

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHANN DEFFERT,

Case No. 1:13-cv-01351

Plaintiff,

v.

Hon. Janet T. Neff, District Judge

OFFICER WILLIAM MOE,
in his individual and official capacities,

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

OFFICER TIMOTHY JOHNSTON,
in his individual and official capacities,

and

CITY OF GRAND RAPIDS
MICHIGAN

Defendants.

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FIRST AMENDED COMPLAINT

Plaintiff states:

Common Allegations

1. This action arises under 42 U.S.C. § 1983. Jurisdiction is conferred by 28 U.S.C. § 1343(a)(3), (4)
2. Jurisdiction over Plaintiff's state law claims is conferred by 28 U.S.C. § 1367.
3. Venue is appropriate under 28 U.S.C. § 1391(b).
4. Plaintiff is an individual residing in Grand Rapids, Michigan, in Kent County.
5. Defendant City of Grand Rapids is a municipal corporation organized and existing under the laws of the State of Michigan, having authority, duties, and powers as provided under the laws of the State of Michigan and the Ordinances of the City of Grand Rapids.
6. Defendant City of Grand Rapids operates the Grand Rapids Police Department.
7. Defendant City of Grand Rapids, through the Grand Rapids Police Department has the responsibility for hiring, training, supervising, disciplining, and retaining the police officers it employs, including those individually named as defendants in this suit.
8. At all material times, Defendant Officer Timothy Johnston was a law enforcement officer for the City of Grand Rapids, Michigan.
9. At all material times, Defendant Officer William Moe was a law enforcement officer for the City of Grand Rapids Michigan.
10. When the events alleged in this complaint occurred, Defendant Officers were acting within the scope of their employment and under color of law.

11. At all material times, Defendant City of Grand Rapids, through the Grand Rapids Police Department, employed Defendant Officers and is liable for their acts.
12. The City of Grand Rapids is also liable because its policies, practices, and customs lead to this complaint of violation.
13. Specifically, Grand Rapids Municipal Code § 9.173. Carrying, states: "No person shall carry any firearm upon his or her person in any public street, alley or other place open to the public in the City of Grand Rapids unless: (1) The person has been issued a valid license to do so as provided by Act 372 of Michigan Public Acts of 1927, as amended (MCL 28.421 et seq.), or (2) All ammunition has been removed from the chamber, cylinder, clip or magazine of the firearm and the firearm has been noticeably rendered inoperable by being broken down or disassembled or is completely enclosed within a case or other similar container (Ord. No. 67-11, 4-25-67).
14. M.C.L. § 123.1102, the state firearms preemption statute, states: "A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by a federal law or a law of this state."
15. Openly carrying a pistol is lawful in Michigan, according to Michigan State Police Bulletin #86, Oct. 26, 2010.
16. The Michigan Court of Appeals has ruled that "a local government shall not enact an ordinance pertaining to the transportation of firearms."
Michigan Coalition of Responsible Gun Owners v. City of Ferndale, 256 Mich. App. 401, 414, 662 N.W.2d 864, 872 (2003)
17. Issues regarding the conflict between the Grand Rapids Ordinance and Michigan State law were brought to the attention of the City Commission of the City of Grand Rapids on January 8, 2013.
18. Upon information and belief, the City of Grand Rapids took no action to repeal Municipal Ordinance No. 67-11.

19. By refusing to take any action to repeal Ord. No. 67-11, the City of Grand Rapids showed deliberate indifference to individuals in situations similar to the Plaintiff, and created a substantial risk of confusion among individual Officers that was likely to lead to incidents such as the one alleged in this complaint.
20. On March 3, 2013, at or about 12:00 P.M., on a public sidewalk in the City of Grand Rapids, in Kent County, Michigan, Plaintiff walked down the street lawfully openly carrying a pistol in a holster on his hip.
21. Defendant Officer Moe arrived at Plaintiff's location.
22. Defendant Officer Moe drew his service pistol and aimed it at Plaintiff while approaching him.
23. Defendant Officer Moe ordered Plaintiff to lie on the ground on his stomach and handcuffed him behind his back.
24. Defendant Officer Moe removed Plaintiff's pistol from its holster.
25. At or about that time, Defendant Officer Johnston arrived at the scene and assisted Officer Moe in placing Plaintiff into the rear of a police vehicle.
26. Defendant Officers left Plaintiff handcuffed in the back of a squad car for approximately ten minutes.
27. In Michigan, there is no duty for an individual to identify him or herself to law enforcement unless being stopped for a motor vehicle code violation.
28. Defendant Officers repeatedly represented to Plaintiff that he was required to identify himself to law enforcement because he was openly carrying a handgun.
29. Despite the fact that Plaintiff is not obligated under Michigan law to display identification to the officers, Plaintiff immediately and repeatedly offered his identification to Defendant Officers, who refused to retrieve it for several minutes, instead choosing to debate public policy with Plaintiff.
30. Defendant Officers eventually verified through the Michigan LEIN system that Plaintiff was legally entitled to carry a pistol as he was not a felon, was

of proper age, and was not in any area where the carrying of a firearm is unlawful.

31. Upon information and belief, Defendant Officers had not been thoroughly trained in Michigan firearms law, as evidenced by a discussion about the current status of open carry of firearms in Michigan.
32. Defendant Officers then released Plaintiff, who was not formally arrested or charged with any crime.

