

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
(SOUTHERN DIVISION)**

JOSEPH M. MCADAM,
Plaintiff

Hon.
Case No. 1:11-cv-00170

v

OFFICER MATTHEW WARMUSKERKEN,
DEPUTY DEREK WILSON, DEPUTY OSCAR
DAVILA, CITY OF LUDINGTON, and
COUNTY OF MASON,
Defendants

**COMPLAINT WITH JURY
DEMAND**

Steven J. Vander Ark (P32471)
Counsel for Plaintiff
29 Pearl Street N.W., Ste. 145
Grand Rapids, MI 49503
(616) 454-6500
steve.vanderark@gmail.com

Joshua P. Fahlsing (P72737)
FAHLSING LAW, PLLC
Co-Counsel for Plaintiff
29 Pearl Street NW, Suite 145
Grand Rapids, MI 49503
(616) 558-2592
joshfahlsing@gmail.com

Plaintiff, Joseph M. McAdam, by and through his counsel, states as follows:

JURISDICTION AND VENUE

1. Plaintiff Joseph M. McAdam brings this action against Defendants to redress the deprivation of rights secured him by the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331, and 1343(a)(3), and 42 U.S.C. §1983.

3. Venue is proper in this District pursuant to 28 U.S.C. §1391 as the cause of action occurred in this District.

PARTIES

4. At all times relevant herein, Plaintiff Joseph M. McAdam was an adult resident of the City of Ludington, Mason County, Michigan.

5. At all times relevant herein, Defendant Matthew Warmuskerken was an Officer and employee of the Ludington Police Department, City of Ludington, Michigan.

6. At all times relevant herein, Defendant Derek Wilson, was a Deputy and employee of the Mason County Sheriff's Department, Mason County, Michigan.

7. At all times relevant herein, Defendant Oscar Davila, was a Deputy and employee of the Mason County Sheriff's Department, Mason County, Michigan.

8. At all times relevant herein, Defendant City of Ludington was a Municipal Corporation organized and existing under the laws of the State of Michigan.

9. At all times relevant herein, Defendant County of Mason was a Municipal Corporation, organized and existing under the laws of the State of Michigan.

10. Each Defendant is a "person" under 42 U.S.C. §1983 and all times relevant herein, acted under color of a law, statute, ordinance, regulation, custom, or usage of and in the State of Michigan.

11. Individual Defendants are sued in their individual capacities only. Corporate/municipal Defendants are sued in their official/corporate capacities only.

FACTS

THE TRAFFIC STOP

12. On July 19, 2009, Susan McAdam and her son, Plaintiff Joseph McAdam, (“McAdam”) were visiting Susan’s mother at her home in Hamlin Township consoling and reminiscing with her following the recent death of her husband, Susan’s father, and McAdam’s grandfather.

13. Susan McAdam and her husband own and operate Michael’s Bar and Grille in Ludington, Michigan. McAdam is employed by and manages the bar at Michael’s.

14. Prior to July 20, 2009, McAdam had never been arrested, charged with, or convicted of any criminal offense.

15. Shortly after midnight on July 20, 2009, Susan McAdam began driving her 1998 Chrysler from her mother’s home toward her home on Ludington Avenue. McAdam was a passenger in the vehicle.

16. While on patrol, Ludington Police Officer Matthew York (“Officer York”) observed Susan McAdam’s vehicle southbound on Lakeshore Avenue with inoperable taillights and began following her.

17. At approximately 00:22:50, Officer York activated his patrol car video (“PCV”). Exhibit A¹

18. After activating his overhead Patrol Car lights, Susan McAdam stopped her vehicle on the west side of Lakeshore Avenue, just north of the intersection of Ludington Avenue.

¹ Exhibit A is a DVD disc containing a patrol-car video with video/audio from Officer York’s vehicle. Exhibit A will be served with the Complaint on the Defendants, but is not attached to this Complaint being filed with the Court pending stipulations of the parties regarding public disclosure and/or sealing, or further order of the Court.

19. Officer York approached the driver's side of Susan McAdam's vehicle and requested her driver's license, registration, and proof of insurance.

20. Susan McAdam advised that she did not have her driver's license with her, but she had a valid license and produced other documentation requested by Officer York.

21. Officer York asked Susan McAdam to step out of her vehicle, and escorted Susan McAdam to the rear of her vehicle.

22. When Officer York asked Susan McAdam if she had consumed any alcohol, she responded that she had two drinks at her mothers.

