto as Exhibit M at 38-39.

DENY that Mr. Dodge was violent or threatening to any officer. Mr. Dodge was not arrested and the residents of the Bunn Home were unusually calm and cooperative. Haley Depo., pp, 68, 124.

54. Christena Dodge was not placed in handcuffs. Exhibit I at pp. 31, 56-57, 45-46.

ADMIT.

55. She was allowed to make a telephone call, although Chief Gleason took the phone away from her when he realized that she had called her father. Exhibit I at p. 64.

ADMIT.

56. Ms. Dodge was not placed in handcuffs “because I had my two young sons.” Exhibit I at p. 31, 34. Exhibit L at pp. 60-63.

ADMIT.

57. One of Christena Dodge’s children was placed in a high chair and the other was in a play pen in the kitchen during the execution of the warrant. Exhibit L at p. 62.

At one point, Christena Dodge asked unidentified police officers if she could change her son’s diaper and was told no. Exhibit I at pp. 31, 34.

ADMIT.

58. These unidentified officers told Ms. Dodge that there was a possibility she could be hiding drugs in her son’s diaper. Exhibit I at p. 31.

ADMIT.

59. After approximately 30 minutes, Ms. Dodge was allowed to change her son’s diaper under the supervision of an unidentified police officer. Exhibit I at pp. 31, 34.

ADMIT.

60. At one point, Officer Fitzgerald took a toy out of Christena Dodge's son's hand and made him cry because, according to Officer Fitzgerald, the toy was too loud. Exhibit I at p. 58-59. Christena Dodge then gave the child a different toy, which he played with. Exhibit L at p. 63.

ADMIT.

61. Chief Gleason and Officer Fitzgerald did not yell, swear at or direct threats of physical violence at the plaintiffs on March 27, 2003. See Exhibit M at pp. 57-58; 64-68; Exhibit L at pp. 64-66; Exhibit I at pp. 34-36, 44. Plaintiff Daniel Collins Answers to Officer Kenneth Fitzgerald's, First Set of Interrogatories, attached hereto as Exhibit N at ¶ 1; Plaintiff Daniel Collins' Answers to Chief Kevin Gleason's, First Set of Interrogatories at ¶ 2; Plaintiff Jamie Dodge (sic) Answers to Chief Kevin Gleason's, First Set of Interrogatories, attached hereto as Exhibit O, at ¶ 2; Plaintiff, Cougar John Bunn Answers Chief Kevin Gleason's First Set of Interrogatories, attached hereto as Exhibit P at ¶ 1; Plaintiff, Phoenix Dodge, per proxima amici, Christena Dodge Answers to Officer Kenneth Fitzgerald's, First Set of Interrogatories, attached hereto as Exhibit Q, at ¶ 1; Plaintiff, Phoenix Dodge, per proxima amici, Christena Dodge Answers to Chief Kevin Gleason's, First Set of Interrogatories, attached hereto as Exhibit R at ¶ 2; Plaintiff Justice Dodge, per proxima amici, Christena Dodge Answers to Chief Kevin Gleason's, First Set of Interrogatories, attached hereto as Exhibit S at ¶ 2.

DENY. Collins Depo., p. 51, 52, 57, 60, 73; Gleason Depo., p. 135.

62. Jamie Dodge does not remember anything about Chief Gleason or Officer

Fitzgerald's actions on March 27, 2003. Exhibit M at pp. 76-77.

ADMIT.

63. At some point during the execution of the Warrant, Chief Gleason entered the kitchen and asked Christena Dodge where her father was. Exhibit I at p. 34-36.

ADMIT.

64. Chief Gleason threatened to call the Department of Social Services ("DSS"). Exhibit I at pp. 34-36. "Basically, he told me that he had the right to call the Department of Social Services on me due to the fact that I was living with a drug dealer with my two young children." Exhibit I at p. 36.

ADMIT.

65. Ms. Dodge forestalled this threat by contacting DSS herself. Exhibit I at pp. 36 39.

ADMIT.

66. One employee of that agency was over zealous but the actions of that employee did not relate in any way to either Chief Gleason or Officer Fitzgerald. Exhibit I at p. 39.

DENY it is unclear what this statement means.

67. An unknown police officer or officers put a gun to a dog's head and threatened to shoot the dog during the search of the Bunn Home. Exhibit I at p. 29.

ADMIT.

68. An unknown police officer or officers insulted plaintiffs and made light of Christena Dodge's disability. See Exhibit I at p. 61.

