

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILSON PAIGE,)
)
 Plaintiff,)
) No. 02 CV 5127
 -vs-)
) (*Judge Gottschall*)
 CITY OF HARVEY AND)
 HARVEY POLICE OFFICER MAGANA, #535,)
)
 Defendant.)

**PLAINTIFF'S MOTION TO CERTIFY
CASE AS A CLASS ACTION**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiff, by counsel, moves the Court to order that this case may be maintained as a class action on behalf of:

All persons arrested by police officers of the City of Harvey from July 19, 2000 to the date of entry of judgment for conduct that is, or has been, viewed as criminal solely because, in the view of the arresting officer as expressed in the arrest report that he (or she) prepared contemporaneously with the arrest, the conduct constituted "loitering" or "lingering."

Grounds for this motion are as follows:

1. Arrest reports produced by defendant City of Harvey reveal that from January 1, 2000 to September 30, 2002, more than 235 persons were arrested by police officers of the City of Harvey solely because, in the view of the arresting officer as expressed in the arrest report that he (or she) prepared contemporaneously with the arrest, the conduct constituted "loitering" or "lingering."

2. Plaintiff contends that each of these 235 arrest was undertaken pursuant to an unwritten municipal policy authorizing Harvey police officers to arrest persons who "loiter" or "linger." Plaintiff contends that this municipal policy and practice places unbridled discretion in the hands of each Harvey police officer by authorizing police officers to arrest persons who are engaging in lawful conduct. These contentions are common to all members of the proposed class.
3. The justification for arresting plaintiff, as set out in the contemporaneous arrest report, consists of the following:

[Reporting officer] dispatched to 15337 Loomis (a high drug residence) in reference to drug activity and loitering. [Reporting officer] observed [plaintiff Wilson Paige and another person] standing in front of 15337 Loomis. [Reporting officer] advised them to leave the said location that loitering was prohibited. [Reporting officer] then left the location drove around the block and observed both arrestees still standing at the same location. [Reporting officer] then placed the arrestees into custody, read them Miranda rights and transported them to Harvey PD for processing. [Reporting officer] notes that arrestee #2 [Wilson Paige] was irate while at the back seat of [reporting officer]'s squad and started hitting himself on the safety bars that separates the back seat and the front seat. [Charged with loitering.]
4. The circumstances of plaintiff's arrest, as stated in the contemporaneous arrest report, are typical of the justification offered in the 234 similar cases referred to in paragraphs 1 and 2 above.
5. Plaintiff is represented by competent counsel and will adequately represent the proposed class.
6. Class certification to prohibit continuation of the policy and practice challenged in this case is appropriate under Rule 23(b)(2) because the policy

and practice is applied to persons who have not engaged in any wrongdoing, and because the policy and practice places the liberty of every man (and woman) within the City of Harvey in the hands of every petty officer.

7. Class certification to secure damages for each member of the class is appropriate under Rule 23(b)(3) of the Federal Rules of Civil Procedure: common questions predominate over individual issues and experience in this district in multi-party Section 1983 cases shows that the proposed class is manageable.

WHEREFORE plaintiff prays that the Court order that this case may be maintained as a class action under Rules 23(b)(2) and 23(b)(3) on behalf of

All persons arrested by police officers of the City of Harvey from July 19, 2000 to the date of entry of judgment for conduct that is, or has been, viewed as criminal solely because, in the view of the arresting officer as expressed in the arrest report that he (or she) prepared contemporaneously with the arrest, the conduct constituted "loitering" or "lingering."

Respectfully submitted,

KENNETH N. FLAXMAN
200 South Michigan Avenue
Suite 1240
Chicago, Illinois 60604
(312) 427-3200
attorney for plaintiff