

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20-CVS 8563

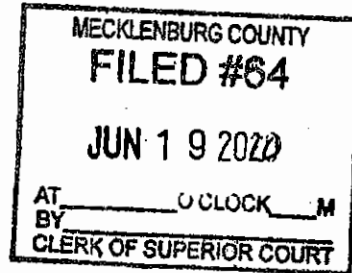
NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED)
PEOPLE CHARLOTTE-)
MECKLENBURG BRANCH NO. 5376,)
~~NORTH STATE PRODUCTIONS, LLC~~)
JUSTIN LAFRANCOIS, AMERICAN)
CIVIL LIBERTIES UNION OF NORTH)
CAROLINA, WILLIAM G. ADAMS,)
TEAM TRUBLUE, CHARLOTTE)
UPRISING, (CU PERSON),)
SOUTHEAST ASIAN COALITION,)
LINDSAY CARLEE)
ETC,)

Plaintiffs,)

v.)

CITY OF CHARLOTTE and KERR)
PUTNEY, in his official capacity as Chief)
of Charlotte-Mecklenburg Police)
Department,)

Defendants.)



TEMPORARY RESTRAINING ORDER

This matter came on for hearing on June 19, 2020 before the undersigned Superior Court Judge upon Plaintiffs' Motion for a Temporary Restraining Order. Having considered Plaintiffs' verified Complaint and Motions for Temporary, Preliminary, and Permanent Injunctive Relief, applicable law and arguments of counsel, for purposes of this temporary restraining order, the Court finds and concludes as follows:

1. This Court has jurisdiction over the parties and the subject matter of the action, and venue is proper in this Court.
2. The Plaintiffs, as member organizations and as individuals, have been, and remain committed to the protest movement to protect black lives. The Plaintiffs have the right to protest, a

right that includes not being boxed in by lines of police, i.e., “kettled,” and subjected to crowd-control weapons such as tear gas, pepper balls, and rubber bullets when they are peacefully expressing their views.

3. The Plaintiffs have joined in a series of ongoing protests against police brutality taking place on the streets of Charlotte that began in late May 2020, following the death of George Floyd, who was strangled and killed by a Minneapolis police officer who placed him in a knee hold for over eight minutes after detaining him for a minor offense.

4. In response to the protests in Charlotte, on or around May 30, 2020, Charlotte Mecklenburg Police Department (“CMPD”) officers began to use rubber bullets, tear gas, pepper spray and flashbang grenades to force the dispersal of largely peaceful protestors, often without giving clear dispersal orders and reasonable opportunities for protestors to disperse.

5. On June 2, 2020, the Plaintiff NAACP organized a protest that convened outside the Charlotte-Mecklenburg Government Center at approximately 5:00 p.m.

6. There is evidence that Defendant CMPD Chief Putney, in conjunction with Charlotte-Mecklenburg Emergency Management (“CMEMO”), oversaw a plan to “kettle” or box in the protestors to force an end to the June 2, 2020 NAACP protest.

7. There is evidence that the plan was not a response to any violence or criminal conduct and was a premeditated and violent use of force designed to punish those protesting police violence and deter them from future protest and was not in response to concern for public safety or some other legitimate end.

8. Approximately 4,000 people attended the NAACP protest on June 2, 2020. The protest at the Government Center passed without incident and, after speeches ended, the crowd began to march peacefully through uptown. Plaintiff LaFrancois live streamed all of these events for Queen City Nerve, as did other protestors on social media.

9. At about 6:00 p.m., the marchers stopped at the CMPD Headquarters. For about 20 minutes, speakers addressed the crowd without incident.

10. At about 6:20 p.m. the march continued, stopping again at about 8:00 p.m. in Romare Bearden Park for about 10 minutes of speeches. By this point, the crowd had thinned to about 800 people.

11. At about 8:10 p.m., a group of 300 to 400 protestors left Romare Bearden Park and marched down 4th Street toward McDowell Street.

12. When this group of protestors reached McDowell Street, a group of about 40 to 50 CMPD officers were standing on the other side of McDowell Street blocking the entrance ramp to Independence Blvd.

13. CMPD officers suddenly threw a tear gas canister into the crowd. This upset the marchers, who began to argue with the police.

14. Defendant CMPD Chief Putney alleged publicly that an officer issued a dispersal order but no such order can be heard on the live stream broadcasts and none of the individual Plaintiffs heard such an order, including journalist Plaintiff Justin LaFrancois, who had a practice of announcing dispersal orders whenever he heard them.

15. In response to the tear gas, the protestors turned back and began to march toward uptown, many with their hands up, chanting “hands up, don’t shoot.”

