

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

TAYLOR RAYMOND CRANE,)	
KENDALL DIMOND,)	
MATT CARMER,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:20-cv-240
)	
CITY OF FORT WAYNE, ALLEN)	JURY TRIAL REQUESTED
COUNTY SHERIFF, in his official)	
capacity,)	
)	
Defendants.)	

Complaint for Declaratory and Injunctive Relief and Damages

Introduction

1. In the days following the murder of George Floyd in Minneapolis, numerous persons have come together to attempt to engage in peaceful protest in downtown Fort Wayne, in front of and near the Allen County Courthouse. Peaceful protesters have repeatedly been met by members of the Fort Wayne Police Department and the Allen County Sheriff's Department who have engaged in a range of unreasonable and inappropriate behaviors designed to prevent the persons from engaging in lawful protest. These behaviors have included the use of tear gas, pepper spray, flash grenades, and rubber bullets and other policing tactics designed to remove peaceful protesters from public spaces. This behavior by law enforcement violated, and continues to violate, both

the First and Fourth Amendments to the United States Constitution. The plaintiffs wish to continue to engage in their constitutional right of assembly and protest, but justifiably fear that the above behaviors will be repeated by the agents, employees, and officers of Fort Wayne and the Allen County Sheriff's Department. They seek declaratory and injunctive relief to ensure that the constitutional violations are not repeated, and the plaintiffs also seek their damages.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331, 1343.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202 ad Rule 57 of the Federal Rules of Civil Procedure.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. Taylor Raymond Crane is an adult resident of Allen County, Indiana.
7. Kendall Dimond is an adult resident of Allen County, Indiana.
8. Matt Carmer is an adult resident of Allen County, Indiana.
9. The City of Fort Wayne is a municipality located in Allen County, Indiana.
10. The Allen County Sheriff is the county-wide law enforcement officer for Allen County, Indiana.

Facts

Introductory facts

11. Following the murder of George Floyd in Minneapolis on May 25, 2020, protests have erupted throughout the United States as persons have demonstrated against systemic racism and the manner in which systemic racism has negatively influenced police actions towards persons and communities of color.

12. The protesters have demanded changes in policing practices and the structure of police forces.

13. In Fort Wayne there have been protests directed to institutional racism and policing practices beginning on May 29, 2020, and continuing through today's date with more protests to be held in the future.

14. These protests have been located at or near the Allen County Courthouse in downtown Fort Wayne.

15. The protests have been almost entirely peaceful.

16. The protests have been marred by officers of the Fort Wayne Police Department and deputies from the Allen County Sheriff's Department taking violent and inappropriate actions against peaceful protesters who were engaging in legitimate protest activities on public property.

17. Unreasonable force has been utilized against protesters.

18. Among other things, protesters have been teargassed, pepper sprayed, attacked with rubber bullets, and pushed away from public areas by inappropriate shows of force by police authorities. The police have also used stun grenades to force peaceful protesters to disperse.

19. Tear gas consists of aerosolized chemicals that cause severe irritation in the eyes, mouth, lungs, and nose. It causes difficulty in breathing, pain and uncontrollable watering in the eyes, and coughing.

20. It is painful to be hit by a tear gas container and being hit by one may cause serious injury, particularly if an individual is struck in the head or neck with the device.

21. Pepper-spray contains a chemical that irritates the eyes, nose, skin, and respiratory system.

22. In addition to the tearing of eyes, blurred vision, respiratory difficulties, and burning and irritation caused by tear gas and pepper spray, these common side effects are particularly dangerous during the current pandemic as they promote the spread of the disease by causing sneezing and coughing that propel droplets into the air.

23. The 1993 Chemical Weapons Convention, signed by the United States, explicitly forbids the use of “riot control agents” like tear gas and pepper balls, “as a method of warfare.” Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Art. I(5), *opened for signature* Jan. 13, 1993, 1874 U.N.T.S, available at <https://treaties.un.org/doc/Treaties/1997/04/199704>

29%2007-52%20PM/CTC-XXVI_03_ocred.pdf (last visited June 15, 2020).

24. It is painful to be struck by rubber bullet, which are rubber-coated projectiles.

They may cause serious injury depending on where the person is struck.

25. Stun grenades are also called flash or flashbang grenades. These are explosive devices that emit an extremely loud sound and bright light upon detonation. They can cause temporary loss of sight and temporary hearing loss and are designed to disorient persons.

26. Stun grenades may cause permanent hearing loss. They can also cause serious burns and injuries to persons struck by them.

27. Stun grenades can be as loud as 175 decibels when they are detonated. A jet engine at 100 feet is only 140 decibels.

May 29, 2020

28. On May 29, 2020, protesters gathered on the Courthouse Green, the one-acre public area in front of the Allen County Courthouse and they also gathered on the public sidewalks near the Courthouse.

