

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

DAMIAN WHEELER

Case No.: 18-  
Hon.

Plaintiff,

vs.

RICHARD BILLINGSLEA, in his individual and official capacities;  
and  
HAKEEM J. PATTERSON, in his individual and official capacities;  
and  
OFFICER JOHN DOE #1, in his individual and official capacities, and;  
OFFICER JOHN DOE #2, in his individual and official capacities, and;  
THE CITY OF DETROIT, a political subdivision of the State of Michigan

Defendants,

\_\_\_\_\_/

ROMANO LAW, PLLC  
DANIEL G. ROMANO (P49117)  
Attorney for Plaintiff  
23880 Woodward Avenue  
Pleasant Ridge, MI 48069  
(248) 750-0270

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*There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.*

**PLAINTIFF'S CIVIL COMPLAINT AND DEMAND FOR JURY  
TRIAL**

NOW COMES Plaintiff, by and through his attorneys, Daniel Romano and Romano Law, PLLC, complaining of Defendants, respectfully allege as follows:

**JURISDICTION AND VENUE**

1. This is a civil rights action in which the Plaintiffs seeks relief for the violation of their rights secured by 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments.
2. Jurisdiction of this Court is found upon 28 U.S.C. § 1331.
3. Venue is properly laid in the Eastern District of Michigan under 28 U.S.C. § 1391(b)(2).
4. The events that give rise to this lawsuit took place at 17046 Harper, a gas station located in Detroit, Michigan.

### **PARTIES**

5. Plaintiff, DAMIAN WHEELER (“Plaintiff WHEELER” or “Mr. WHEELER”), is a law-abiding citizen of the United States and a resident of the City of Detroit, Michigan.
6. Defendant RICHARD BILLINGSLEA (“Defendant BILLINGSLEA”) is a Detroit Police officer, badge number 971, and at all times relevant, was acting under the color of state law.
7. Defendant HAKEEM J. PATTERSON (“Defendant PATTERSON”) is a Detroit Police officer, badge number 3639, and at all times relevant, was acting under the color of state law.

8. Defendant OFFICER JOHN DOE #1 (“Defendant DOE #1”) is believed to be a Detroit Police officer, badge number unknown, and at all times relevant, was acting under the color of state law.

9. Defendant OFFICER JOHN DOE #2 (“Defendant DOE #2”) is believed to be a Detroit Police officer, badge number unknown, and at all times relevant, was acting under the color of state law.

10. Defendant City of Detroit (“City Defendant”) is a political subdivision of the State of Michigan, acting under color of state law, and is a person for the purposes of a 42 U.S.C. 1983 action.

11. At all times relevant hereinafter mentioned, the individual Defendants were personally acting under the color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State of Michigan and/or the City of Detroit.

12. Each and all of the acts of the Defendants alleged herein were committed by said Defendants while acting within the scope of their employment by the Detroit Police Department.

**STATEMENT OF FACTS**

13. On April 18, 2017 at around 9:20 PM, Plaintiff went to a fuel station, located at 17046 Harper in Detroit, Michigan, to purchase \$12.00 in fuel.

14. Upon Plaintiffs arrival at said fueling station, he observed three (3) unmarked police vehicles, one of which contained the individually named and unnamed Defendants in this action.

15. The named Defendants, later identified as BILLINGSLEA and PATTERSON, unbeknownst to Plaintiff, both of whom are unethical, abusive cops whose reputations precede them, were already at the gas station prior to the Plaintiffs' arrival.

16. Plaintiff in observing said police presence, and in possession of his legally permitted and concealed firearm, felt safe to exit his motor vehicle and enter the station to purchase his \$12.00 in fuel.

17. Plaintiff regularly stopped at this particular station as it was close to his home.

18. As Plaintiff Wheeler entered the front door of the station, he cordially greeted the officers "how you doing?" when suddenly without provocation a young black male police officer that was seated in the drivers position, in one of the unmarked cars (later identified as BILLINGSLEA), exited the vehicle, grabbed Plaintiff by his right arm, spun Plaintiff around, and said "I'm going to hold you on that."

