UNITED STATED DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS D'ANGELO,

Plaintiff,

CASE NO. 2:10-CV-12195
HONORABLE LAWRENCE P. ZATKOFF
MAGISTRATE MONA E. MAJZOUB

v.

PAUL PARENT, **CLINTON TOWNSHIP**, a municipal entity, **NICHOLAS DYKAS**, **JASON FIGURSKI** and **KEITH WATSON**, in their official and individual capacities, jointly and severally,

Defendants.

AMOS E. WILLIAMS (P39118)
THOMAS E. KUHN (P37924)
AMOS E. WILLIAMS, P.C.
Attorneys for Plaintiff
615 Griswold St., Suite 1115
Detroit, Michigan 48226
(313) 963-5222

PETER W. PEACOCK (P37201)
PLUNKETT COONEY
Attorneys for Defendants Clinton Township Dykas, Figurski and Watson
10 S. Main Street, Suite 400
Mt. Clemens, Michigan 48043
(586) 466-7605

PLAINTIFF'S RESPONSE IN OPPOSITION TO SUMMARY JUDGMENT

NOW COMES PLAINTIFF, Thomas D'Angelo, by and through his attorneys, and responds in opposition to Defendants' Motion for Summary Disposition as set forth in his Brief in Opposition.

AMOS E. WILLIAMS, P.C.

s/ Amos E. Williams
Thomas E. Kuhn (P37924)
Amos E. Williams (P39118)
Attorneys for Plaintiff

Dated: April 6, 2011

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PLAINTIFF'S BRIEF IN OPPOSITION TO SUMMARY JUDGEMENT

I. FACTS

This case involves the wrongful arrest and prosecution of Tom D'Angelo for indecent exposure. Mr. D'Angelo brought claims against Defendants for 4th Amendment violations, including excessive force, wrongful arrest and malicious prosecution. Plaintiff will stipulate to drop his federal claims against Clinton Township and officer Watson. Thus, this brief will address only Plaintiff's claims against Defendants Dykas and Figurski.

A. THE LIBRARY INCIDENT

Tom D'Angelo went to the Macomb Clinton Library on Saturday afternoon, April 12, 2008, as he had many times during the years since the library first opened (Ex. 1, D'Angelo dep, p. 20, 22). He went to the periodical area, read a couple daily newspapers, then went to the adult non-fiction area, ande to its separate adult computer area (Ex. 1, D'Angelo dep, p. 44-5). Mr. D'Angelo spent several hours on the computer, looking up alternative treatments for his mother's illness (Ex. 1, D'Angelo dep, p. 37). In particular, he was researching the work of Professor Valerie Hudson from Brigham Young University (Ex. 1, D'Angelo dep, p. 45, 48).

Apparently, a library patron, Paul Parent, came and sat at the computer terminal right next to Mr. D'Angelo (Ex. 2, trial transcript, p. 27). Parent became annoyed at some noises made by Mr. D'Angelo, something he described as "chirping" or "grunting" (Ex. 2, trial transcript, p. 29-30; Ex. 4, p.6). This distraction caused Parent to look at Mr. D'Angelo. Parent observed on three occasions over a 45 minute time frame that Mr. D'Angelo put his hands in his shirt flap or trousers and reached into his genital area (Ex. 2, trial transcript, p. 30-2). Parent believed that Mr. D'Angelo was masturbating, and was looking at pornography (Ex. 2, trial transcript, p. 44, 57).

When he saw D'Angelo's actions the third time, Parent complained about the masturbation and noise to the adult non-fiction library worker, Janine Taylor, and asked her to observe D'Angelo (Ex. 2, trial transcript, p. 34, 57; Ex. 3, Taylor dep., p. 6). Ms. Taylor didn't see anything when she checked (Ex. 3, p. 6, 8). Parent wanted Ms. Taylor to call the police, but instead Ms. Taylor contacted Deborah Bodner, a children's librarian, who was the library's on-site manager for the day (Ex. 3, Taylor dep., p. 7). Mrs. Bodner

immediately went past the location where Mr. D'Angelo was sitting and saw nothing improper in Mr. D'Angelo's conduct (Ex. 2, trial transcript, p. 60, 61, 63). She was able to identify Mr. D'Angelo, with whom she was acquainted, because he had been a regular library patron for many years (Ex. 4, Bodner dep, p. 10).

