

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

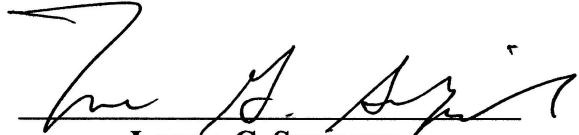
DR. CLYDE PEMBERTON,	Plaintiff,	X
-against-	:	18 Civ. 7908 (LGS)
CITY OF NEW YORK, et al.,	Defendants.	<u>ORDER</u>
		X

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on November 10, 2023, the parties submitted the attached deposition designations for unavailable witnesses Kasseem Reddick and Gizelle Gant. The parties' objections and responses, as well as the Court's rulings on those objections, are noted in the margins. It is hereby

ORDERED that the rulings shall apply to any deposition testimony offered on behalf of witnesses Reddick and Gant during the trial.

Dated: November 13, 2023
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

G. GANT

1 Q. -- to the 911 operator rather?

2 A. No. I don't recall.

3 Q. So these women are hurling these racial slurs.

4 Was anyone responding?

5 A. I'm sure they were. I'm sure, but I don't
6 remember.

7 Q. Were there any other patrons at the establishment
8 that were still there at that point?

9 A. No. I don't remember seeing anyone
10 had to worry about because I know I probably
11 worried about those patrons and making sure
12 gotten out.

13 Q. Do you recall what event or events
14 that night?

15 A. I don't remember.

Defendants also object to
22:18-23:8 on relevance
grounds. The specific alleged
actions of the complainants
toward this non-party witness
are not relevant to the
assessment of probable
cause, are cumulative of other
testimony from this witness
and others, and potentially
confusing to the jury given the
lack of clarity as to what
events the witness is
describing

The
testimony at
22:18-23 is
directly
relevant to
the state of
the women
who were
allegedly
prevented
from leaving
MIST.

16 Q. What's the next thing that you recall from that
17 incident?

OVERRULED.

18 A. I do believe we got somebody on the phone, 911 or
19 whoever, a dispatcher to come, and I was like okay. Then
20 I'm going back into this whole situation. There's a chair
21 that's happened -- the older one is sitting in the chair
22 now I do believe, and I'm asking if she needs water and
23 trying to defuse the situation asking the other two does
24 she need water, let's just focus on her right now, what
25 does she need because she looks a mess. She's about to,

1 A. I don't recall.

2 Q. Okay. When you go outside you described the
3 scene at mayhem?

4 A. Yes.

5 Q. What do you mean by that?

6 A. The police are there, we're trying -- I see
7 people trying to explain excitedly what's happening, what's
8 going on. That sort of -- if you're exiting it's sort of
9 happening a little to the left. To the right the EMTs are
10 there and some police and EMTs are laughing because the
11 brown haired woman is pushing, and calling them names, and
12 fighting them. And they're saying that she needs to get
13 into the ambulance and she's like I'm not doing anything
14 and running around, pushing them, doing all this other OVERRULED.
15 stuff. And they're laughing and they think it's funny.

16 Q. She was pushing the police and E

Defendants object to 27:2-15 ;
Fed. R. Evid. 402, 403, and 802.
This description of events which
occurred after the commission of
the events is not relevant to the
assessment of probable cause,
contains speculation as to the
state of mind of unidentified
persons, and is potentially
confusing due to the vagueness of
the events described.

17 A. Mm-hmm.

18 Q. Both the police and EMTs or one

19 A. I'm not quite sure.

20 Q. Okay.

21 A. Somebody in uniform she was push

22 Q. Okay.

23 A. And everybody was laughing. The blonde haired
24 one, her back was against the wall and she was being very
25 quiet and just looking like she wanted to cry. Which is

1 everyone was -- everyone was heightened, so I'm not quite
 2 sure what she said, how she said it. She could have been
 3 just whatever. I'm not sure.

4 Q. I know you don't remember who you spoke to, but
 5 do you recall what you said when you spoke to the person
 6 who was the police officer?

7 A. Paraphrasing?

8 Q. Sure.

9 A. Okay. Sorry about that.

10 Q. That's okay. It's two years ago. I get it.

11 A. That we called them, we were trying to get them
 12 here for a while, and these women were doing X, Y, and Z.
 13 They were pushing, kicking, they were hurling abuses, and
 14 this is -- and you guys are going to go and arrest whoever

15 This is not fair. And it just became something else.

OVERRULLED.

