

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

2015 JUN 16 P 5:14

ANTHONY COOPER, et al.

Plaintiffs,

v.

THE CITY OF DOTHAN,

Defendant.

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

Case No. 1:15-cv-425-WKW  
(Class Action)

CLASS ACTION COMPLAINT

Introduction

This case is about the City of Dothan jailing some of its poorest people because they cannot pay a small amount of money. Anthony Cooper is a recent arrestee who is currently imprisoned by the City because he cannot afford to pay the amount of money generically set by the "bail schedule" used by the City of Dothan. In the City of Dothan, many people arrested for minor traffic or misdemeanor offenses are released from custody almost immediately upon payment of money to the City. Those arrestees who are too poor to purchase their release remain in jail because of their poverty for up to seven days before a first court appearance.

On behalf of the many other arrestees subjected to the City's unlawful and ongoing post-arrest money-based detention scheme, the Plaintiff challenges in this action the use of fixed amounts of secured money bail that operates to detain only the most impoverished of minor misdemeanor arrestees. The City's policy has no place in modern American law.

By and through his attorneys and on behalf of Plaintiff and all others similarly situated, the Plaintiff seeks in this civil action the vindication of his fundamental rights, injunctive relief

assuring that his rights and the rights of the other Class members will not continue to be violated, and a declaration that the City's conduct is unlawful.

**Nature of the Action<sup>1</sup>**

1. It is the policy and practice of the City of Dothan to refuse to release traffic and misdemeanor arrestees from jail unless they pay a generically set "bond" amount. That amount varies for each misdemeanor offense but generally ranges from \$300-\$500. Because this sum is set by reference to the alleged offense of arrest, no individualized factors are considered, and anyone who cannot afford to pay is held in jail for up to seven days before the City brings its arrestees before the municipal court by video feed from the jail. City officers bar members of the public from attending that court session.

2. Plaintiff seeks declaratory, injunctive, and compensatory relief.

**Jurisdiction and Venue**

3. This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, *et seq.*, and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

**Parties**

5. Plaintiff Anthony Cooper represents himself as an individual and a Class of similarly situated people all subject to the City's money-based post-arrest detention scheme.

6. Defendant City of Dothan is a municipal corporation organized under the laws of the State of Alabama. The City operates the Dothan Police Department and the Dothan City Jail, where Dothan arrestees are confined after arrest.

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<sup>1</sup> Plaintiff makes the allegations in this Complaint based on personal knowledge as to matters in which he has had personal involvement and on information and belief as to all other matters.

**Factual Background**

**A. The Plaintiff's Arrest**

7. Anthony Cooper is a 56-year-old man.

8. Mr. Cooper was arrested on Friday, June 12, 2015 by Dothan police officers for public intoxication. *See* Exhibit 1, Declaration of Anthony Cooper.

9. Mr. Cooper was taken to the Dothan City jail and informed by City employees that he would not be released unless he paid the standard \$300 bond amount for public intoxication charges.

10. Mr. Cooper is indigent and suffers from significant mental health problems. He is illiterate and survives solely on Social Security benefits. *See id.* He cannot afford to purchase his release from jail.

11. Mr. Cooper suffers from physical injuries, including a head wound and high blood pressure. He is currently not being given his medication by the City jail.

12. Mr. Cooper was told that, pursuant to City policy, he would not be brought to court until the City's weekly court session on Thursday, six days after his arrest. Pursuant to City policy, the earliest that Mr. Cooper would be brought to court for a first appearance is Thursday, June 18, 2015.

**B. The City's Policies and Practices**

13. The named Plaintiff would be released immediately by the City of Dothan if he or a family member paid the amount set by the City of Dothan.

14. The treatment of the named Plaintiff and other Class members is caused by and is representative of the City's post-arrest detention policies and practices.

15. As a matter of policy and practice, when the City of Dothan Police Department makes an arrest for a minor traffic or misdemeanor offense, officers inform the arrestee at booking that the person will be released immediately if the person pays \$300-\$500 for each charge of arrest pursuant to an offense-based and pre-set informal "bail schedule."<sup>2</sup> The arrestee is told that she will remain in jail if she is not able to make that payment.