Mrs. Bodner adamantly refused to call the police because she had seen nothing wrong (Ex. 2, p. 63; Ex. 4, Bodner dep, p. 7). Parent became more and more upset, and finally another librarian Ellen McNally came by, and said that they would call the police for Parent (Ex. 4, Bodner dep, p. 7). Ms. Taylor made the call and told the dispatcher that a patron had complained about someone "playing with himself" (Ex. 3, Taylor dep., p. 9). The dispatcher said some cars would be over shortly (Ex. 3, Taylor dep., p. 10) .

About ten minutes later, a patrol car with Defendants Dykas and Figurski arrived at the library (Ex. 3, Taylor dep., p. 10). They met Mrs. Bodner, who took them upstairs to the adult non-fiction area (Ex. 4, Bodner dep, p. 8-9). Figurski then went to observe Mr. D'Angelo while Dykas talked with the librarians and Parent (Ex. 5, Figurski dep, p. 8,9). Neither librarian had seen anything that constituted a crime (Ex. 3, Taylor dep., p. 8). Parent, on the other hand, believed that Mr. D'Angelo was masturbating and watching pornography (Ex. 3, Taylor dep., p. 6).

After Dykas talked with the witnesses, he talked with his partner Figurski (Ex. 5, Figurski dep, p. 11). Based on Dykas' discussions with the witnesses, the two officers decided that they would arrest Mr. D'Angelo for masturbating and watching pornography (Ex. 5, Figurski dep, p. 11-12). Figurski then handcuffed Mr. D'Angelo, and led him out of the library to their patrol car (Ex. 1, D'Angelo dep, p. 60-2). Although Mr. D'Angelo asked why he was being arrested, Figurski refused to respond. Once outside the computer lab,

Figurski stated, “So you’re looking at porn in there, ay?” (Ex. 1, D’Angelo dep, p. 61). Mr. D’Angelo said, “Absolutely not. I was not looking at porn.” (Ex. 1, D’Angelo dep, p. 61). Figurski went on, “A gentleman here says you were masturbating as well.” (Ex. 1, D’Angelo dep, p. 62). Mr. D’Angelo denied that. Figurski told Mr. D’Angelo that the library had video surveillance of the computer room, and D’Angelo stated he would like to see that video (Ex. 2, p.132).

When Figurski and Mr. D’Angelo got to the patrol car, D’Angelo asked Figurski to check the computer and he would see that D’Angelo was not looking at porn (Ex. 1, D’Angelo, p. 66). Figurski opened the car door, and D’Angelo sat down in the back seat. Without notice or explanation, Figurski then took D’Angelo’s legs and slammed his right knee into the door jam (Ex. 1, D’Angelo, p. 67-8). Mr. D’Angelo yelled out in pain (Ex. 1, D’Angelo, p. 68).

Figurski got into the car and started making derogatory comments about Mr. D’Angelo (Ex. 1, D’Angelo, p. 69). Figurski said, “Why don’t you do that shit at home?” “Don’t you have a computer at home?” “I bet you know what the sex offender list is, don’t you?” (Ex. 1, D’Angelo, pp. 69-72).

Meanwhile, Dykas checked the computer used by Mr. D’Angelo and found no evidence that he had been looking at pornography (Ex. 6, Dykas dep, p. 17). He asked that the librarians keep the computer out of service until it could be examined by the library’s technician on Monday (Ex. 7, Police Report; Ex. 6, p. 18). Neither Dykas nor Figurski saw Mr. D’Angelo masturbate while they were observing him (Ex. 7, Police Report). Dykas asked Mrs. Bodner if she had seen D’Angelo expose himself, and she told him that she hadn’t (Ex. 6, Dykas dep, p. 12). When the police came, they noticed that Mr. D’Angelo’s

zipper was zipped (Ex. 7, Police Report). Dykas asked Ms. Taylor whether she had seen D'Angelo do anything wrong, and she told him that she hadn't (Ex. 3, Taylor dep., p. 11).

Dykas joined Figurski in the patrol car, and they took Mr. D'Angelo to the Clinton Township Police Department, where he was photographed, fingerprinted and booked. D'Angelo repeatedly asked Figurski about his charges, but Figurski refused to respond (Ex. 1, D'Angelo, p. 76). Finally, Figurski angrily said, "We're going to charge you with a felony." (Ex. 1, D'Angelo, p. 77).