JOSEPH MCADAM ENCOUNTER

23. At approximately 00:28:24 (PCV), McAdam got out of the passenger side of the vehicle and walked toward Officer York and his mother.

24. After Officer York asked McAdam what the matter was, McAdam stated, "Just wondering if she is okay."

25. Officer York advised that, "She's okay," and stated, "Do me a favor and just stay in the car for me." McAdam responded, "Yes sir I will," and got back into the vehicle.

26. At approximately 00:30:13 (PCV), Dispatch inquired via radio transmission as to Officer York's status, to which Officer York responded, "Secure."

27. At approximately 00:31:03 (PCV), McAdam again got out of the vehicle and approached Officer York and his mother.

28. Officer York advised McAdam that he had to "stay in the car." McAdam advised Officer York that he did not have to stay in the car, that he could walk home, and that he just wanted to know what Officer York was doing regarding his mother.

29. McAdam advised that he could walk away and Officer York advised that McAdam needed to, "Walk away and get away from me then." McAdam responded, "Yes sir" while holding his hands up and backing away from Officer York.

30. During this discussion, Officer York contacted Dispatch requesting another unit at his location.

31. Shortly thereafter, Officer Warmuskerken arrived at the scene in a marked Ludington Police vehicle.

32. Officer York then advised Dispatch that Officer Warmuskerken was with him and "We're calming down here."

33. McAdam politely approached Officer Warmuskerken to discuss the situation with McAdam's mother and was advised that he needed to sit back in the car.

34. McAdam advised that he did not need to get back into the car and took out his Apple iPhone and began recording both video and audio of his encounter with Officer Warmuskerken.

35. At approximately 00:31:38 (PCV), Officer York advised McAdam that McAdam was interrupting his investigation and that McAdam needed to leave.

36. McAdam was holding up his iPhone and recording the events and conversation when Officer Warmuskerken slapped McAdam's hand with the iPhone away to preclude further taping.

37. McAdam began walking away to leave the scene as instructed by Officer York, and was followed closely by Officer Warmuskerken.

38. Officer York then advised Officer Warmuskerken, "You can let him go – I just don't want him around."

39. Deputy Wilson and Deputy Davila arrived at the scene in a marked Mason County Sheriff's patrol car, got out of their vehicle, and approached McAdam.

40. Officer York advised the Deputies that McAdam needed to get out of there to which one of the Deputies responded, "We'll take him."

41. After walking a short distance away, McAdam stopped and turned back towards the scene asking if he could get his two dogs which were in the back seat of Susan McAdam's vehicle.

42. One of the Deputies advised McAdam, "Last opportunity to leave or you're going to jail."

43. McAdam immediately turned in compliance and began walking away from the scene being followed by Officer Warmuskerken and Deputies Wilson and Davila.

44. McAdam continued walking away as instructed while holding his iPhone to record the events.

45. Without stopping and while continuing to walk away as instructed, McAdam put his iPhone in his pocket. Officer Warmuskerken and Deputies Wilson and Davila then rushed toward McAdam – whose back was to them – and grabbed McAdam from the rear and on both sides.

Arrest and Taser

46. Approximately five seconds after grabbing McAdam, one or more of the officers kicked McAdam's legs out from under him, violently taking him face down to the pavement causing injuries, including to his head.

47. While all three officers were on top of McAdam, one of McAdam's wrists was handcuffed.

48. While dazed and confused from hitting his head on the pavement, and with three officers on top of him holding him face down, McAdam's other arm was pinned under his body and not immediately accessible.

49. According to conflicting police reports, either Officer Warmuskerken or Deputy Wilson utilized his department issued taser and drive stunned McAdam.

50. McAdam was rigid from the pain and electrical current of this taser deployment when another Officer/Deputy utilized his department issued taser and drive stunned McAdam.

51. McAdam was rigid from the pain and electrical current of this taser deployment when yet another Officer/Deputy utilized his department issued taser and drive stunned McAdam.

52. According to police reports, Officer Warmuskerken, Deputy Wilson, and Deputy Davila each drive stunned McAdam at least once.

53. Deputy Davila stood up, inserted a cartridge into his taser and, at approximately 00:35:17 (PCV), deployed taser probes into McAdam's back.