16. Because Dothan does not deviate from secured money bail, any arrestee too poor to pay the pre-set secured bail could spend as many as seven days in jail prior to a first court appearance.<sup>3</sup>

17. A court docket is developed weekly from the City jail records. The docket includes individuals who were jailed since the previous Thursday's court appearances. Impoverished persons arrested for a traffic or misdemeanor offense after the docket is developed on Thursday morning must languish in jail until the following Thursday when the next weekly (Thursday) court docket is called.

18. Unlike many other cities, the City of Dothan does not allow post-arrest release on recognizance or with an unsecured bond (in which a person would be released by promising to pay the scheduled amount if the person later does not appear). Instead, City officials require that the payment amount be made up front.

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<sup>2</sup> Because of the common availability of commercial bail bonds, those that remain in the custody of the City of Dothan are typically those that cannot even afford to pay a third-party bonding agent. The amount charged by a bonding agent to pay a \$500 cash bond is typically \$50-\$100, although such agents are free to refuse to pay for the release of an arrestee for any reason or for no reason. Thus, the availability of third-party agents, at least for those arrestees who can afford \$50 but not \$500, is no guarantee. Mr. Cooper cannot afford such a bond.

<sup>3</sup> Those arrestees unable to pay for their release are eventually visited, usually within 72 hours, by a Dothan City magistrate. The purpose of that visit is not to conduct any hearing or to make any neutral probable cause finding. As a matter of policy and practice, the magistrates do not conduct any indigency hearing and are not permitted to reduce or waive monetary bail, to allow release on recognizance, or to allow that bail be unsecured rather than secured. Instead, the magistrate merely informs the person of the charges, confirms the arrestee's monetary bail amount as determined by jail employees, and informs the person that the person's first appearance before a judge will occur the following Thursday. The City of Dothan holds court once per week each Thursday.

19. After arrest, jail employees inform arrestees of the secured bond amount based on their training and City policies. Many of Dothan's minor misdemeanor arrestees are thus released soon after arrest upon payment of the scheduled amount of cash. Some remain detained for varying lengths of time until they or their families are able to borrow sufficient amounts of money or arrange for third-party payment. Others, like the named Plaintiff, who are too poor even to find anyone to pay the money bond for them, are kept in jail for up to seven days before their first court appearance.

20. Each Thursday, there are commonly about ten (10) destitute defendants who were not able to pay enough money to secure their release. The City of Dothan forces these inmates to appear in the courtroom via video from jail.

21. The City of Dothan holds such proceedings in an empty "courtroom" that is closed to the public for all such video proceedings. The public is not allowed to enter the proceedings, which often include only the City prosecutor or magistrate, City judge, and the defendant on video. On occasion, an arrestee is represented by an attorney, who is allowed to be present.

22. Despite the First and Sixth Amendments' guarantee of open public court proceedings and binding precedent from the Supreme Court of the United States and the Eleventh Circuit requiring all such proceedings to be open to the public, it is often not possible, as a matter of policy and practice, for a member of the public to observe court proceedings involving inmates in the City of Dothan.

23. Because of Dothan's unprecedented and illegal courtroom closure policies, it is difficult for the public to obtain accurate details concerning how many impoverished Dothan arrestees are unable to buy their release each week or the exact manner in which they are treated.

**Class Action Allegations**

24. The named Plaintiff brings this action, on behalf of himself and all others similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common basis.

25. A class action is a superior means, and the only practicable means, by which the named Plaintiff and unknown Class members can challenge the City's unlawful poverty-based post-arrest detention scheme.

26. This action is brought and may properly be maintained as a Class action pursuant to Rule 23(a)(1)-(4) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

27. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

28. The Plaintiff proposes one Class seeking declaratory and injunctive relief. The Declaratory and Injunctive Class is defined as: All arrestees unable to pay for their release who are currently or who will become in the custody of the City of Dothan as a result of an arrest involving a misdemeanor or traffic offense.

**A. Numerosity. Fed. R. Civ. P. 23(a)(1)**

29. Every traffic and misdemeanor arrestee in Dothan is presented with the City's standard choice of pay or jail. Arrestees are held in jail for varying lengths of time depending on how long it takes them to make the cash payment that the City requires for their release.

30. Some arrestees are able to pay for release immediately. Others are forced to wait a day or two days until they or family members can make the payment. Others are not able to pay or to find someone else to pay for them even after a few days.