After spending over an hour in the jail cell, a friend of Mr. D'Angelo's came to the police station and paid a $500 bond so that he could be released (Ex. 1, D'Angelo, p. 83). When he saw the bond receipt, it was the first time that Mr. D'Angelo was aware he was being charged with indecent exposure (Ex. 1, D'Angelo, p. 85). Mr. D'Angelo remained out on bond until he was finally found not guilty by a jury on September 11, 2008 (Ex. 2, trial transcript; Ex. 7, Police Reports) .

B. THE POLICE REPORT

Defendant Dykas wrote the police report on April 12, 2008 (Ex. 7, Police Report). Dykas wrote that Mrs. Bodner had seen D'Angelo masturbating (Ex. 7, Police Report). Of course, Mrs. Bodner categorically denied saying that to Dykas (Ex. 4, p. 8). In fact, she insisted that she had seen Mr. D'Angelo do nothing wrong (Ex. 2, p. 60, 61, 63; Ex. 4, p. 8). Dykas went on to write that Parent had told him that Mr. D'Angelo had taken his penis out of his pants, and masturbated (Ex. 7, Police Report). Parent denied ever seeing Mr. D'Angelo expose himself in any way: Parent merely saw hand movements which he took to be "masturbating" (Ex. 2, p. 38-40, 43-4). Parent also denied that he told Dykas that Mr. D'Angelo was watching "hard core porn," even though Dykas also put that in his police

report (Ex. 2, trial transcript, p. 37); however, Parent did acknowledge that he had mentioned that D'Angelo was watching "pornography." Although Ms. Taylor and Mrs. Bodner told Dykas that they hadn't seen Mr. D'Angelo do anything wrong– and, according to Dykas, Mrs. Bodner told him she didn't see D'Angelo expose himself– Dykas didn't put any of that information in his report (Ex. 7, Police Report).

Neither Dykas nor Figurski testified at Mr. D'Angelo's trial; however, Figurski was present at the trial, talking with Parent prior to Parent's testifying in court (Ex. 1, D'Angelo, affidavit; Ex. 5, p. 14).

C. TOM D'ANGELO

Tom D'Angelo was 45 years old at the time of this incident (Ex. 1, D'Angelo, p. 13). He graduated from Macomb Community College with an Associates Degree in 1983 (Ex. 1, D'Angelo, p. 13). D'Angelo lived with his mother who was in her 80s and in failing health. He had served as his mother's primary care giver for several years prior to the incident.

D'Angelo had one prior arrest in the early 80s for shoplifting while in college (Ex. 1, D'Angelo, p. 18). In that case, D'Angelo pled guilty and paid the fine (Ex. 1, D'Angelo, p. 18).

At the time of the library incident in April, 2008, Mr. D'Angelo had a jock rash, and may have inadvertently scratched the area (Ex. 2, Trial transcript, p. 124-5).

D'Angelo was humiliated with his arrest and removal from the library– on a Saturday when the library was at its busiest. He couldn't sleep, and suffered nightmares and flashbacks (Ex. 1, D'Angelo, p. 100-1). He became very angry and depressed (Ex. 1, D'Angelo, p. 100-1). D'Angelo was pre-occupied with the arrest, suffered bouts of crying, and was continually sad (Ex. 1, D'Angelo, p. 111). He feared going out, and feared the

police (Ex. 1, D'Angelo, p. 103, 112). While he was attending his nephew's little league game, a young person pointed him out as the "guy arrested at the library" (Ex. 1, D'Angelo, p. 113). D'Angelo was very stressed to be arrested and prosecuted for something he didn't do– and the nature of the charges increased the stress (Ex. 1, D'Angelo, p. 115).

In addition to his emotional damages, Mr. D'Angelo suffered pain from the knee injury which continues to the present. Because of his lack of insurance, Mr. D'Angelo has not pursued treatment for the knee. He also had criminal attorney bills under $5,000 (Ex. 1, D'Angelo, p. 109).

D. THE LIBRARY

Neither the library nor any of the librarians ever pursued any charges against Mr. D'Angelo. He wasn't put on any list, or prohibited from going to the library; however, because of the incident Mr. D'Angelo has never returned to the library (Ex. 1, D'Angelo dep; Ex. 2, trial transcript, p. 85-94.)

