

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

Chambers of  
**BENSON EVERETT LEGG**  
United States District Judge

101 West Lombard Street  
Baltimore, Maryland 21201  
410-962-0723

November 13, 2012

MEMORANDUM TO COUNSEL RE: Sharp v. Baltimore City Police Dept. et al.  
Civil No. L-11-2888

Dear Counsel:

Plaintiff Christopher Sharp attended the 2010 Preakness Stakes, one of the Triple Crown horse races. While he was in the clubhouse, Sharp used his cell phone to video record officers of the Baltimore City Police Department (“BPD”) making an arrest of an inebriated woman. In his Complaint, Sharp sues three BPD officers, alleging that they confiscated his cell phone, erased the arrest recording (as well as family videos), then returned the phone to him. Sharp also sued the BPD, contending that the officers’ actions were consistent with departmental practice, policy and procedure.

Sharp cannot identify the three officers who confiscated his cell phone. His Complaint, which he filed under 42 U.S. C. § 1983, names the three officers as Unknown Officers 1–3. Sharp’s inability to identify the officers is significant because in order to establish liability under 42 U.S.C. § 1983, Sharp must show that the unnamed officers “personally caused the deprivation of his federal rights.”<sup>1</sup> Johnson v. Prince George’s Cnty., 157 F. Supp. 2d 607, 609 (D. Md. 2001) (citing Kentucky v. Graham, 473 U.S. 159, 166 (1985)); see also Waybright v. Frederick Cnty., 528 F.3d 199, 203 (4th Cir. 2008).

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<sup>1</sup> Although there appear to be limited exceptions to this requirement, see, e.g., Brown v. Prince George’s Cnty., No. DKC 07–2591, 2012 WL 3012573, at \*6 (D. Md. July 20, 2012) (Fourth Amendment excessive force case), whether such an exception might apply under the circumstances presented here is far from clear. The Court takes no position on the issue, which has not been briefed.

Because of the importance of the issue, the Court staged discovery, reserving the first phase for information that might assist Sharp in naming the officers. To that end, the Court, inter alia, ordered the BPD to produce a Federal Rule of Civil Procedure 30(b)(6) witness who would not only produce documents, but also testify about the BPD's record-keeping practices concerning officers who work the Preakness.

Although documents have been produced and depositions have been taken, discovery has bogged down. Based on the documents he has received so far, Sharp remains unable to identify the three officers. Seeking more information, he contends that the BPD has failed to offer a satisfactory explanation for gaps in its document production. The BPD contends that it has fully complied with its discovery obligations and that there is nothing else it can provide that might assist Sharp in identifying the officers.

In order to hold down litigation costs, the Court has tightly controlled discovery, limiting the number of depositions and tailoring the document requests. After hearing from both sides during the latest teleconference (November 7, 2012), the Court determined that an evidentiary hearing is required to break the impasse. The hearing, which should take a morning, will address the completeness of the BPD's document production.

During the teleconference, the Court carefully delineated the topics to be covered and the witnesses who must testify. The general scope of the hearing is to (i) identify records and witnesses potentially useful to Sharp in identifying the three officers, and (ii) ascertain whether there are gaps in the production. Without limiting the scope of the hearing, the topics to be covered will include:

1. The security plan for the 2010 Preakness, including:
  - i. how the plan was developed,

- ii. the interaction between the BPD and private Preakness security,
- iii. the chain of command,
- iv. which officers were stationed at the clubhouse, including where and at what times the officers were stationed there, and
- v. what documents were created.

The BPD will produce Lt. Corbett, its Rule 30(b)(6) witness, who will testify concerning the records that it keeps and does not keep regarding the Preakness. Lt. Corbett must be prepared to address the discovery issues raised by Sharp. Sharp will subpoena Lt. Blair (ret.) and a representative of the Maryland Jockey Club or other group conversant with security at the 2010 Preakness.

My chambers will be in touch with counsel to schedule a hearing date. Despite the informal nature of this memorandum, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.

Very truly yours,

/s/

Benson  
United

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Everett Legg  
States District Judge