ADMIT.

69. Daniel Collins' girlfriend was forced to dress in front of police officers. See Exhibit L at p. 57.

ADMIT.

70. Officer Fitzgerald placed a tin containing marijuana and a "bowl" inside of Christena Dodge's son's crib and took pictures of it. Exhibit I at pp. 57-58.

ADMIT.

71. The execution of the search warrant took between one half hour and an hour and a half. Exhibit L at p. 68; Exhibit I at p. 60.

ADMIT.

72. No one was arrested at the Bunn Home on March 27, 2003 and none of the plaintiffs were arrested thereafter. See Exhibit A at pp. 67-69.

DENY a warrant was issued for the arrest of Judith Bunn and Christena Dodge on November 4, 2004. Exhibits 8 & 10.

73. On March 28, 2003, the Town of Holland Board of Health investigated the toilets and septic system at the Bunn Home at Chief Gleason's request. Exhibit B at pp. 169-176. Chief Gleason assigned Officer Pillsbury to accompany the Board of Health official involved to the Bunn Home at the request of the Board of Health official. Exhibit B at pp. 170-172. No police officer entered the Bunn Home that day. Exhibit B at p. 174; Exhibit J at pp. 116-118. One of the toilets in the Bunn home was broken. Exhibit I at p. 69.

DENY that a toilet was broken. Collins Depo., 134. Gleason Depo., p. 170, 172.

74. Sometime after March 27, 2003, Officer Fitzgerald went to the Bunn Home because the Holland Police Department had received a report that the Bunn's dog

had eaten a cat. Exhibit I at p. 72. Judith Bunn offered to show Officer Fitzgerald the dog. Id. He refused the offer and left. Id. at p. 72, 75.

ADMIT.

75. Daniel Collins was the subject of an automobile stop by a Holland police officer on January 29, 2006. Neither Chief Gleason nor Officer Fitzgerald was involved in that incident. See Complaint at ¶ 42(d); Exhibit L at pp. 91-93.

ADMIT.

76. Jamie Dodge has not been harassed by members of the Holland Police Department and has not had any problems with either Chief Gleason or Officer Fitzgerald since March 27, 2003. Exhibit M at pp. 70, 77.

ADMIT.

77. Cougar John Bunn, Daniel Collins and David Bunn have not been harassed by either defendant. Deposition of Cougar J. Bunn, May 1, 2008, attached hereto as Exhibit T, at p. 62; Exhibit L at p. 86-87; Exhibit K at p. 43, 98, 100, 115. Daniel Collins' Answers to Fitzgerald Interrogatories #4, 5, 6, in Response to Motion to Compel, attached hereto as Exhibit U at ¶ 5; Cougar Bunn's Answers to Chief Kevin Gleason's Interrogatories # 4, 7, 8, 11, 12 in Response to Motion to Compel, attached hereto as Exhibit V at ¶ 8.

ADMIT that with the exception of the Raid and the events surrounding the Raid, Cougar Bunn, Collins, and Mr. Bunn were not personally harassed by the defendants.

78. \$850 in United States currency which was seized during the search of the Bunn Home was returned to the plaintiffs during the pendency of this lawsuit.

ADMIT that despite repeated requests, the \$850 was not returned until after May 6, 2008

and was held by Chief Gleason without reason for more than five years. Gleason Depo., p. 144.

79. Judith Bunn debated the merits of medical marijuana with Chief Gleason approximately a year before the execution of the Warrant and informed him that David Bunn was a medical marijuana patient at that time. Exhibit J at pp. 50-54.

ADMIT that Chief Gleason was aware that David Bunn was an activist for medical marijuana. Gleason Depo., p. 124, 125.

80. Judith Bunn has not been harassed by Officer Fitzgerald. Judith Bunn's Answers to Fitzgerald Interrogatories #4, 5, 6 in Response to Motion to Compel, attached hereto as Exhibit W at ¶ 5.

ADMIT.

81. On or about April 2, 2003, Chief Gleason filed an application for a criminal complaint charging David Bunn with: one count of possession of a Class D controlled substance in violation of M.G.L. c. 94C, § 34; possession of a Class D controlled substance with the intent to distribute in violation of M.G.L. c. 94C, § 32C; and possession of drug paraphernalia with intent to distribute in violation of M.G.L. c. 94C, § 32I. See Application for Complaint, attached hereto as Exhibit X.

ADMIT.