Count I - Fourth and Fourteenth Amendment Violations

33. Plaintiff incorporates by reference paragraphs 1 through 23.
34. Plaintiff's constitutionally protected rights that Defendant Officers violated include the following:
 - (a) His right to be free from unreasonable searches and seizures of his person and property, protected by the Fourth Amendment, as incorporated by the Fourteenth Amendment.
 - (b) His right to liberty protected in the substantive component of the Due Process Clause of the Fourteenth Amendment, which includes personal safety and freedom from captivity.
35. Defendant Officers, acting under color of state law, took Plaintiff into physical custody without probable cause to believe that a crime had occurred, probable cause that Plaintiff had committed a crime, or reasonable articulable suspicion that criminal activity was afoot.
36. Defendant Officers, acting under color of state law and in concert with one another, by their conduct showed intentional, outrageous, and reckless disregard for Plaintiff's constitutional rights.
37. As a direct and proximate result of Defendant Officers' conduct, Plaintiff suffered physical and emotional injury, loss of freedom, and loss of other constitutionally protected rights described above.
38. Defendant City of Grand Rapids, acting under color of state law, authorized, tolerated, ratified, permitted, or acquiesced in the creation of policies, practices, and customs that established a de facto police of deliberate

indifference to Officers' unlawful harassment of individuals such as Plaintiff, specifically by adopting Ord. No. 67-11, referenced above.

39. Upon information and belief, Defendant City of Grand Rapids has not properly trained its officers in Michigan firearms law and has thus repeatedly violated the constitutional rights of individuals in similar situations to the Plaintiff.
40. As a direct and proximate result of Defendant Officers' actions and these policies, practices, and customs, Plaintiff suffered emotional injury, loss of freedom, and loss of constitutionally protected rights.

Count II - Second and Fourteenth Amendment Violations

41. Plaintiff restates and incorporates by reference paragraphs 1 through 40.
42. The Second Amendment to the United States Constitution provides in pertinent part that "the right of the people to keep and bear arms shall not be infringed."
43. Defendant Officers' decision to seize Plaintiff's pistol, without justification or provocation, violated his Second Amendment individual right, as incorporated by the Fourteenth Amendment, to keep and bear arms.
44. As a direct and proximate result of Defendant Officers' actions and the policies, practices, and customs of the Grand Rapids Police Department and the City of Grand Rapids described above, Plaintiff suffered physical and emotional injury, loss of freedom, and loss of constitutionally protected rights.

Count III - First and Fourteenth Amendment Violations

45. Plaintiff restates and incorporates by reference paragraphs 1 through 44.
46. Plaintiff's act of openly carrying a pistol in public was intended, in part, to increase awareness that open carry is lawful in Michigan and to rally public support, therefore qualifying it as symbolic political speech.
47. Defendants' actions violated the following Constitutional rights of Plaintiff:

(a) Plaintiff's right to core political speech protected by the First Amendment and incorporated by the due process clause of the Fourteenth Amendment, which includes conduct intended to rally public support for a particular cause

(b) Plaintiff's right to symbolic expression protected by the First Amendment and incorporated by the due process clause of the Fourteenth Amendment, which includes conduct intended to increase awareness of a particular cause.

48. As a direct and proximate result of Defendant Officers' actions and the policies, practices, and customs of the City of Grand Rapids described above, Plaintiff suffered physical and emotional injury, loss of freedom, and loss of constitutionally protected rights.

Count IV - Michigan Constitution Article 1 Section 6 Claim

49. Plaintiff restates and incorporates by reference paragraphs 1 through 48.

50. The Michigan Constitution, Article 1, Section 6, states that "Every person has a right to keep and bear arms for the defense of himself and the state."

51. Defendant Officers' decision to seize Plaintiff's pistol, without justification or provocation, violated his individual right to keep and bear arms under the Michigan Constitution.

52. As a direct and proximate result of Defendant Officers' actions and the policies, practices, and customs of the Grand Rapids Police Department and the City of Grand Rapids described above, Plaintiff suffered physical and emotional injury, loss of freedom, and loss of constitutionally protected rights.

Count V - State Law Assault and Battery

53. Plaintiff restates and incorporates by reference paragraphs 1 through 52.

54. At all material times, Plaintiff was aware of Defendant Officer Moe's ability to cause an imminent battery.

55. Defendant Officer Moe did cause a harmful and offensive touching when he placed Plaintiff on the ground.

56. Defendant Officer Moe intended to cause apprehension in Plaintiff when he aimed his service pistol at Plaintiff.
57. Defendant Officer Moe intended to touch Plaintiff when he ordered him to the ground.
58. At all material times, Defendant Officer Moe was acting under color of state law; within the scope of his employment with Defendant City of Grand Rapids; and in furtherance of the policies, practices, and customs of the City of Grand Rapids.

Count VI - State Law False Imprisonment

59. Plaintiff restates and incorporates by reference paragraphs 1 through 58.
60. Defendant Officer Moe intended to restrain Plaintiff when he ordered him to the ground and placed him in handcuffs.
61. Defendant Officer Moe's actions had the effect of actually restraining Plaintiff.
62. At all material times, Plaintiff was conscious of being restrained.
63. At all material times, Defendant Officer Moe was acting under color of state law; within the scope of his employment with Defendant City of Grand Rapids; and in furtherance of the policies, practices, and customs of the City of Grand Rapids.

Request for Relief

Plaintiff requests that this Court enter judgment against Defendants in the amount of One Hundred Thousand Dollars (\$100,000.00) or such amount to which he is otherwise found to be entitled, an additional amount of Five Hundred Thousand Dollars (\$500,000.00) for punitive and/or exemplary damages, as well as costs, interest, attorney's fees, and any other relief this Honorable Court deems

equitable, and injunctive relief against enforcement of Municipal Ordinance No. 67-11.

Demand for Jury Trial

Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all issues triable by a jury.

Respectfully Submitted,

THE LAW OFFICES OF STEVEN W. DULAN, PLC

By: /s/Steven W. Dulan
Steven W. Dulan (P54914)
Attorney for Plaintiff

Dated: 02/14/14