E. THE COMPUTER RECORDS

In addition to the review of the computer by Defendants while they were on the scene, further computer records demonstrated that Mr. D'Angelo never viewed pornography on April 12, 2008 (Ex. 2, trial transcript, p. 114-120).

F. INDECENT EXPOSURE

The elements of indecent exposure are set forth in the Standard Criminal Jury Instructions, as well as the District Court' charge to the jury in Mr. D'Angelo's case.

The Standard Criminal Jury Instructions state:

CJI2d 20.33

(1) The defendant is charged with the crime of indecent exposure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant exposed his penis.

(3) Second, that the defendant knew that he was exposing his penis. . .

(5) Third, that the defendant did this in a place under circumstances in which another person might reasonably have been expected to observe it and which created a substantial risk that someone might be offended or in a place where such exposure is likely to be an offense against your community's generally accepted standards of decency and morality. In determining this, you must think about the nature of the act and all of the circumstances surrounding the act.

(Ex. 8, CJI2d; See also, Ex. 2, Trial Court transcript, p. 179.)

Although Figurski claimed that Mr. D'Angelo was arrested for masturbating and watching porn, no evidence or law was put forth that masturbating or watching porn was a crime. Of course, Dykas' and Figurski's records indicated that they arrested Mr. D'Angelo for indecent exposure (Ex. 7, police report). The only evidence, however, that Mr. D'Angelo exposed his penis was the fabricated report and testimony of Defendant Dykas (Ex. 7, police report).

II. ARGUMENT

Summary judgment under Federal Rules of Civil Procedure 56c, is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law." LaPointe v. United Autoworkers, Local 600, 8 F.3d 376, 378 (6th Cir. 1993)

The standard of review for a district court in deciding a motion for summary judgment requires that the evidence, all facts and any inferences that may permissibly be drawn from the facts must be viewed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) The judge may not make credibility determinations or weigh the evidence. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

A. DEFENDANTS FIGURSKI AND DYKAS LACKED PROBABLE CAUSE TO ARREST

The 6th Circuit has clarified the standards for summary judgement based on § 1983 claims of fabricating evidence and withholding exculpatory evidence. Gregory v. City of Louisville, 444 F3d 725 (6th Cir. 2006). In Gregory, the Plaintiff was criminally convicted of several rapes, and his conviction vacated seven years later. The Plaintiff brought claims against various police investigators and experts, alleging they lacked probable cause for his arrest even though police relied on an eye witness who they claimed provided probable cause for the arrest.

The 6th Circuit held that "in a §1983 action, the existence of probable cause is a question of fact." Gregory, supra., at p. 743.

The Court cited Kuehl v. Burris, 173 F3d 646, 650 (8th Cir. 1999):

> An officer contemplating arrest is not free to disregard exculpatory evidence, even if substantial inculpatory evidence (standing by itself) suggests that probable cause exists.

The Court also cited Radvinski v. City of Olmsted Falls, 395 F3d 291, 305-6 (6th Cir. 2005).

In the present case, Defendants Dykas and Figurski can not even rely on an eye witness as the police did in Gregory. The one witness who claimed to see anything, never saw Mr. D'Angelo expose himself. All Parent said was that D'Angelo had been masturbating and watching pornography, neither of which are relevant to the crime of indecent exposure. In fact, Figurski testified that Mr. D'Angelo was arrested for masturbating and watching pornography– even though neither are crimes, and even though he and Dykas later charged D'Angelo with indecent exposure instead.

As in Gregory, Defendants also had significant exculpatory evidence at their disposal. Two librarians told the Defendants that they saw Mr. D'Angelo do no criminal acts. When the Defendants arrested D'Angelo, they found him with his pants zipped up, and found no pornography on the computer he was using. As in Gregory, the issue of probable cause should be a question of fact for the jury in this case as well.

In Gregory, a police expert claimed that hairs matched the Plaintiff's. Plaintiff produced witnesses who testified the hairs didn't match. The 6th Circuit found that Plaintiff had produced sufficient evidence to go to a jury on the police expert's fabrication of evidence on both the 4th Amendment wrongful seizure and malicious prosecution. Gregory, supra., at p. 744.

The present case is even clearer. Defendants Figurski and Dykas did a warrantless misdemeaner arrest (Ex. 7, police report). No independent prosecutorial or judicial judgement was involved. No preliminary exam was necessary, because Plaintiff was charged with a misdemeanor. Because no warrant was used, the only basis for the arrest was the officers' decision to arrest. The only written evidence of the alleged crime was

Dyka's report and Dyka's statement as the complaining witness[1], which contained falsification of both Mrs. Bodner's statements and Parent's. Without the falsification, a jury could reasonably find that no probable cause existed for the arrest or prosecution.