29. A group of protesters marched from this area on Clinton Street to the nearby Martin Luther King Bridge and then back to the Courthouse Green.

30. Some persons were on the sidewalks and some were in the street.

31. As the protesters walked back towards the Courthouse, a large number of officers of the Fort Wayne Police Department came out of the police headquarters in the Rousseau

Building on Clinton Street. At that point there were also protesters on the public sidewalk and the Courthouse Green.

32. The police officers proceeded to move toward the Courthouse Green where there were peaceful demonstrators.

33. Without warning, the police officers began to indiscriminately shoot off dozens of tear gas cannisters. They were shot into the Courthouse Green and the public sidewalks near the Courthouse where demonstrators had gathered as well as into the street where there were demonstrators.

34. One of the tear gas cannisters broke a window of the Courthouse.

35. After the initial volley of tear gas, the police created a line and pushed forward across South Clinton Street.

36. Police officers sprayed any person with pepper spray who did not fall back off of the public space they were previously occupying to engage in peaceful protest.

37. A number of protesters were on the public sidewalks that bounded the nearby Freimann Square, a 4.6-acre public park diagonally across from the Courthouse Green, and a number where in Freimann Square.

~~38.~~ Officers from the Fort Wayne Police Department indiscriminately shot tear gas into the protesters on the sidewalks and those in Freimann Square.

39. Deputies from the Allen County Sheriff's Department assisted in creating the line of officers that pushed protesters out of the public areas.

40. Law enforcement officers fired rubber bullets into the crowds of persons who were peaceably assembled in the public areas.

41. The protest lasted into the night and despite some isolated incidents of property destruction by a few protesters, remained largely peaceful despite indiscriminate attacks by law enforcement.

May 30, 2020

42. Another protest was planned for the environs near the Allen County Courthouse on May 30, 2020.

43. Deputies of the Allen County Sheriff's Department had lined up their vehicles near the entrance to the Courthouse, forming a barrier.

44. A number of deputies from the Allen County Sheriff's Department were accompanied by police canines and were present on the Courthouse Green.

45. However, the large majority of the Courthouse Green was open, and the protesters gathered there.

46. A number of protesters entered the street, although the majority remained on the Courthouse Green and on public sidewalks.

47. Nevertheless, Fort Wayne Police Department officers joined by Allen County Sheriff Department deputies again formed a line and moved toward the peaceful protesters on the public spaces.

48. There was a quiet announcement that persons had to disperse, although it could not be heard by protesters who were not immediately next to the law enforcement officer who made the announcement. There was no lawful basis for this order.

49. Ten seconds later, again, without further warning, Fort Wayne Police Department officers fired tear gas indiscriminately towards persons in the Courthouse Green and on the public sidewalks.

50. Again, officers from the Fort Wayne Police Department indiscriminately shot tear gas into the protesters on the sidewalks and those in Freimann Square.

51. Tear gas was sprayed at a three-year old whose mother was taking her home. She was two blocks from the protest scene. While street medics attempted to administer first aid to her, law enforcement officers shot another tear gas cannister from a moving vehicle directly into the group helping the child.

52. Persons in public areas were pepper sprayed.

53. Rubber bullets were shot by law enforcement officers at demonstrators who were in public places.

54. Stun grenades, causing loud explosions and brilliant flashes of light, were also deployed against the protesters.

55. A number of protesters had marched on the street and neighboring sidewalks to the nearby Martin Luther King Bridge.

56. Without warning, officers of the Fort Wayne Police Department descended on the persons on the bridge and sidewalks and started shooting teargas into the crowd, including into those persons on sidewalks. Law enforcement personnel blocked protesters from leaving the bridge in either direction, and then shot tear gas canisters at them. The protesters were given no opportunity or time to safely disperse.

57. Law enforcement officers travelled near the Courthouse, and if they saw persons on the sidewalk, they would shoot tear gas or pepper spray at them.

Further demonstrations

58. On May 31, 2020, protesters again gathered on the Courthouse Green to engage in peaceful protest.

59. Again, police authorities used tear gas, rubber bullets, pepper spray, and stun grenades to prevent persons from engaging in peaceful protest in public spaces including on public sidewalk.

60. Persons have continued thereafter to engage in protests activity on the Courthouse Green and nearby areas.

61. On June 14, 2020, a group of protesters marched in the street towards the Martin Luther King Bridge blocking the street.

62. After protesters refused to clear the road, Fort Wayne Police Department officers responded and shot rubber bullets into the crowd, which dispersed.

63. Police pursued the demonstrators, even after they left the street, shooting rubber bullets at that them.

64. As protesters dispersed to get away from the weapons being deployed, police went into private businesses and dragged out protesters who were just trying to get away from rubber bullets.