16. As the protesters marched up 4th Street, just before 9:30 p.m., large cordons of CMPD officers blocked access to College Street, forcing the protestors up 4th Street towards Tryon Street.
17. Just before the marchers reached Tryon Street, members of the CMPD and CMEMO rushed out from hiding behind the building at that corner and lined across 4th Street, physically blocking the protesters from advancing.
18. At the same time, the officers on College Street stepped in behind the protesters, trapping the protestors in, an action known as kettling.
19. One of the CMPD or CMEMO officers on Tryon Street threw a tear gas canister at the front of the marchers and another threw a flash bang grenade, causing the marchers at the front to panic, turn away and run from the tear gas and explosions back down 4th Street.
20. The CMPD officers at 4th and College Streets who had moved onto 4th Street behind the protesters, now threw three tear gas canisters to block any exit — one on the right side of 4th Street, a second on the left side and a third down the middle of the street and right against the crowd of protesters.
21. Pinned in by tear gas and the buildings lining the sides of the street, the protesters began to scream and gasp for air in panic.
22. A group of CMPD and/or CMEMO officers were stationed on the second floor of the parking deck, and began to shoot at the protesters with pepper balls. The police continued to fire pepper bullets at the marchers, and officers on Tryon Street threw five more flash bang grenades at the crowd as they ran in panic and tried to seek safety.
23. At the Charlotte City Council meeting the following Monday, June 8, 2020, the Charlotte City Council voted to cease funding *future* purchases of tear gas for the upcoming fiscal year. In response to this decision, Defendant CMPD Chief Putney publicly refused to discontinue the use of tear gas on protestors.
19. By depriving Plaintiffs of the opportunity to assemble and express their views against police violence on future occasions, including, most immediately at the NAACP's scheduled Juneteenth demonstration today in downtown Charlotte, Defendants will impose irreparable harm upon Plaintiffs.
24. Plaintiffs have demonstrated a likelihood of success on the merits of each of their claims for relief, as the use of tear gas, flash bang explosives, rubber bullets, pepper balls, and unlawful "crowd control" containment practices, such as kettling, against peaceful protestors violates their rights to assemble, to freedom of speech and to due process of law under Article I, Sections 12, 14 and 19 of the North Carolina Constitution.
25. The Court recognizes the challenges facing the police in managing protests, particularly protests aimed at them. A balancing of the equities, however, favors the entry of a temporary restraining order. The harm to the freedom to assemble and speak peacefully that results from unreasonable violence from the government is irreparable. Absent entry of an Order, Plaintiffs have shown that their constitutional rights to continue to protest free from excessive and unreasonable force cannot be secured, including at the Juneteenth event this afternoon, because of the CMPD's actions.
26. Plaintiffs have shown there is no adequate remedy at law to protect against the irreparable harm they have suffered, and that they are threatened with continued and repeated immediate and

irreparable harm absent the entry of a temporary restraining order. ~~Indeed, Defendant CMPD Chief Putney has publicly refused to curtail the use of chemical munitions against peaceful protesters, but even absent those statements, the risk of irreparable harm is real.~~ Plaintiffs and the members of organizational plaintiffs are likely to participate in future public gatherings and demonstrations to protest police brutality, including a Juneteeth rally and march taking place this afternoon and other events planned for this weekend. Swift action by this Court is necessary to protect their constitutional rights. AJP

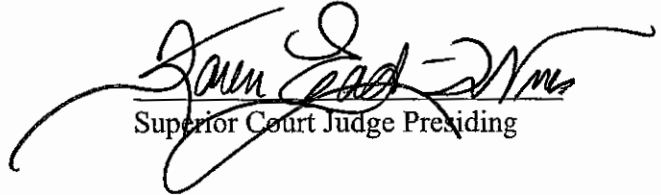
WHEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. The kettling of peaceful protesters is banned.
2. ~~The City's police and other agents must make exits~~ ^{Exits must be...} available for voluntary dispersal of a crowd and ~~provide sufficient warning and sufficient time and opportunity to disperse before munitions or other force are used to disperse peaceful protesters;~~ ^{CMPD must} AJP
3. That clear, loud, continuous and provable orders of dispersal are issued before munitions are threatened, and up until any munitions or force are used;
4. That any and all dispersal orders used shall be reasonably limited in temporal and geographic scope;
5. That the use of chemical munitions, irritants, explosives and rubber bullets on peaceful protesters is enjoined. Such force may be used if and only if:
 - a. Officers are faced with imminent threat of physical harm to themselves or identifiable others or are responding to specific acts of violence against people;
 - b. Protestors are committing or clearly threatening acts of violence against people that cannot be controlled by singling out perpetrators and removing them;
 - c. Alternative crowd control measures have been exhausted and were ineffective; and
 - d. Chief Putney or Deputy Chief Jennings or their specified designee has determined unequivocally that the use of such chemical agents on a crowd is the only reasonable alternative available.
6. Any violation of this Order while in full force and effect will be a Contempt of Court and punishable by both criminal and civil contempt powers of this Court upon a proper showing.

7. The necessity for a security bond is waived, as this is a non-commercial case, the balance of equities favors the Plaintiffs, and there is no realistic likelihood of harm to Defendants from enjoining their conduct.

8. This Temporary Restraining Order shall continue and will remain in full force and effect until a hearing on Plaintiff's Motion for Preliminary Injunction. Plaintiff's Motion for Preliminary Injunction shall be heard on TBD at _____ a.m./p.m. in Courtroom _____ of the Mecklenburg County Courthouse, before the presiding Mecklenburg County Superior Court Judge. Defendants are ordered to appear and show cause why a Preliminary Injunction should not be entered against them.

This the 9th day of June, 2020.


Superior Court Judge Presiding