16 Q. So was that a conversation you had after
 17 Mr. Debnam and Mr. Baptiste had been arrested?

18 A. Yes.

19 Q. And had Dr. Pemberton already been arrested when
 20 you had that conversation?

21 A. Yes.

22 Q. Did you ever come to see that the blonde woman
 23 was arrested?

24 A. Yes.

25 Q. Okay. What did you see in terms of that?

Plaintiff
 opposes
 Defendants'
 objection,
 which gives
 no basis for
 any
 arguments
 as to
 relevance,
 hearsay, or
 prejudice.
 The
 testimony is
 directly
 relevant to
 the
 information
 the
 Defendants
 had when
 they
 arrested
 Plaintiff, and
 thus the
 state of
 mind of the
 Defendants
 at the time
 Plaintiff was
 arrested,
 which is not
 hearsay.
 See, e.g.,
Guerrero v.
City of New
York, No.
 14-CV-8035
 (VSB), 2018
 WL
 4333985, at
 *9 (S.D.N.Y.
 Sept. 11,
 2018).

Defendants
 object to
 31:4-15; Fed.
 R. Evid. 402,
 403, and
 802. What
 this witness
 said to an
 unidentified
 officer is not
 relevant to
 the
 assessment
 of probable
 cause nor is
 her opinion
 as to the
 fairness of
 the arrests.

1 A. Yes.

2 Q. Do you recall if they left a tip?

3 A. Yes.

4 Q. While they were sitting there, did you overhear
5 any of their conversation, that you can remember?

6 A. Well, one of the ladies was t
7 because she was the one ordering the ro
8 coming to speak to me, I don't remember
9 it was or exactly what she was talking
10 But, it was, like, good energ
11 that something was going on because the
12 other drinks like they was buying round
13 round. So, they was having a good time
14 exactly what was going on.

Defendants object to 10:15-11:9; Fed. R Evid. 402, 403, and 802 (implicates hearsay statements of others). The thrust of this testimony concerns information this witness purports to have learned about the complainants from unidentified persons at an unknown time. To the extent this is offered as evidence of the complainants' state it is clearly offered for the truth of the matter asserted. The admissible portions of this designation are largely duplicated at 11:12-12:2, which defendants propose as an alternative.

15 Q. Let me ask you this, can you briefly describe any

16 of them sitting here today, what they looked like?

Objection sustained from 10:22 ("But something . . .) to 11:6. Otherwise overruled.

17 A. I think one was short and heavyset and two was
18 slim. I can't remember hair, but like I wouldn't be able
19 -- I don't think I would be able to exactly remember if I
20 seen them. It might come back to me like oh, yeah.

21 I was with them most of the night because they
22 was at the bar, but something that took place that wasn't
23 really known about originally is that they was drinking
24 before they came to the main bar. They was drinking in the
25 cafe originally first and we didn't find out until after

Plaintiff
opposes
the
objection
and
disagrees
with the
proposed
alternative.

The
testimony
is directly
relevant to
the state
of the
women
who were
allegedly
prevented
from
leaving.

Any out of
court
statements
in the
statement
are not
offered for
the truth of
the
matters
asserted,
but in the
alternative,
are not
grounds to
exclude
the rest of
the
testimony.

1 the incident happened.

2 And people was talking about what happened, that
3 I found out that before they even came to the main bar and
4 this is the reason why I believe they were intoxicated on
5 the level they was because they had a few rounds before
6 they even made it to the main bar.

7 And I know with me they had at least four or five
8 rounds because their bill was at least a hundred and
9 something dollars and I know she tipped me at least \$20.

10 Q. Do you remember which one paid the bill?

11 A. I believe it was the heavyset one. Objection sustained re 11:12 -
18; Otherwise overruled.

12 Q. So, they've been described to me by other people
13 as a blonde one with blonder straight hair, curly haired
14 woman who someone told me looked like she might have been
15 Mexican and the third one like older, like, was the oldest
16 of the three. That's how they've been described to me.

17 I'm not representing that that's what they
18 actually look like, but based on those descriptions, does
19 that comport with your general recollection of them?