54. Logs for two of the three tasers utilized on McAdam reflect a minimum of 18 seconds of electrical current in both drive stun and probe deployment mode.

55. McAdam was handcuffed, pulled to his feet, and escorted back to Deputy Davila and Deputy Wilson's patrol car.

56. Deputies Wilson and Davila, with McAdam handcuffed in the rear of the patrol car, cleared the scene followed by Officer Warmuskerken in his patrol car en route to Memorial Medical Center.

57. McAdam was being transported to the emergency room of Memorial Medical Center pursuant to the policies of the Ludington Police Department and the Mason County

Sheriff's Department requiring medical evaluation and/or treatment of someone who had been tased.

Hospital Tasers

58. McAdam arrived at the Emergency Room of Memorial Medical Center at approximately 00:48.

59. McAdam was handcuffed and taken to a treatment room in the Emergency Department.

60. Officers removed a handcuff from one of McAdam's wrists and locked the removed handcuff to the railing of the hospital bed.

61. McAdam cooperated with medical personnel in providing medical history and other triage information.

62. While seated on and handcuffed to the hospital bed, nursing staff were going to attend to and apply a bandage to a scrape on McAdam's knee.

63. When McAdam realized that he did not have his iPhone in his pocket containing video and audio recordings of the event, he asked for it back from Deputies Wilson and Davila and Officer Warmuskerken who were all present in the treatment room.

64. Officer Warmuskerken advised McAdam that the iPhone had been seized as evidence and it would not be given back.

65. McAdam advised that he would not consent to further medical treatment of his cuts and scrapes.

66. McAdam was still handcuffed to and seated on the hospital bed when Officers demanded that he lie back on the bed so his knee could be treated or he would be tased again.

67. When McAdam did not immediately comply with the demand to lie back on the bed, Deputy Wilson utilized his taser in drive stun mode to McAdam's right thigh one or more times.

68. McAdam was in pain from the electrical current and still handcuffed to the hospital bed, when Officer Warmuskerken deployed his taser in drive stun mode on McAdam's left thigh one or more times.

69. A log of the taser deployed by Officer Warmuskerken reflects electrical charge deployment for a full five seconds.

70. While in excruciating pain from the two or more taser deployments, McAdam laid back on the hospital bed, at which time his free hand was handcuffed to the other railing of the hospital bed.

71. Hospital staff were advised that they could finish treating McAdam's scraped knee and apply a bandage, which was done.

72. McAdam was discharged from Memorial Medical Center and transported to the Mason County Jail where he was booked in at approximately 01:42. He was released from the Mason County Jail at approximately 18:00 on July 20, 2009.

73. Following the conclusion of McAdam's court proceedings in October 2009, McAdam went to the Mason County Sheriff's Office and retrieved his iPhone.

74. Upon immediate examination of his iPhone, McAdam discovered that the taped events of July 20, 2009, had been erased or otherwise deleted while the iPhone was in the custody of the Mason County Sheriff's Department.

COUNT I
§1983 – CIVIL RIGHTS VIOLATION
INDIVIDUAL DEFENDANTS – LUDINGTON AVENUE

75. Plaintiff repeats and incorporates by reference paragraphs 1 through 74 above.

76. At all times relevant hereto, Defendants Warmuskerken, Wilson and Davila were acting under color of law.

77. The Defendants' use of force against McAdam was intentional, unprivileged, and not consented to.

78. The Defendants' conduct and use of force against McAdam violated clearly established law.

79. The Defendants' conduct and use of force against McAdam was wanton, unnecessary, unreasonable, and excessive during the seizure of McAdam, depriving McAdam of his rights secured under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

80. Each Defendant observed or had reason to know that excessive force would be or was being used against McAdam and each Defendant had both the opportunity and the means to prevent the conduct and harm from occurring.

81. Each Defendant owed a duty to McAdam to intervene and prevent the excessive force and conduct against McAdam by each other Defendant.

82. Each Defendant breached his duty to intervene which deprived McAdam of his rights secured under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

83. As a direct and proximate result of Defendants' conduct, as set forth herein, McAdam suffered injuries and damages more fully set forth in paragraphs 104 and 105 below.

