

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KEN ANDERSON,

Plaintiff,

vs.

LaSHAWN PEOPLES and
JOHN DOE, Detroit police officers,
in their individual capacities,

Defendants.

Hon.

Case No.

JURY TRIAL DEMANDED

Daniel S. Korobkin (P72842)
Jessie J. Rossman (P72869)
Michael J. Steinberg (P48085)
Kary L. Moss (P49759)
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COMPLAINT

INTRODUCTORY STATEMENT

1. Plaintiff Ken Anderson was charged with a crime for innocently sitting in his legally parked car on the side of the road, something law-abiding citizens do every day.

2. He brings this civil rights lawsuit because two police officers detained him without reasonable suspicion and, when he exercised his constitutional right to question their authority, charged him with a crime that does not exist.

3. He wishes to live in a free society where innocent people can park on the side of the road without fear of being harassed by police officers and forced to appear in court to defend against frivolous criminal charges.

4. In this action, Plaintiff alleges violations of his rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983. He also brings a supplemental state law claim for malicious prosecution.

JURISDICTION AND VENUE

5. This court has original jurisdiction over Plaintiff's federal claims under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking redress for the deprivation of rights secured by the United States Constitution.

6. This court has supplemental jurisdiction over Plaintiff's state law claim under 28 U.S.C. § 1367(a) because it is part of the same case or controversy as Plaintiff's federal claims.

7. Venue is proper under 28 U.S.C. § 1391(b)(2) because the events giving rise to the claims asserted occurred in Wayne County, which is within the Eastern District of Michigan.

PARTIES

8. Plaintiff Ken Anderson is 57 years old and a resident of Detroit, Michigan.

9. Defendant LaShawn Peoples is, or was at all times relevant to this Complaint, a police officer employed by the Detroit Police Department. He is being sued in his individual capacity.

10. Defendant John Doe is, or was at all times relevant to this Complaint, a police officer employed by the Detroit Police Department. He is being sued in his individual capacity. His true name is currently unknown to Plaintiff, and Plaintiff intends to amend this Complaint to name him as a Defendant as soon as his identity is disclosed.

FACTS

11. Ken Anderson was born and raised in Hamtramck and then drafted into the Army in 1972. He served honorably for two years. He then returned to Michigan and worked as an automotive design engineer for contractors to the Big Three automakers.

12. Like many working people in Michigan, Mr. Anderson has fallen on hard times. Due to the economic crisis and physical disability, he has been unemployed for several years.

13. In 2008, Mr. Anderson was living in a shelter for homeless veterans at 2770 Park Avenue in Detroit. He still had his car and a laptop computer, and during the day he often left the shelter and drove to a nearby parking space on the side of the road where he could sit quietly by himself and work on a business plan to get himself back on his feet.

14. At 2 p.m. on November 12, 2008, Mr. Anderson was seated alone in his car on Edmund Place, a public street, just east of Woodward Avenue in the City of Detroit. His car was parked just outside the Ecumenical Theological Seminary, approximately three blocks east of his

own residence at 2770 Park Avenue, half a mile north of Comerica Park, and just one block south of the law offices of undersigned counsel.

15. Mr. Anderson's car was legally parked, and the engine was not running.

16. Mr. Anderson was not engaged in any unlawful activity or planning to engage in any unlawful activity, nor to his knowledge was any unlawful activity occurring in his presence.

17. For no apparent reason, a police vehicle stopped behind Mr. Anderson's car and activated its emergency lights. Two police officers -- Defendants LaShawn Peoples and John Doe -- approached Mr. Anderson's vehicle. Officer Peoples stood at the driver's side window, and Officer Doe stood at the opposite side of Mr. Anderson's car.

18. Officer Peoples asked Mr. Anderson for his identification.

19. Mr. Anderson asked Officer Peoples what probable cause he had to ask for ID.

20. Officer Peoples again asked for ID.

21. Mr. Anderson again asked Officer Peoples for his probable cause.

22. Officer Peoples told Mr. Anderson he was in an area where drugs were rampant and many break-ins had taken place.

23. Officer Doe then shouted at Mr. Anderson, "If you don't give us your ID, we're going to come in there and get it."

24. Fearing that he would be physically restrained if he did not immediately comply, Mr. Anderson reluctantly handed Officer Peoples his valid Michigan driver's license.

25. The officers returned to their police vehicle.

26. Upon information and belief, they verified Mr. Anderson's identity and discovered that he had no outstanding warrants or any criminal record.

27. Several minutes later, the officers exited their vehicle.

28. Officer Peoples returned to Mr. Anderson's driver's side window.

29. As Officer Peoples approached Mr. Anderson's car, Officer Doe drew his service weapon and assumed a crouched, defensive posture.

30. Officer Peoples handed Mr. Anderson his driver's license and a citation. Then he said, "You're free to go."

31. The citation is a criminal complaint charging Mr. Anderson with "loitering in a known narcotic area." The complaint states that Mr. Anderson "was found loitering in an area where narcotics area [sic] bought, kept, or sold" in violation of section 38-11-8 of the Municipal Code of the City of Detroit. The complaint is signed by Officer Peoples.

32. In fact, there is no municipal ordinance against "loitering in a known narcotic area" or "loitering in an area where narcotics are bought, kept, or sold."

33. The ordinance number cited by Officer Peoples, section 38-11-8, does not prohibit loitering. It is titled "Civil forfeiture," and provides: "Any controlled substance that is manufactured with intent to sell, possessed with intent to use or sell, or sold in violation of this division shall be seized and forfeited to the City of Detroit."

34. Upon receiving the citation from Officer Peoples charging him with a crime for "loitering in a known narcotic area," Mr. Anderson drove immediately to the police station to complain about what had just taken place.