19. Plaintiff Wheeler, had greeted and had attempted to walk past BILLINGSLEA to enter the store, but BILLINGSLEA purposely put himself in front of Plaintiff Wheeler, at the last second to induce contact between the two of them restraining him for no apparent reason.

20. That before Mr. Wheeler could even react to what had happened: he was surrounded by three (3) additional officers, one of which is named in this complaint Defendant PATTERSON, the remaining officers names are currently unknown, with weapons drawn.

21. Plaintiff surrounded by drawn weapons, was again approached by the officer that had originally restrained Mr. Wheeler, Defendant BILLINGSLEA, the officer effectuating an illegal search of Plaintiffs person, reached into Plaintiffs clothing without probable cause, released the safety latch on Plaintiffs holster and removed Plaintiffs legally possessed, concealed weapon, located on the right side of his person placing same in the officer's pocket.

22. Mr. Wheeler, in shock and disbelief asked the individual Defendant what he was being detained for, the officer never replied, nor did any of the officers with their weapons drawn say anything to Plaintiff.

23. The three (3) officers, two of which are unidentified, continued to have their hands on their weapons, without saying a word. Plaintiff Wheeler, now fearing for

his life, quietly, as to not cause further alarm, stated he could provide his credentials for the concealed weapon although he was never asked for them, nor required to provide.

24. Mr. Wheeler, still in fear of his life, slowly reached to obtain his credentials for his concealed weapon, to provide to the officer, at which time Defendant BILLINGSLEA, chest bumped Plaintiff, placed his loaded weapon in Plaintiffs neck, and started pushing him against the wall, stating “you think you hard...boss” all the while guns are drawn on Plaintiff and he has an imminent fear of being shot.

25. During the time that the Plaintiff was being pushed by the Defendant, he was able to ultimately retrieve his concealed weapons permit, both old and new, as well as three or four other pieces of identification from his pocket and provide it to Defendant officer.

26. Plaintiff Wheeler asked to see Defendants name tag, at which time the officer purposefully and in direct contradiction of Plaintiffs request turned sideways so that his identification was not visible to the Plaintiff, Defendant further advised that “it wasn’t important” at that time.

27. Plaintiff continued to be wrongfully, restrained, questioned and detained with a loaded weapon pressed against his neck, and the imminent threat of lethal force without proper cause.

28. Plaintiff posed no threat to the officers or their safety, Mr. Wheeler had simply walked into the gas station and the Defendants attacked Mr. Wheeler without any lawful basis.

29. That at no point did Defendants tell Mr. Wheeler he was under arrest or attempt to place Mr. Wheeler's hands behind his back to be handcuffed.

30. The Defendants were acting like bullies, not like officers of the law, sworn to protect the public.

31. The Defendants did not attempt to place Mr. Wheeler under arrest.

32. Plaintiff Wheeler was not interfering in any way with a police investigation.

33. Plaintiff Wheeler was not acting aggressive in any way.

34. Plaintiff Wheeler was not resisting in any way and remained remarkably calm during this incident.

35. During this assault, BILLINGSLEA forcefully and maliciously rammed Plaintiffs head into the wall, twisted his arms, and placed the Plaintiffs body in positions that caused Plaintiff severe bodily injuries, while the remaining officers stood by watching the abuse, with weapons drawn.

36. Defendant BILLINGSLEA also had his loaded service revolver cocked and pressed into Plaintiff Wheeler's neck several times, while despite Mr. Wheeler not resisting in any way.

37. Defendants unlawfully took Plaintiff Wheeler's weapon and identification, without a warrant and without any lawful basis.

38. Defendants unlawful taking of Plaintiff's property was done in blatant violation of the Fourth Amendment and the First Amendment.