65. On this date, officers of the Fort Wayne Police Department also attacked persons who were peacefully protesting on the Courthouse Green, a number of blocks away from the bridge, shooting rubber bullets at them.

66. Law enforcement officers ordered the peaceful protesters to disperse. There was no lawful cause to do so.

67. On June 15, 2020, protesters gathered peacefully on the Courthouse Green.

68. Around 6:00 p.m., without warning, Fort Wayne Police Department officers started arresting persons without stating any charges and without reading them their rights. Weapons were pointed at other persons and they were threatened with arrest.

69. The police sprayed person on the Courthouse Green with pepper spray.

70. This compelled persons to leave the Courthouse Green, even though they were peaceably assembled.

71. At no point was a curfew ever established in Fort Wayne.

Individual plaintiffs

Taylor Raymond Crane

72. On May 29, 2020, Taylor Raymond Crane went to the protest taking place on the Courthouse Green around 4:30 p.m.

73. He walked with protesters to the Martin Luther King Bridge.

74. As he walked back, he saw Fort Wayne Police officers leave their headquarters.

75. He saw the police launch tear gas into the crowd on the Courthouse Green and sidewalks, as well as persons in the street.

76. He was on the Courthouse Green and got teargassed.

77. The persons on the Courthouse Green and sidewalks were not doing anything unlawful.

78. Nevertheless, Fort Wayne Police Department officers, in riot gear, again began to indiscriminately shoot tear gas everywhere.

79. He was again teargassed.

80. He witnessed police spray persons with pepper spray who were on the Courthouse Green and on the sidewalks.

81. He watched police officers proceed on the lawn with batons, pushing back protester while spraying them.

82. He eventually went to a public parking lot to try to avoid the tear gas. He was there with a number of media personnel. Nevertheless, the police launched tear gas into the sidewalk by the parking lot, and he again was engulfed by tear gas.

83. He was present on May 30, 2020, while 200-300 persons were on the Courthouse Green.

84. Again, law enforcement came onto the lawn, firing tear gas indiscriminately.

85. Although he remained on the sidewalk and the Courthouse Green, he was again teargassed.

86. He also witnessed concussion grades being employed.

87. Although he was peaceably protesting, he was shot in the back by a rubber bullet. He believes it was shot by Allen County Sheriff's Department deputy.

88. He was present on May 31 near the Courthouse.

89. He saw law enforcement personnel fire rubber bullets at peaceful protesters on May 29, 20 and 31.

90. He is aware that protests are continuing. He has checked in on them, but he has not stayed as he is fearful of being exposed to further violence by law enforcement officials.

91. He wants to be able to engage in peaceful protest without fear and without needing to be hypervigilant.

Kendall Dimond

92. On May 29, 2020, Ms. Dimond joined other persons engaging in peaceful protest near the Allen County Courthouse.

93. During the afternoon she was on the sidewalk near the headquarters of the Fort Wayne Police Department when numerous police officers, dressed in riot garb, left the building heading towards the Courthouse.

94. She was instructed to get out of the way and she and other persons on the sidewalk moved so that they were pressed against a retaining wall, allowing the officers to pass.

95. As the officers walked by a number of them sprayed her and others with pepper spray.

96. She suffered intense discomfort, burning in her eyes and on her face, and respiratory difficulties.

97. The officers then proceeded to fire cannisters of tear gas at protesters who were in the intersection of Main and Clinton Streets as well as firing into the crowds of protesters in the Courthouse Green and on neighboring sidewalks.

98. The teargas directed to the protesters in the intersection resulted in all protesters except one leaving the intersection.

99. Members of the Fort Wayne Police Department proceeded to fire tear gas cannisters directly at this man. He collapsed as he was apparently overcome by the tear gas.

100. Ms. Dimond was on the sidewalk and she and a number of persons entered the intersection and dragged the man to the sidewalks. As she did this the law enforcement officers fired numerous cannisters of tear gas at them as they rescued this man.

101. Much like the pepper spray, the tear gas caused intense discomfort. She had difficulty breathing and suffered pain in her face and eyes.

102. Law enforcement then started firing rubber bullets at persons on sidewalks as well as on the Courthouse Green.

103. Although at one point, after she was initially sprayed with pepper spray, she heard an announcement that the protest had been declared to be an unlawful assembly, this was quickly followed, without warning, with cascade of tear gas.

104. Persons were never instructed by law enforcement where they should go to safely leave the areas.

105. On May 30, 2020, she arrived in the early evening and travelled to the area near the Martin Luther King bridge, where protesters were on the sidewalk.

106. She briefly left and by the time she came back Fort Wayne Police Department Officers were shooting tear gas cannisters into crowds of persons in Freimann Square and in the Courthouse Green.