COUNT II
§1983 – CIVIL RIGHTS VIOLATION
INDIVIDUAL DEFENDANTS – MEMORIAL MEDICAL CENTER

84. Plaintiff repeats and incorporates by reference paragraphs 1 through 83 above.

85. At all times relevant hereto, Defendants Warmuskerken, Wilson and Davila were acting under color of law.

86. The Defendants' use of force against McAdam was intentional, unprivileged, and not consented to.

87. The Defendants' conduct and use of force against McAdam violated clearly established law.

88. The Defendants' conduct and use of force against McAdam at Memorial Medical Center, while McAdam was handcuffed to a hospital bed, was wanton, unnecessary, unreasonable, and excessive, and deprived McAdam of his rights secured under the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983.

89. Each Defendant observed or had reason to know that excessive force would be or was being used against McAdam and each Defendant had both the opportunity and the means to prevent the conduct and harm from occurring.

90. Each Defendant owed a duty to McAdam to intervene and prevent the excessive force and conduct against McAdam by each other Defendant.

91. Each Defendant breached his duty to intervene which deprived McAdam of his rights secured under the Fourth and Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983.

92. As a direct and proximate result of Defendants' conduct, as set forth herein, McAdam suffered injuries and damages more fully set forth in paragraphs 104 and 105 below.

COUNT III
§1983 – CIVIL RIGHTS VIOLATION
CITY OF LUDINGTON

93. Plaintiff repeats and incorporates by reference paragraphs 1 through 92 above.

94. Pursuant to 42 U.S.C. §1983 and the Fourth and Fourteenth Amendment of the United States Constitution, Defendant City of Ludington, through its police department, owed McAdam certain duties, including but not limited to, the duty to properly supervise, monitor, and train its officers, including Officer Warmuskerken, so as not to use unreasonable, unnecessary or excessive force while dealing with unarmed, compliant subjects in effectuating an arrest or seizure for an alleged non-violent offense.

95. Pursuant to 42 U.S.C. §1983 and the Fourth and Fourteenth Amendment of the United States Constitution, Defendant City of Ludington, through its police department, owed McAdam certain duties, including but not limited to, the duty to properly supervise, monitor, and train its officers, including Officer Warmuskerken, so as not to use unreasonable, unnecessary, or excessive force to compel unwanted medical treatment of unarmed, compliant, and handcuffed subjects.

96. Defendant City of Ludington breached these duties via its policies, procedures, ordinances, regulations, customs, and usages, and exhibited a deliberate and reckless indifference toward the general public, and the civil rights of McAdam in particular, in one or more of the following ways:

- a. Deliberately failing to train police officers concerning the proper use of less-than-lethal force;
- b. Deliberately failing to train police officers to avoid the use of unreasonable and excessive force when attempting to arrest unarmed, compliant subjects;

- c. Deliberately failing to train police officers to avoid the use of unreasonable and excessive force when attempting to compel unwanted medical treatment of unarmed, compliant, and handcuffed subjects;
- d. Deliberately failing to monitor the conduct and behavior of its police officers including Defendant Officer;
- e. Deliberately failing to train its officers to intervene to prevent violation of unarmed and handcuffed subjects' civil rights; and
- f. De facto allowing Defendant Officer to violate the civil rights of unarmed and handcuffed subjects in violation of procedures;
- g. Other violations which may be discovered.

97. As a direct and proximate result of Defendant City of Ludington's violations of McAdam's civil rights, McAdam suffered injuries and damages more fully set forth in paragraphs 104 and 105 below.

COUNT IV
§1983 – CIVIL RIGHTS VIOLATION
COUNTY OF MASON

98. Plaintiff repeats and incorporates by reference paragraphs 1 through 92 above.

99. Pursuant to 42 U.S.C. §1983 and the Fourth and Fourteenth Amendment of the United States Constitution, Defendant County of Mason, through its Sheriff's Department, owed McAdam certain duties, including but not limited to, the duty to properly supervise, monitor, and train its deputies, including Deputy Wilson and Deputy Davila, so as not to use unreasonable, unnecessary or excessive force while dealing with unarmed, compliant subjects in effectuating an arrest or seizure for an alleged non-violent offense.

100. Pursuant to 42 U.S.C. §1983 and the Fourth and Fourteenth Amendment of the United States Constitution, Defendant County of Mason, through its Sheriff's Department owed McAdam certain duties, including but not limited to, the duty to properly supervise, monitor, and

train its deputies, including Deputy Wilson and Deputy Davila, so as not to use unreasonable, unnecessary, or excessive force to compel unwanted medical treatment of unarmed, compliant, and handcuffed subjects.