35. Initially Mr. Anderson went to police headquarters downtown, but he was directed to complain at the Central District at the corner of Woodward and Grand Ave.

36. At the Central District, Mr. Anderson was directed to speak with a female sergeant whose name is currently unknown to him.

37. Mr. Anderson showed the sergeant his citation, and the sergeant called Officer Peoples on his cell phone in Mr. Anderson's presence. The sergeant told Officer Peoples that Mr. Anderson was at the police station to complain about the incident. After a pause, the sergeant said to Officer Peoples, "You don't want to dismiss this ticket because he was rude?" The sergeant ended her telephone call with Officer Peoples and told Mr. Anderson that Officer Peoples was going to prosecute him because he had been rude.

38. A few days later, Mr. Anderson received a notice to appear in 36th District Court for arraignment.

39. Upon information and belief, no prosecuting attorney independently reviewed Officer Peoples' criminal complaint before Mr. Anderson was sent a notice to appear for arraignment or before he was arraigned.

40. On the basis of Officer Peoples' criminal complaint, Mr. Anderson was arraigned in 36th District Court on February 10, 2009.

41. Mr. Anderson appeared without counsel. He asked the district judge to dismiss the case against him, but his motion was denied. Personal bond was set at \$100. A trial was scheduled for April 20, 2009. The trial was subsequently rescheduled for June 15.

42. Mr. Anderson retained an ACLU attorney to represent him at trial. The ACLU attorney drafted and filed a motion to dismiss. Mr. Anderson and his attorney prepared for trial.

43. On June 15, 2009, Mr. Anderson and his attorney appeared for trial. Prosecuting attorney Nellie Lee told Mr. Anderson's attorney that she had not yet spoken to Officer Peoples about the case and that she would dismiss the case if Officer Peoples did not appear to testify.

44. Officer Peoples did not appear to testify, and the prosecution was dismissed.

45. As a result of the Defendants' unlawful conduct, Mr. Anderson suffered the embarrassment, humiliation, indignity, fear, anger, anxiety, emotional distress, and personal inconvenience of being detained without reasonable suspicion; threatened with personal injury for no good reason; retaliated against for questioning the officers' authority; and prosecuted maliciously and without probable cause for allegedly committing a crime that does not exist.

COUNT ONE

**42 U.S.C. § 1983
Violation of the Fourth Amendment
Unlawful Detention**

46. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures, and the Fourth Amendment is incorporated against the states by the Fourteenth Amendment. Persons violating the Fourth Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

47. Under the Fourth Amendment, police officers may not conduct even a brief *Terry* stop without reasonable suspicion that the person being stopped is involved in criminal activity.

48. Defendants, while acting under color of state law, violated Plaintiff's clearly established right to be free from unreasonable seizure by unlawfully detaining him.

COUNT TWO

**42 U.S.C. § 1983
Violation of the First Amendment
Retaliation**

49. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech, and the First Amendment is incorporated against the states by the Fourteenth

Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

50. The First Amendment protects the right to express disagreement with a police officer, to question the correctness of a police officer's actions, and even to be "rude" to a police officer without fear of reprisal or retaliation.

51. Defendants, while acting under color of state law, violated Plaintiff's clearly established right against retaliation in violation of the First Amendment because Defendants' decision to charge Plaintiff with a crime was motivated at least in part by Plaintiff's constitutionally protected speech.

COUNT THREE

42 U.S.C. § 1983

Violation of the Fourteenth Amendment Due Process

52. The Due Process Clause of the Fourteenth Amendment protects against the deprivation of liberty without due process of law. Persons violating the Fourteenth Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

53. The freedom to remain in a public place for innocent purposes is part of the liberty protected by the Due Process Clause of the Fourteenth Amendment.

54. Defendants, while acting under color of state law, violated Plaintiff's clearly established right under the Fourteenth Amendment by depriving him of the liberty to remain in a public place because they charged him with a crime for "loitering in a known drug area" absent probable cause that Plaintiff was committing a drug offense, intended to commit a drug offense, or knew of a drug offense being committed in his presence.

COUNT FOUR

42 U.S.C. § 1983

**Violation of the Fourth and Fourteenth Amendments
Malicious Prosecution**

55. The Fourth Amendment's protection against unreasonable seizures encompasses the right to be free from malicious prosecution.

56. Malicious prosecution is also prohibited by the Fourteenth Amendment's guarantee against the deprivation of liberty without due process of law.

57. Defendants, while acting under color of state law, violated Plaintiff's clearly established right under the Fourth and Fourteenth Amendments by unlawfully and maliciously causing a criminal prosecution to be instituted against him.

58. Defendants lacked probable cause to initiate criminal proceedings against Plaintiff; a reasonable person in Defendants' position would have known that the facts and circumstances were insufficient to justify a reasonable belief that Plaintiff had committed any offense; the criminal proceedings ended in Plaintiff's favor; and the criminal proceedings were the result of malice by Defendants.

COUNT FIVE

**Common Law and M.C.L. § 600.2907
Malicious Prosecution**

59. In Michigan, malicious prosecution is recognized under the common law and by M.C.L. § 600.2907.

60. Defendants tortiously and maliciously prosecuted Plaintiff.

61. Defendants caused criminal proceedings to be instituted against Plaintiff; the proceedings terminated in Plaintiff's favor; there was no probable cause to support the prosecution; and Defendant acted with malice.

DEMAND FOR RELIEF

Plaintiffs request that this court:

- a. assert jurisdiction over this matter;
- b. award compensatory and punitive damages to Plaintiff, in an amount to be proved at trial;
- c. award Plaintiff costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- d. grant or award such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Daniel S. Korobkin
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Dated: June 2, 2010.

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

Respectfully submitted,

/s/ Daniel S. Korobkin

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