Established federal law is that an arrested person's seizure is "deemed to continue even after release from initial custody." Gregory, supra. at 748, citing Albright v Oliver, 510 US 266 at 277-78, 114 S.Ct. 807 (1994). A person continues to be seized for Fourth Amendment purposes when their freedom of action is "restrained due to the pending criminal proceedings." Gregory, supra. at 748, citing Albright v Oliver, 510 US 266 at 277-78, 114 S.Ct. 807 (1994)

In Sykes v Anderson, 625 F3d 294(6th Cir. 2010), the 6th Circuit upheld a jury verdict for 4th Amendment malicious prosecution against several officers involved in the arrest and prosecution of two women. The 6th Circuit established four elements of proof for such a claim:

1. Plaintiff must show a criminal prosecution was initiated against the plaintiff, and that the defendants made, influenced or participated in the decision to prosecute.

2. Plaintiff must show that there was a lack of probable cause for the criminal prosecution.

3. Plaintiff must show that he suffered a deprivation of liberty apart from the initial seizure (citing Gregory, see above).

4. The criminal proceeding must have been resolved in the plaintiff's favor.

[1]In its brief, Defendants incorrectly state that Parent was the complaining witness. The records, however, indicate that Dykas was the complaining witness, not Parent (Police Reports, Ex. 7).

In the present case, Plaintiff has presented evidence of each of the Sykes elements. Thus, Plaintiff has presented evidence sufficient to be allowed to go to a jury on his 4h Amendment claims for wrongful arrest and malicious prosecution.

III. ARGUMENT RE. QUALIFIED IMMUNITY

A. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

A claim of qualified immunity presents two closely linked questions: whether the Defendant violated the Plaintiff's rights and whether those rights were clearly established at the time of the alleged violation. Saucier v. Katz, 533 U.S. 194, 150 L Ed 2d 272 (2001); Phelps v. Coy, 286 F3d 295, 299 (6th Cir. 2002).

A Court must take the facts in the light most favorable to the Plaintiff. Phelps v. Coy, 286 F3d 295, 299 (6th Cir. 2002); Dickerson v. McClellan, 101 F3d 1151, 1157 (6th Cir. 1996). In their present motion, Defendants argue for qualified immunity on Plaintiffs' Fourth Amendment excessive force claim and wrongful search and seizure claims.

B. DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY

As Plaintiff has demonstrated, taken in the light most favorable to Plaintiff, Defendants failed to include exculpatory material, fabricated evidence, as well as wrongfully seized Mr. D'Angelo. Such wrongful conduct violated Mr. D'Angelo's 4th Amendment rights. The Court's inquiry doesn't end, however, with a determination that the facts would amount to a violation of Plaintiffs' Fourth Amendment rights. Defendants may be entitled to summary judgment if Plaintiffs' rights were not clearly established at the time of the incident.

Defendants, however, fail on this step as well. The unlawfulness of the Defendants' actions in wrongfully excluding exculpatory evidence, fabricating evidence, seizing Plaintiff without probable cause and participating in malicious prosecution were all clearly established at the time of the events in this case. See, e.g., Malley v. Briggs, 475 US 335, 106 S.Ct. 1092 (1986); Hale v. Kart, 396 F.3d 721, 2005 Fed.App. 0017P (6th Cir., Jan 13, 2005); Yancey v. Carroll County, Ky., 876 F.2d 1238 (6th Cir.1989); Gregory v. City of Louisville, 444 F3d 725 (6th Cir. 2006); Sykes v Anderson, supra.

Defendants Dykas and Figurski are not entitled to qualified immunity on Plaintiff's 4th Amendment claims of wrongful seizure and malicious prosecution.

C. DEFENDANT FIGURSKI IS NOT ENTITLED TO QUALIFIED IMMUNITY ON PLAINTIFF'S EXCESSIVE FORCE CLAIM

Because the excessive force used against Plaintiff occurred during his arrest, the parties' rights and liabilities are governed by the Fourth Amendment. Phelps v. Coy, 286 F3d 295, 300 (6th Cir. 2002).