82. On or about April 2, 2003, Chief Gleason filed an application for a criminal complaint charging Judith Bunn with: one count of possession of a Class D controlled substance in violation of M.G.L. c. 94C, § 34; possession of a Class D controlled substance with the intent to distribute in violation of M.G.L. c. 94C, §

32C; and possession of drug paraphernalia with intent to distribute in violation of M.G.L. c. 94C, § 32I. See Application for Complaint, attached hereto as Exhibit Y.

ADMIT.

83. On or about April 2, 2003, Chief Gleason filed an application for a criminal complaint charging Christena Dodge with one count of possession of a Class D controlled substance in violation of M.G.L. c. 94C, § 34. See Application for Complaint, attached hereto as Exhibit Z.

ADMIT.

84. On or about November 9, 2003, a criminal complaint issued charging Christena Dodge with one count of possession of a Class D controlled substance in violation of M.G.L. c. 94C, § 34. Criminal Complaint, attached hereto as Exhibit AA.

ADMIT.

85. On or about November 9, 2003, a criminal complaint issued charging Judith Bunn with one count of possession of a Class D controlled substance in violation of M.G.L. c. 94C, § 34. Criminal Complaint, attached hereto as Exhibit BB.

ADMIT.

PLAINTIFFS' FACTS IN DISPUTE

These facts contradict the facts set forth by the Defendants as to Gleason's involvement and knowledge of the investigation, search and seizure of the Bunn Home.

1. Mr. Bunn is an activist in support of the legalization of marijuana and Mr. Bunn and members of his family have participated in protests. Mr. Bunn has been featured in

- magazines and newspaper articles that are in favor of the legalization of marijuana, and Mr. & Mrs. Bunn were on the Board of Directors for a pro-marijuana group called Mass/Cann. Mr. Bunn has a legal prescription for the use of marijuana for medicinal purposes issued in California by a physician. David Bunn Depo., p. 23-24.
2. Prior to March 27, 2003, Chief Gleason knew of Mr. Bunn's activist speech in support of the legalization of marijuana. Gleason Depo., p. 124-125.
 3. On March 25, 2003, Defendant, Scott Haley, Lead Agent Eastern Hampden County Narcotic Task Force, filed an application for a search warrant and signed an affidavit in support of the application and a search warrant was issued. Defendants' Answer, Paragraph 22.
 4. The search warrant sought to search the Bunn Home at The Property, where the plaintiffs, were living. **Exhibit 3.**
 5. The affidavit in support of the application for the search warrant stated that defendant, Chief Gleason, "reported that the Holland Police Department had been receiving information that a David Bunn whom lives with his family on Maybrook Road in that town was selling marijuana from the house." **Exhibit 4.**
 6. The affidavit in support of the application for the search warrant referenced that David Bunn is an activist for the legalization of marijuana is actively involved in public protests for the legalization of marijuana. Copies of newspaper articles in which David Bunn was interviewed were attached to the warrant. **Exhibit 4.**
 7. The Bunn family's house was raided because of rumors and because of David Bunn's public protected speech: "It's very -- it's our search warrant becomes easier and more believable if we can show that a person's been involved in drug activity in the past, and one of the ways we do that is from doing criminal histories on them, police reports on them, simple things

- like this one, in this case marching up and down the street with placards and all the other, then that is part of our probable cause that this person has drugs and drug history, and that corroborates and verifies our affidavit that we're writing.” Haley Depo., p. 125.
8. Chief Gleason assisted Agent Haley in preparing the Search Warrant for 90 Maybrook Road, specifically, Chief Gleason provided Scott Haley information for the sole purpose of the preparation of the Search Warrant, Gleason Depo., p. 102, 108, as follows: (1) Chief Gleason requested a copy of a newspaper article featuring a pro-marijuana protest that David Bunn conducted and gave it to Agent Haley, Gleason Depo., p. 85, 86, ; (2) Chief Gleason researched the criminal histories of the residence on 90 Maybrook, prior to the Raid and gave the criminal background checks to Agent Haley; Gleason Depo. p. 98; (3) Chief Gleason provided license pictures of the residents of 90 Maybrook. Gleason Depo., p. 98; (4) Chief Gleason gathered information regarding the description and ownership of the van owned by the plaintiffs. Gleason Depo., p. 109.
 9. Agent Haley relied on the information that Chief Gleason provided to him to draft the search warrant: “Chief Gleason is a fellow police officer and the information he gives me is certainly privy for me to put in the police report. If an officer or agent is working with me on an investigation and he has seen or uncovered something, then he is reliable in the fact that he's a police officer and he's working the investigation with me.” Haley Depo., p. 74.
 10. Chief Gleason made misrepresentations to Agent Haley to be added to the Search Warrant and Chief Gleason knew the statements he made to Agent Haley were false. Gleason Depo., p. 110, 113, 114, 115.
 11. Chief Gleason initiated and conducted an investigation against David Bunn and 90 Maybrook Road. Gleason Depo., p. 69, 70, 82, 103.