107. People had gone into Freimann Square to try to escape the violent responses of police authorities directed to persons on the Courthouse Green. But law enforcement, from outside of Freimann Square just launched multiple volleys of tear gas into the area.

108. Since that time she has returned to protests in and around the Courthouse Green only intermittently and only for brief periods of time. She generally just drives by.

109. She would like to be able to continue with protesting on the Courthouse Green and surrounding sidewalks. However, she is extremely fearful of being exposed to more violence from law enforcement.

Matt Carmer

110. On May 29, 2020, Matt Carmer travelled to the Allen County Courthouse to participate in the peaceful protest that was ongoing.

111. He took his young child with him as he wanted to teach the child about the rights that all persons have in the United States to engage in peaceful protest.

112. He also wanted to teach the child about racism and the need for persons to stand up against it and its influences and effects.

113. He and his child participated in the peaceful protest for a period of time.

114. It started to rain, and he and his child went into Freimann Square to get under the trees there.

115. From there he saw the line of officers from the Fort Wayne Police Department leave police headquarters.

116. No demonstrators were behaving violently, but the police immediately began to deploy chemicals, indiscriminately, at protesters.

117. Almost immediately he saw plumes of smoke and persons being sprayed.

118. He heard people screaming.

119. Shortly thereafter, the chemical clouds that the police had caused descended on him and his child in Freimann Square.

120. His child started coughing and while Mr. Carmer attempted to tend to the child Mr. Carmer felt the effects of the gas—his eyes started to water, and he began to cough.

121. He and his child ran to the far end of Freimann Square, attempting to get as far away from the Courthouse Green as possible.

122. His child was terrified and stated that that the police were coming to kill them.

123. He would like to go back to engage once again in peaceful protest, but he is unwilling to do so given the reaction of law enforcement on May 29. He would also like to teach his child that persons have the right to engage in peaceful protest.

124. If law enforcement is enjoined to allow peaceful protests he will return to protest, as from what he saw protesters were all peaceful before they were attacked.

Concluding allegations

125. On information and belief defendants have employed drones to survey the crowd and to identify persons who have engaged in peaceful protest.

126. At no point has any representatives of the City of Fort Wayne or the Allen County Sheriff's Department indicated that it was a mistake to use tear gas, stun grenades, pepper spray, and rubber bullets against peaceful protesters. Nor have they promised not to use similar weapons and tactics in the future to suppress peaceful protest.

127. The violent response to peaceful protests by the officers, agents, and employees of the defendants has led to persons being unwilling to exercise their rights to engage in peaceful protest.

128. The items used by defendants to interfere with, punish, and disperse peaceful protest are dangerous.

129. It is the practice or policy of the defendants to utilize these items on peaceful protesters.

130. The defendants have engaged in a practice, without lawful justification, of preventing peaceful protest in public spaces.

131. The actions and the inactions of the defendants, their officers, agents, and employees, have had the effect of denying persons the ability to peaceably assemble and protest. They also represent the objectively unreasonable use of force.

132. The plaintiffs are suffering continuing harm in that their rights to peaceably protest have been and continue to be chilled by the actions and inactions of the defendants, their officers, agents, and employees.

133. The plaintiffs are suffering continuing harm in that they are threatened with the objectively unreasonable use of force by defendants, their officers, agents, and employees.

134. The individual plaintiffs have been damaged by the actions and inactions of defendants, their officers, agents, and employees.

135. Plaintiffs are being caused irreparable harm for which there is no adequate remedy at law.

136. At all times the defendants, their officers, agents, and employees have acted under color of state law.

Jury demand

137. Plaintiffs request a trial by jury on all claims so triable.

Legal claims

138. The actions of the defendants, their officers, agents, and employees, in attempting to interfere with and stop lawful protest activities in Fort Wayne through the use of tear gas, pepper spray, rubber bullets, stun grenades, and overwhelming shows of force, violate the First Amendment to the United States Constitution.

139. The use of such things as tear gas, stun grenades, rubber bullets, and pepper spray against peaceful protesters was and is the objectively unreasonable use of force in violation of the Fourth Amendment to the United States Constitution.

WHEREFORE, plaintiffs request that this Court

1. accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. declare that the actions of the defendants, their officers, agents, and employees violated, and continue to violate, the First and Fourth Amendments to the United States Constitution.
3. enter a preliminary injunction, later to be made permanent, enjoining defendants and their officers, agents, and employee from

- i. taking any actions designed to interfere with or stop lawful protest activities.
 - ii. utilizing objectively unreasonable force against protest activities including, but not limited to, employing tear gas, rubber bullets, pepper ball projectiles, and stun grenades.
4. award the plaintiffs their damages following a jury trial.
5. award plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
6. award all other proper relief.

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