39. No lawful basis existed for Defendants to take Plaintiff's property.

40. Plaintiff Wheeler was then released at the scene, with no arrests, tickets or charges.

41. Plaintiff was then taken to the emergency room at St. John's Providence, for

42. treatment of the injuries he sustained during Defendants assault on him.

43. The Defendants' outrageous conduct was unlawful and malicious from start to finish.

44. The Defendants, by engaging in this type of unlawful, thug-like conduct while acting under the color of law, exacerbated an already strained relationship between the police and the non-police citizens of the city they're sworn to protect, and are deserving of serious punishment for their malicious actions.

45. Plaintiffs seek damages, both punitive and compensatory, an award of costs and attorney's fees, and any other relief this Court deems just and proper.

**Count I**  
**Use of Excessive Force Against Plaintiff Damian Wheeler in Violation Of 42**  
**U.S.C. § 1983 and The Fourth and Fourteenth Amendments as to All**  
**Defendants**

46. Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above and incorporate them as if fully set forth herein.

47. Plaintiff Wheeler did not do anything unlawful to provoke Defendants.

48. All the aforementioned acts of the defendants were committed maliciously, recklessly, intentionally, grossly negligently, and/or knowingly, without any lawful purpose and without good faith.

49. All of the aforementioned acts deprived Plaintiff of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

50. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, with the entire actual and/or apparent authority attendant thereto.

51. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the Detroit Department of Police, all under the supervision of ranking officers of said department.

52. Defendants collectively and individually, while acting under the color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden under the Constitution of the United States.

53. Defendants' actions constitute an excessive use of force which a reasonable police officer would not have used.

54. As a proximate result of the illegal and unconstitutional acts of the Defendants, Plaintiff Wheeler was harmed and suffers damages for his physical, mental, and emotional injury and pain, mental anguish, humiliation, and embarrassment.

**Count II**  
**Assault and Battery (As to All Defendants)**

55. Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above and incorporate them as if fully set forth herein.

56. Defendants intentionally made unlawful physical contact with Plaintiff when:

57. Defendants physically threw Plaintiff Wheeler around outside of the gas station and forcefully held his face against the cement;

58. Defendants walked aggressively towards Plaintiff restrained him and threatened to use deadly force on Mr. Wheeler when he was complying with all of Defendant's requests;

59. Defendants grabbed Plaintiff Wheeler by the arm, threw him into a wall, and threatened deadly force outside the gas station; and

60. Defendants physically pushed Plaintiff Wheeler on several occasions inside and/or near the entrance door of the gas station.

61. All of the above physical contact with Plaintiff was initiated by the Defendants without any lawful basis and without any unlawful provocation by the Plaintiff.

62. Such willful and harmful acts of force were done with the intention to cause harm to Plaintiff.

63. As a proximate result of the malicious, illegal and unconstitutional acts of the Defendants, Plaintiff Wheeler was harmed and suffer damages for their physical, mental, and emotional injury and pain, mental anguish, humiliation, and embarrassment.

**Count III**  
**Violation of Civil Rights Under 42 U.S.C. § 1983 and The First, Fourth and Fourteenth Amendments (As to Defendant City of Detroit)**

64. Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above and incorporate them as if fully set forth herein.

65. A municipality is liable under 42 U.S.C. § 1983 if the acts that violated a person's right were undertaken pursuant to the municipality's policies and customs.

66. As the first alternate basis for liability against Defendant City of Detroit, the policy maker for Defendants, the mayor, or someone else in a policy making position, delegated full authority and/or empowered the individual Defendants.

67. That delegation of authority by the actual policy maker of Defendant City of Detroit placed the individual Defendants in a policy making position, and the acts of the individual Defendants may fairly be said to be those of the municipality.

68. Those acts therefore subject Defendant City of Detroit to liability for the constitutional violations of the individual Defendants.

69. Defendant City of Detroit directly caused the constitutional violations suffered by Plaintiff, and is liable for the damages caused as a result of the conduct of the individual Defendants.

70. The conduct of the individual Defendant officers was a direct consequence of the policies and practices of Defendant City of Detroit.