12. At no point did the Drug Task Force or Agent Haley take over the investigation of 90 Maybrook, which lead to the drafting of the Search Warrant of 90 Maybrook, from Chief Gleason or the Holland Police Department. Gleason Depo., p. 79-80.
13. Under the supervision of Chief Gleason, Officer Moran arranged for Agent Haley to meet with the Confidential Informant. Gleason Depo., 80-81.
14. Chief Gleason contacted the Drug Task Force to involve the Drug Task Force in his investigation against David Bunn and 90 Maybrook Road. Gleason Depo., p.70, 103.
15. Chief Gleason was present at the Raid and participated in the collection of evidence. Gleason Depo., 34.
16. Chief Gleason supervised his Holland Police Officers at the Raid. Gleason Depo., p. 37.
17. Chief Gleason knew that David Bunn was an activist for the legalization of medical marijuana when he initiated the investigation against David Bunn and 90 Maybrook Road. Gleason Depo., p. 124-125.
18. Chief Gleason knew of the residents of 90 Maybrook and relied upon rumors that residents at 90 Maybrook were doing drugs. Chief Gleason did not have any information that the residents of 90 Maybrook were selling drugs. Gleason Depo., p. 110, 113, 114, 115.
19. Chief Gleason met with Agent Haley at the Holland Police Department to investigate and prepare for the search on 90 Maybrook. Gleason Depo., p. 89.
20. Chief Gleason met personally with the Confidential Informant. Gleason Depo., p. 91.
21. The search on the Bunn Home was the only search executed in Holland since at least 2001. Gleason Deposition, p. 18.
22. Chief Gleason supervised Officer Moorehouse, and Officer Fitzgerald during the Raid of 90 Maybrook. Gleason Deposition, p. 22.

23. Chief Gleason ordered Officer Moorehouse and Officer Fitzgerald to attend the briefing at State Police Barracks and to attend the Raid. Gleason Depo., p. 61, 68, 69.
24. Under the supervision of Chief Gleason, Officer Moran performed surveillance on 90 Maybrook. Gleason Depo., p. 22.
25. Chief Gleason participated in the second and third controlled buys. Gleason Depo., 25, 93-94, 100.
26. Chief Gleason reviewed the Search Warrant prior to its execution on March 27, 2003. Gleason Depo., p. 60.
27. Chief Gleason drove to 90 Maybrook on March 27, 2003 in his black SUV police cruiser. Gleason Depo., p. 66.
28. Chief Gleason requested an inspection by the Board of Health to investigate dog feces in the basement but did not remember seeing dog feces in the basement. Gleason Depo., 133, 172.
29. Chief Gleason requested an inspection by the Board of Health to investigate the Bunn Home because the toilets were not working, but he did not check the toilets and Board of Health director, Sally Blais noted that the toilets worked but Chief Gleason did not follow up on the issue. Gleason Depo., p. 170, 172.
30. Chief Gleason requested an inspection by the Board of Health to investigate the Bunn Home because it was a “pigsty” although the only time Chief Gleason saw the interior of the house was after the law enforcement officers had raided the house. Gleason Depo., p. 170, 172.
31. Chief Gleason heard yelling by the law enforcement officers during the Raid. Gleason Depo., p. 135.
32. Chief Gleason had his weapon drawn when he entered the house through the first floor basement. Gleason Depo., 138.

