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## Mayor trial goes to jury Tuesday

Ex-cops' lawsuit lacks smoking gun, but burden for guilty finding is lower than in a criminal case.

David Josar / The Detroit News

**DETROIT** -- While there were about a dozen unconfirmed allegations of mayoral impropriety, there was no smoking gun or Perry Mason-like moment during the 12 days of testimony in the whistleblowers lawsuit filed against Mayor Kwame Kilpatrick and the city of Detroit by two ex-cops who claimed they were punished for probing reports of bad behavior by the mayor and his bodyguards.

Starting Tuesday, the 11 jurors -- one was excused Friday after telling the judge she was too ill to continue -- will wade through the testimony and dozens of documents presented as evidence to decide whether former Deputy Chief Gary Brown and ex-Officer Harold Nelthrope suffered retaliation at the hands of Kilpatrick and the city of Detroit.

The two ex-cops claim they were targeted after Nelthrope contacted Internal Affairs about alleged misconduct by two of the mayor's bodyguards, the mayor and his wife, and about a wild party at the Manoogian Mansion.

Brown, a 25-year department veteran who once was shot in the back during a narcotics raid, was head of Internal Affairs in spring 2003 when he directed a preliminary investigation into Nelthrope's complaint.

The mayor and the city maintain both officers chose to retire, and that Brown was removed as deputy chief because the mayor had lost confidence in him after he failed to follow the chain of command and conducted unauthorized investigations.

Kilpatrick also asserts that because Brown was a mayoral appointee, he was free to dismiss Brown at any point.

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In a civil trial, experts note, the burden of proof for the plaintiffs, in this case the two ex-cops, is easier to reach than in a criminal trial, which requires a unanimous jury and a finding of "beyond a reasonable doubt."

"You can theoretically have doubt about what actually happened, but if you feel it's more probable than not that the plaintiff's version is truthful, then the jury will side with the plaintiffs," said Lawrence Dubin, a professor at the University of Detroit Mercy School of Law.

Civil litigator Jill A. Bankey, of Siegel, Greenfield, Hayes & Gross of Southfield, said for Brown and Nelthrope to win, the figurative scales of justice have to tip just slightly in their favor.

"This is about a preponderance of evidence, and in this case it's 51 percent to 49 percent," she said. "This is only about money ... not liberty."

Durbin said the judge on Tuesday will give jurors "tips" on evaluating testimony, such as whether a witness had a personal interest in the matter, had a potential bias or made inconsistent statements.

"They have to discuss and decide who is telling the truth," he said.

Here are the major issues:

*Was Brown removed from his post because of performance or was it because he proposed looking into allegations that could embarrass the mayor?*

The ex-cops: Brown's Internal Affairs preliminary investigation looked into misconduct by bodyguards and the alleged mansion party. Brown concluded the allegations of bodyguard misconduct didn't warrant further investigation, but he had asked the police chief for clearance to investigate the Manoogian Mansion party rumors. Brown's lawyer is expected to argue that the mayor and his staff came up with reasons for his ouster to cover up anger over the investigation. The ex-cops also allege the Internal Affairs investigation would have uncovered philandering behavior by the mayor.

The city and the mayor: Brown failed to tell the police chief what he was looking into; he was using precious resources to investigate minor problems; and if Brown wanted to probe the mayor, he should have gone to an outside agency such as the FBI. None of the salacious allegations against the mayor was substantiated in court.

*Was Nelthrope retaliated against?*

The ex-cops: Nelthrope testified that not only

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did mayoral bodyguard Mike Martin call him and threaten him after Nelthrope's complaint to Internal Affairs, but the mayor called him a liar on TV. The city also released a confidential memo identifying Nelthrope as the person who contacted Internal Affairs with claims of misconduct by the mayor, his wife and his bodyguards.

The city and the mayor: There was never malice or ill will toward Nelthrope. The memo was released by Bob Berg, a media consultant hired by the city, to quell uproar over Brown's firing.




















*Was Brown fired from the department or was he removed from his position?*

The ex-cops: Brown claims he was fired when ex-Police Chief Jerry Oliver gave him a letter from Kilpatrick relieving him of command. Brown also had to surrender his badge and gun. Brown asserts no other cop has ever received a letter from the mayor relieving him of his position.

The city and the mayor: Brown was removed as deputy chief but could have reverted to rank of lieutenant. Few people remain at rank of deputy chief longer than a year or two, and Brown knew he could have stayed with the department but chose not to.

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