71. At all times relevant in this complaint, direct and proximate cause of the damages and injuries complained of were caused by policies, practices and /or customs developed, implemented, enforced, encouraged, and sanctioned by Defendant City of Detroit, including the failure:

- a. To adequately supervise and train its officers and agents, including individual Defendants, thereby failing to adequately discourage further constitutional violations on the part of its police officers;
- b. To properly and adequately monitor and discipline its officers, including individual Defendants; and
- c. To adequately and properly investigate citizen complaints of police misconduct and instead, acts of misconduct were tolerated by the Defendant City of Detroit.

72. Defendants have acted with deliberate indifference to the constitutional rights of the Plaintiffs. As a direct and proximate result of the acts as stated herein by each of the Defendants, each of the Plaintiffs' constitutional rights have been violated.

73. As a proximate result of Defendants illegal and unconstitutional acts, Plaintiff suffered physical, mental, and emotional injury and pain, mental anguish, suffering, humiliation, and embarrassment.

74. Upon information and belief, the City of Detroit has a de facto unwritten policy, custom, or procedure in place wherein it only preserves footage which shows the police acting like heroes. It allows for and encourages the destruction of evidence that incriminates the police or exposes them to civil or criminal liability.

75. The police taking one's weapon without a warrant and without consent for evidence, would likewise be an unconstitutional policy, since such a taking clearly violates the Constitution.

76. Upon information and belief, the police took custody and control of the surveillance video footage of the gas station where this entire incident took place and have failed to provide it Plaintiff although requested numerous times.

77. Upon information and belief, the police destroyed, altered, or edited the footage from the gas station surveillance system in accordance with the abovementioned unwritten de facto policy, procedure or custom.

78. Upon information and belief, the defendants were not subjected to any disciplinary action despite their unlawful actions, all of which were recorded on surveillance and could easily have been reviewed by Internal Affairs.

79. Upon information and belief, the defendants do not have in their possession a copy of the footage from the gas station.

80. The City of Detroit does nothing meaningful to train, supervise, discipline, or control its officers to prevent the actions taken by the officers as outlined in this lawsuit.

81. Upon information and belief, there was Audio/Visual recording equipment on the semi-marked scout 143802 vehicle being driven by the Defendants on the day of

this incident. However, the de facto unwritten policy, procedure, or custom indicates that officers should either turn off such recording equipment prior to engaging in unlawful activity, allow it to be recorded over by not preserving it, or by simply lying about it and saying it was not working in the event they accidentally recorded their own unlawful actions. Therefore, upon information and belief, the Defendants will claim no such footage exists and they will either claim the equipment was not on, was not functioning, or was recorded over by not being preserved.

82. This failure to supervise, discipline, or control its officers demonstrates deliberate indifference to the constitutional rights of the Plaintiff and is directly responsible for the individual Defendants acting the way they did as outlined in this lawsuit.

83. Further the de facto unwritten policy, procedure, or custom, described herein, demonstrates deliberate indifference to the constitutional rights of the Plaintiff and is directly responsible for the individual Defendants acting the way they did as outlined in this complaint.

84. As a proximate result of the unconstitutional acts of Defendant City of Detroit, Plaintiff Wheeler was harmed and suffered damages for his physical, mental, and emotional injury and pain, mental anguish, humiliation, and embarrassment.

**Count IV**  
**Gross Negligence, Willful and Wanton Misconduct, Intentional**  
**Infliction of Emotional Distress**

85. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

86. The individual Defendants' acts constitute gross negligence, willful and wanton misconduct, and/or intentional infliction of emotional distress on Plaintiff.

87. That as a direct and proximate result of the wrongful acts of Defendants as aforesaid, Plaintiff suffered severe injuries.

88. As a direct proximate result of the actions of the Defendants in total and individually as alleged herein, Plaintiff sustained personal injuries.

89. That the within cause is brought on behalf of Plaintiff to recover for conscious pain and suffering suffered by Plaintiff prior to his release at the scene.