33. Chief Gleason collected the evidence taken from the Bunn Home during the Raid and transported the evidence from the Bunn Home to the Holland Police Department in his black SUV cruiser. Gleason Depo., p. 141, 178.
34. Officer Fitzgerald and Chief Gleason prepared the police report and inventory of all of the evidence taken from 90 Maybrook and cataloged and stored the evidence at Holland Police Department. Gleason Depo., p. 142, 143.
35. As of May 6, 2008, all of the evidence taken from 90 Maybrook was still at the Holland Police Department. Gleason Depo., p. 144.
36. Judith Bunn requested the return of the Bunn Home taken from 90 Maybrook and Chief Gleason denied this request. Gleason Depo., p. 147.
37. The view of the Bunn Home is obscured by a long winding driveway. Haley Depo., p. 25, 126.
38. The search warrant was executed on the Bunn Home on March 27, 2003. Haley Depo., p. 59.
39. David Bunn did not have any convictions for the sale of drugs. Haley Depo., p. 87.
40. No test were conducted on the substances procured during the controlled buys to confirm that the substances were marijuana. Haley Depo. p., 104.
41. The Mr. Collins was terrorized during the Raid: I was sleeping downstairs in my room with my girlfriend. Neither of us had any clothes on. And next thing I know, there is a pounding outside my bedroom door which was locked. And I'm getting up, throwing my pants on, thinking somebody's breaking into my bedroom, my house. I hear wham, wham, wham on the door. So, I jump up, throw my pants on, and get ready to defend myself because I think somebody's breaking into my house. And next thing I know, there's cops pointing guns in my face, telling me to get on the ground, get on the ground. Then they brought me upstairs

in handcuffs, sat me at the table and searched the house. . . .I got thrown down to the ground really quick, but I know there was probably three going -- three guns pointed at me and five pointed at my girlfriend. . . . They forced her to get out of bed naked. They would not throw her any clothes or anything to wrap her body up with. Forced her to get out of bed naked and go out to the dresser and pull out clothes while five of them watched her . . .I know five people were watching her. That's what she told me. . . . I was there but I was facing -- I was on the ground with my face on the ground with somebody's knee in my back. I couldn't stand up and look around, couldn't talk. Every time I went to talk, they would tell me to shut up. . . . They were tearing my house apart.... There was two officers in the kitchen watching over us looking through stuff and the rest of them were tearing through our house. I could hear noises throughout our entire house, stuff breaking, crashing and falling. . . . the people who were in my room broke a whole bunch of my stuff because there was eight people in a small bedroom knocking all my stuff around on the floor. DVD player was broken. Models that I had previously built had been broken. Pictures that I had had in picture frames had been broken. Glass on the floor.” Collins Depo., p. 51, 52, 57, 60, 73.

42. The criminal charges for Mrs. Dodge were for Class D Drug Possession (Exhibit 6).
43. Chief Gleason’s narrative report indicated that “a search of the bedroom of Christina Dodge found a pipe with residue of burnt marijuana was located on a shelf just above an infants crib. Also marijuana was recovered from this room.” (Exhibit 7).
44. The bedroom was shared by Christena Dodge and Jamie Dodge.
45. The criminal charges for Mrs. Bunn were for Class D Possession (Exhibit 8).
46. Chief Gleason’s Incident Report dated April 2, 2003, does not identify Mrs. Bunn as the owner of any of the marijuana or paraphernalia. All of the drugs and other properties are

identified as being owned by either Mr. Bunn or Mrs. Dodge. (Exhibit 9).

47. The individual that Chief Gleason used to perform the "controlled buys" had a criminal record and an incentive to bring evidence to Chief Gleason that Mr. Bunn sold drugs:

Q Did Chief Gleason ever explain his relationship to the informant prior to your involvement?

A. I know what the relationship was. He was arrested and he rolled and they turned him over to me. And that was it. And that's the way we get our informants. Ninety something percent of them come to us that way. They get arrested. They roll. And then they work or they get in trouble, go to jail. And that's what happened with this guy. He had incentive to work because he was in trouble.

Haley Depo., p. 114- 115.

48. Mrs. Dodge saw Officer Fitzgerald in her bedroom during the raid:

A. But when they found the tin and the bowl in my drawer, they put the tin and the bowl inside of my son's crib and took pictures of it, making it look like they would have found the pot inside of my son's crib which is not the case. They found it in my nightstand next to my bed.

Q. Okay. Who's they?

A. The police officers.

Q. Was it Kevin Gleason?

A. No. Kevin Gleason was in my father's room.

Q. Okay. So, what you just described occurring in your bedroom was neither Kevin Gleason nor Ken Fitzgerald?

A. No, it was Ken Fitzgerald. Not Kevin Gleason.

Q. Ken Fitzgerald was in your room?

A. Yes.

THE PLAINTIFFS,

BY: /s/ Erin I. O'Neil-Baker

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 17th day of October, 2008.

 /s/ Erin I. O'Neil-Baker

Erin O'Neil-Baker