101. Defendant County of Mason breached these duties via its policies, procedures, ordinances, regulations, customs, and usages, and exhibited a deliberate and reckless indifference toward the general public, and the civil rights of McAdam in particular, in one or more of the following ways:

- a. Deliberately failing to train deputies concerning the proper use of non-deadly force;
- b. Deliberately failing to train deputies to avoid the use of unreasonable and excessive force when attempting to arrest unarmed, compliant subjects;
- c. Deliberately failing to train deputies to avoid the use of unreasonable and excessive force when attempting to compel unwanted medical treatment of unarmed, compliant, and handcuffed subjects;
- d. Deliberately failing to monitor the conduct and behavior of its deputies including Defendant Deputies;
- e. Deliberately failing to train its deputies to intervene to prevent violation of unarmed and handcuffed subjects' civil rights; and
- f. De facto allowing Defendant Deputies to violate the civil rights of unarmed and handcuffed subjects in violation of procedures;
- g. Other violations which may be discovered.

102. As a direct and proximate result of Defendant County of Mason's violations of McAdam's civil rights, McAdam has suffered injuries and damages more fully set forth in paragraphs 104 and 105 below.

COUNT V
DAMAGES

103. Plaintiff repeats and incorporates by reference paragraphs 1 through 102 above.

104. As a direct and proximate result of the conduct of each Defendant herein, McAdam suffered grievous injuries and damages, including but not limited to:

- a. Conscious and physical pain and suffering;
- b. Extreme mental and emotional distress and injuries;
- c. Fright, shock, and terror;
- d. Humiliation, embarrassment and mortification;
- e. Lost wages and income;
- f. Medical and mental healthcare costs and expenses in the past and in the future;
- g. Other compensable and consequential damages and injuries which may become apparent.

105. The aforesaid conduct and actions of Officer Warmuskerken, Deputy Wilson, and Deputy Davila in their contact with and use of force against McAdam, both individually and collectively, were malicious or with evil intent, or in callous disregard or reckless indifference of or towards McAdam's federally protected rights entitling McAdam to punitive damages against these Defendants in their individual capacity pursuant to 42 U.S.C. §1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joseph M. McAdam requests a Judgment as follows:

- A. Against all Defendants, jointly and severally, for compensatory damages to which McAdam is found entitled in excess of \$75,000, together with costs of this litigation, including Plaintiff's reasonable attorney fees and expenses pursuant to 42 U.S.C. §1988 and related statutes;

- B. Punitive damages against Defendants Warmuskerken, Wilson and Davila in their individual capacities, jointly and severally, in such amount to which he is found entitled;
- C. Such other relief to which the Court or jury finds McAdam to be entitled.

RESPECTFULLY SUBMITTED

Dated: February 17, 2011

By: /s/ Steven J. Vander Ark
Steven J. Vander Ark (P32471)
Counsel for Plaintiff
BUSINESS ADDRESS:
29 Pearl Street N.W., Suite 145
Grand Rapids, Michigan 49503
(616) 454-6500
steve.vanderark@gmail.com

and

Dated: February 17, 2011

By: /s/ Joshua P. Fahlsing
Joshua P. Fahlsing (P72737)
Co-counsel for Plaintiff
BUSINESS ADDRESS:
Fahlsing Law, PLLC
29 Pearl Street NW, Suite 145
Grand Rapids, MI 49503
(616) 558-2592
joshfahlsing@gmail.com

REQUEST FOR JURY TRIAL

Plaintiff, Joseph M. McAdam, by and through his counsel, requests a trial by jury in the above matter.

RESPECTFULLY SUBMITTED

Dated: February 17, 2011

By: /s/ Steven J. Vander Ark
Steven J. Vander Ark (P32471)
Counsel for Plaintiff
BUSINESS ADDRESS:
29 Pearl Street N.W., Suite 145
Grand Rapids, Michigan 49503
(616) 454-6500
steve.vanderark@gmail.com

and

Dated: February 17, 2011

By: /s/ Joshua P. Fahlsing
Joshua P. Fahlsing (P72737)
Co-counsel for Plaintiff
BUSINESS ADDRESS:
Fahlsing Law, PLLC
29 Pearl Street NW, Suite 145
Grand Rapids, MI 49503
(616) 558-2592
joshfahlsing@gmail.com