90. That as a direct and proximate result of the acts alleged herein, Plaintiff became liable for various sums of money in and about securing medical supplies and attention for said injuries and Plaintiff will be liable for any such bills.

91. The Defendant's intentionally and without provocation or justification did knowingly deprive Plaintiff of basic needs in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.

**Count V**  
**Deprivation of Liberty Without Due Process of Law**

92. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

93. 42 U.S.C. § 1983 provides that:

*Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for . . .*

94. Plaintiff in this action is a citizen of the United States and the individual Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

95. Defendants at all times relevant hereto, were acting under the color of state law in their capacity as City of Detroit employees and their acts or omissions were conducted within the scope of their official duties or employment.

96. At the time of the complained events, Plaintiff had a clearly established right under the Fourteenth Amendment not to be punished without due process of law.

97. At the time of the complained events, Plaintiff's Due Process rights were at least as great as the Eighth Amendment protections available to a convicted prisoner.

98. At the time of the complained events, Plaintiff has a clearly established right under the Fourteenth Amendment to not be subjected to punitive conditions.

99. Any reasonable law enforcement officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established.

100. Defendants actions, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them and were intended to punish Plaintiff.

101. Defendants' actions, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them and were an exaggerated response to a real concern.

102. The individual Defendants to this claim at all times relevant hereto were acting pursuant to The City of Detroit's custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

103. As a proximate result of the Defendants' unlawful conduct, Plaintiff suffered serious injury and was deprived of his liberty without due process of law.

104. In addition to compensatory damages, Plaintiff is entitled to punitive damages against each of the individual Defendants under 42 U.S.C. § 1983, in that the actions

of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

**Count VI Res Ipsa Loquitur**  
**(Against all the defendants, and each of them, jointly and severally)**

105. Plaintiff herein hereby incorporates paragraphs 1 through 104 of this complaint as though fully set forth herein.

106. At all times material and relevant herein, Plaintiff has never been in any situation or under any condition that would have made Plaintiff particularly susceptible to the personal injuries complained of herein.

107. Thus, plaintiff is informed, believes, and thereupon alleges that, but for the acts, commissions and or omissions complained of herein, undertaken by the defendants, and each and all of them, jointly and severally, plaintiff would never have suffered the injuries complained of herein that resulted from defendants, and each every one of them, violating plaintiff's rights protected by 42 U.S.C § 1983, As a proximate result, plaintiff has suffered and continues to suffer injury to his mind, nervous system and body.

108. As a further proximate result, plaintiff has suffered loss of income and other legally compensable damages, with the legal rate of interest thereupon, in an amount to be determined at trial.

109. Plaintiff is therefore entitled to compensatory damages, with the legal rate of interest thereupon.

110. Defendants' acts, commissions and or omissions were wanton, outrageous, willful and malicious without any justification in law or fact therefore entitling plaintiff to punitive and exemplary damages.

### **PRAYER FOR RELIEF**

Plaintiff prays that this Court enter judgment for the Plaintiff and against each of the Defendants and grant:

- a) compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- b) economic losses on all claims allowed by law;
- c) special damages in an amount to be determined at trial;
- d) punitive damages on all claims allowed by law against individual Defendants and in an amount to be determined at trial.

- e) attorney's fees and the costs associated with this action under 42 U.S.C. § 1988, including expert witness fees, on all claims allowed by law;
- f) pre- and post-judgment interest at the lawful rate; and
- g) any further relief that this court deems just and proper, and any other appropriate relief at law and equity.

Respectfully Submitted,

By: /s/ Daniel G. Romano

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Dated: January 30, 2018

**DEMAND FOR JURY TRIAL**

NOW COMES, the above-named Plaintiff, by and through his, attorneys, ROMANO LAW, P.L.L.C., and hereby makes formal demand for a trial by jury of facts and issues involved in this cause of action.

Respectfully Submitted,

By: /s/ Daniel G. Romano

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Dated: January 30, 2018