Courts should pay particular attention to the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others and whether he/she is actively resisting arrest or attempting to evade arrest by flight. Graham v. Connor, 490 U.S. 386, 394, 104 LEd2d 443 (1989); Kostrzewa v. Troy, 247 F3d 633 (6th Cir. 2001).[2]

[2]The Graham elements do not justify the force Defendant used. First, Plaintiff was supposedly arrested for indecent exposure. In fact, all Defendant Firgurski knew was that Plaintiff was accused of watching porn and masturbating, which even if it were a crime would not qualify as a "severe crime" by any standards. Figurski acknowledged that D'Angelo was cooperative and didn't resist or attempt to evade arrest in any way.

In assessing the reasonableness of Defendants' actions, a Court must analyze the events in segments. Phelps v. Coy, 286 F3d 295, 301 (6th Cir. 2002); Dickerson v. McClellan, 101 F3d 1151, 1161-62 (6th Cir. 1996).

In Phelps, the plaintiff was handcuffed when a command officer thought the plaintiff was trying to kick another officer. The command officer tackled the plaintiff, and after being on top of him, hit the plaintiff in the face twice and banged his head into the floor at least three (3) times. The Sixth Circuit held that looking at the segment after the plaintiff had been tackled, no error was made in denying the defendant's motion for qualified immunity. The Sixth Circuit concluded:

> [O]n the facts as we must take them, there was simply no governmental interest in continuing to beat Phelps after he had been neutralized, nor could a reasonable officer have thought there was.
>
> Phelps, supra. at 301

See also, Adams v. Metiva, 31 F3d 375, 386 (6th Cir. 1994) (use of force after suspect incapacitated by mace would be excessive as a matter of law); McDowell v. Rogers, 863 F2d 1302, 1306 (6th Cir. 1988) (blow with nightstick to handcuffed, unresisting suspect would be gratuitous and therefore unreasonable); Darnell v. Caver, No. 97-5297, 1998 WL 416000 at *3 (6th Cir. 1998 (unpublished) (after suspect thrown to ground, unreasonable for officer to lift suspect's head and let it drop to pavement).

In the present case, Defendant Figurski had Mr. D'Angelo cuffed, and he had sat down in the back seat of the patrol car. Without warning, Figurski grabbed Plaintiff's legs and smashed his left knee into the door jam of the vehicle. Figurski admitted that Mr. D'Angelo was cooperative and didn't resist in any way (Ex. 5, Figurski dep, p. 12). As a result, Mr. D'Angelo suffered severe knee pain which continues to the present.

Thus, under all the elements of Graham, Mr. D'Angelo offered no threat whatsoever. Under these facts, Defendant used excessive force on Plaintiff that was not only unnecessary but also would have been recognized as unnecessary by reasonable officers in their position. These facts establish a violation of Plaintiff's Fourth Amendment right to be free from use of excessive force.

The Court's inquiry doesn't end with a determination that the facts would amount to a violation of Plaintiffs' Fourth Amendment rights. Defendant Figurski may be entitled to summary judgment if Plaintiffs' rights were not clearly established at the time of the incident.

Defendant Figurski, however, fail on this step as well. The unlawfulness of the Defendant's actions was clearly established at the time of the events in this case. See, e.g., Phelps v. Coy, 286 F3d 295, 302 (6th Cir. 2002); Adams v. Metiva, 31 F3d 375, 386 (6th Cir. 1994) (unconstitutionality of use of gratuitous force against helpless and incapacitated suspect during arrest well established in 1991); McDowell v. Rogers, 863 F2d 1302, 1306 (6th Cir. 1988). No reasonable officer could have thought his actions committed on April 12, 2008, were lawful.

VI. CONCLUSION

Wherefore, for all the reasons stated, Plaintiffs respectfully request this Court to deny Defendants' Motion.

AMOS E. WILLIAMS, P.C.

s/ Amos E. Williams

Thomas E. Kuhn (P37924)
Amos E. Williams (P39118)
Attorneys for Plaintiff

Dated: April 6, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2011, I served ***Plaintiff's Response and Brief In Opposition to Summary Judgment and Certificate of Service on*** with the Clerk of the Court using the ECF system, which will send notification of such filing to Peter W. Peacock, Esquire.

s/Amos E. Williams
615 Griswold, Suite 1115
Detroit, Michigan 48226-3998
(313) 963-5222
AEWPC@aol.com
(P39118)