20 A. Yeah, I think one of them I thought was Spanish,
21 yes, but I wouldn't be able to give you -- like, it was a
22 long time ago. The only reason is because there was an
23 incident I actually remember, but I try and be tentative
24 with the customers especially if they are tipping trying to
25 remember if they come back, to give them the same good

1 was drinking a white wine and they went one round, two
 2 rounds, three rounds and then later on they was there
 3 talking, laughing for the whole night.

4 Q. And at some point there was, I'm calling it an
 5 incident?

6 A. Yes.

7 Q. Tell me what you remember of what happened?

8 A. Okay. So, I remember one of the young ladies I
 9 believe her name was -- her -- I don't know her real name,
 10 but one of the girls that worked there her name was Luna.

11 She came to me and asked me for a bottle of water
 12 and I asked her, "what's going on?" And she was like, "one
 13 of the female -- one of the customers they're under the
 14 influence in the bathroom and they need water." So I gave
 15 her the water.

16 Then one of the other girls came and was like,
 17 "they need a cab, do you know a New York cab number?" I'm
 18 from New Jersey so I didn't know, so I asked somebody else
 19 and then one of the owners, Ms. Long, Jackie Long, she came
 20 to the bar and told me to give her a bottle of water as
 21 well and told me that one of the patrons was in the
 22 bathroom and that they was under the influence. Objection sustained from 14:18 to
 23 14:24 to "shape." Otherwise
 24 overruled.

25 They was discombobulated. They couldn't
 26 physically move, they was in bad shape. So, I was
 27 basically cleaning up the bar, wrapping up for the night

Defendants
 object to
 14:8-15:18
 as it
 contains
 hearsay and
 takes the
 form of a
 narrative.

Plaintiff
 opposes
 the
 objection.
 The
 objection
 as to the
 testimony
 "tak[ing]
 the form of
 a
 narrative"
 is not a
 proper
 ground to
 exclude
 the
 testimony.

Any out of
 court
 statements
 in the
 testimony
 are not
 offered for
 the truth of
 the
 matters
 asserted,
 but in the
 alternative,
 are not
 grounds to
 exclude
 the rest of
 the
 testimony.

1 A. They just -- there wasn't really a say anything
2 situation. It was basically Dr. Pemberton said they're not
3 suppose to leave because this lady needs medical treatment.

4 These ladies trying to take this lady out without
5 getting medical treatment, so basically everybody -- he's
6 the owner of the establishment, most places you assume that
7 once somebody drop like that 'cause on numerous occasions I
8 had paid for Ubers out of my own pocket or gotten people
9 water and made sure they were safe and good before they
10 left.

11 So, when he said it, we just assumed that
12 whatever he said was right. He's an owner, he's very
13 educated. He's a doctor, he said she needed medical
14 treatment, so that's what we was persuing to try and get
15 her the medical treatment she needed.

16 Q. The women who were trying to leave that they were
17 preventing -- that he was preventing from leaving, was that
18 the real sick woman or the other women?
19 MS. SAYLOR: Objection.

20 MS. FUDIM: I'll rephrase the question.

21 Q. Who was it that you saw him physically try to
22 prevent from leaving?

23 MS. SAYLOR: Objection, you can answer.

24 A. Wait, say the question again, that objection
25 just distracted me.

KASSEEM REEDICK

1 Q. What -- I didn't follow all the hes.

2 So, you felt like whatever the police officer
3 said to you might be trouble, so you went back inside?

4 A. Yes. And this was basically now at this point
5 everybody was outside and the lady was in the ambulance.

6 She was causing some type of disturbance at that point with
7 the ambulance people.

8 Q. When you talked to the -- well, did you talk the
9 officer inside or outside?

10 A. I talked to the officer -- I remember talking an
11 officer outside.

12 Q. Was it the white shirt or a different one?

13 A. No. It wasn't the white shirt, it was one of the
14 other officers. He had a jacket on that night I believe he
15 was about to officer.

16 Q. And did he ask you any questions about, like,
17 what these ladies were drinking or if any of, like, had
18 taken anything that you saw or anything about that?

19 A. No.

20 Q. Did you see Dr. Pemberton have a conversation
21 with any of the officers?

22 A. Yes. He was speaking to the police. I seen him
23 trying to explain that he was the owner and stuff like
24 that.

25 When Dr. Pemberton was talking to them, they

Plaintiff
opposes
the
objection.
The
testimony is
not
speculation,
and rather
describes
the
declarant's
observations.

Defendants
object to
24:20-25:3
as to
speculation
as to the
intentions
of the
plaintiff
and police
officers.

KASSEEM REEDICK

1 What's Joel's contact?

2 A. (929) 363-6602.

3 Q. And he was working that night?

4 A. Yes.

5 Q. But, you don't know if he was bartending that
6 night?

7 A. No, he wasn't bartending -- I don't -- no, he's a
8 bartender now, he wasn't a bartender then. He was working
9 for maintenance at the time because we are the ones that
10 closed that's how I remember.

11 Q. Because the two of you closed.

12 Did you hear -- so, other people who were there
13 that night have told us, you know, come in and met with us
14 and some people have said that the women were hurling like
15 racial slurs --

16 A. They were.

17 Q. -- did you hear that?

18 A. Yeah, I know that for a fact, that's true.

19 That's one hundred percent true. It started with somethin
20 -- it wasn't something I was familiar with, it was
21 something with a G or something.

22 And when she said it, that was another thing

23 that, like, shook the room, "okay, we're going that way
24 with it." When you hear something racist, it's like, how
25 do you want to deal with it. Do you want to be angry and

31:19-21 is
not hearsay
as it is a
literal
description
of a word
the witness
heard used
and is
offered as
evidence of
his
observations
, not the
truth of the
statement
being
described.

Plaintiff
objects to
31:19-21
as
hearsay.

OVERRULED.

KASSEEM REEDICK

1 be hostile about it or do you just want to brush it away.

2 So, when it was said it was, like, oh. It wasn't
 3 towards me, it was towards Dr. Pemberton, but we all felt
 4 it. It was, like, okay.

5 Q. And you said the word was one you didn't even
 6 know the word?

7 A. I knew it was racist, but I hadn't heard it in a
 8 while. Like, you don't hear unless you're watching
 9 something, like I try not to be around people that believe
 10 or live like that.

Plaintiff
objects to
32:7-14
as
hearsay.

32:7-14 is
not
hearsay as
the
witness is
describing
his
observatio
ns and
knowledge,
not
relaying
an out of
court
statement
for the
truth of
its
contents.

OVERRULED.

11 So, when I heard it, I was like, "Oh," it was
 12 like I hadn't heard this in a while. Like, wow, that's
 13 where you're going with it. It wasn't the N word, it was
 14 something else. It was something I don't remember what it.

15 Q. Which one of three women said it?

16 A. If I had to guess.

17 Q. I don't want you to guess, if you don't know, you
 18 could say you don't kn.

19 A. I don't know, but I think it was the same one
 20 that hit Doc because she was in his face, she set it off
 21 basically.

22 Q. Well, what was the affect of that, what was Dr.
 23 Pemberton's reaction to that?

24 A. His face got -- like, his fate was real serious.
 25 He just looked like and everybody kind of looked around

KASSEEM REEDICK

1 Q. Just to clarify, you never saw anyone blocking
2 the women in exiting through the bar door?

Exclude 38:1-4

3 MS. FUDIM: Objection to form.

4 A. Wait, say that again.

5 Q. Did you ever see anyone blocking the women from
6 exiting through the bar doors?

7 A. No. There's another exit as well. There's an
8 exit in the restaurant, two double doors, but it's like an
9 emergency exit. Like, if you was in the restaurant you
10 could just walk right, but you can't get in.

11 MS. SAYLOR: I have no further
12 questions.

13 MS. FUDIM: I just have one follow-up.

14 FURTHER EXAMINATION BY

15 MS. FUDIM:

16 Q. You were asked by Ms. Saylor if the bar door was
17 open and you said yes and I just want to clarify when you
18 say open, does that mean, like, physically, like, open or
19 unlock?

20 A. It was unlocked. Anybody could have left in and
21 out the bar at any time.

22 Q. But, you don't mean, like, physically open, like,
23 air is coming in and out?

24 A. No, it wasn't physically open like that, no.

25 MS. FUDIM: I have nothing else.