31. Each week, an average of approximately ten (10) persons have not been able to pay the secured money bond set by City policy. Those arrestees are still in custody and appear before

the Dothan municipal judge by video. Thus, the number of future class members, even in a period of several months, numbers in the hundreds.

**B. Commonality. Fed. R. Civ. P. 23(a)(2).**

32. The relief sought is common to all members of the Class, and common questions of law and fact exist as to all members of the Class. The named Plaintiff seeks relief concerning whether the City's policies, practices, and procedures violate the rights of the Class members and relief mandating the City to change its policies, practices, and procedures so that the constitutional rights of the Class members will be protected in the future.

33. These common legal and factual questions arise from one central scheme and set of policies and practices: the City's post-arrest detention scheme. The City operates this scheme openly and in materially the same manner every day. The material components of the scheme do not vary from Class member to Class member, and the resolution of these legal and factual issues will determine whether all of the members of the class are entitled to the constitutional relief that they seek.

Among the most important, but not the only, common questions of fact are:

- Whether the City of Dothan has a policy and practice of using fixed offense-based money bail to determine the amount of money necessary to avoid post-arrest detention;
- Whether the City of Dothan requires that bail amount to be paid up front in order to allow release;
- What post-arrest procedures the City of Dothan performs on misdemeanor arrestees, for example, whether Dothan has any other alternate procedures for promptly releasing indigent people unable to afford a monetary payment.

34. Among the most important common question of law are:

- Whether a fixed secured bail procedure setting standard amounts of money required up front to avoid post-arrest detention violates the Fourteenth Amendment's due process and equal protection clauses.

**C. Typicality. Fed. R. Civ. P. 23(a)(3).**

35. The named Plaintiff's claims are typical of the claims of the other members of the Class, and he has the same interests in this case as all other members of the Classes that he represents. Each of them suffers injuries from the failure of the City to comply with the basic constitutional provisions: they are each confined in jail because they could not afford to pay the City's standardized cash bond amount. The answer to whether the City's scheme of policies and practices is unconstitutional will determine the claims of the named Plaintiff and every other Class member.

36. If the named Plaintiff succeeds in the claim that the City's policies and practices concerning post-arrest detention violate his constitutional rights, that ruling will likewise benefit every other member of the Class.

**D. Adequacy. Fed. R. Civ. P. 23(a)(4).**

37. The named Plaintiff is an adequate representative of the Class because his interests in the vindication of the legal claims that he raises are entirely aligned with the interests of the other Class members, who each have the same basic constitutional claims. He is a member of the Class, and his interests coincide with, and are not antagonistic to, those of the other Class members.

38. There are no known conflicts of interest among members of the proposed Class, all of whom have a similar interest in vindicating their constitutional rights in the face of their unlawful treatment by their local government.

39. The Plaintiff is represented by attorneys from Equal Justice Under Law who have experience litigating complex civil rights matters in federal court and extensive knowledge of both secured "bail schedule" schemes and the relevant constitutional law. Class Counsel has conducted an investigation over a period of months into the use of the generic secured bail in Alabama including numerous interviews with witnesses, experts, City employees, inmates, families of



inmates, local attorneys, community members, statewide experts in the functioning of Alabama municipal courts, and national experts in post-arrest detention procedures and constitutional law. Class Counsel has studied the way that these systems function in other cities in order to investigate the wide array of reasonable constitutional options in practice for municipalities like the City of Dothan. As a result, Class Counsel has devoted enormous resources to becoming familiar with the “bail schedule” scheme and with all of the relevant state and federal laws and procedures that relate to it.

40. Counsel for the Plaintiff has also been lead counsel in several similar class action constitutional challenges to unlawful secured money bail practices in Alabama, Missouri, and Mississippi. *See Jones et al. v. City of Clanton*, 15-cv-34 (M.D. Ala. 2015); *Pierce et. al. v. City of Velda City*, 15-cv-570 (E.D. Mo. 2015); *Powell et al. v. City of St. Ann*, 4:15-cv-840 (E.D. Mo. 2015); *Thompson et al. v. City of Moss Point*, 1:15-cv-00182-LG-RHW (S.D. Miss. 2015). Counsel has previously been the lead attorney in a recent constitutional civil rights class action lawsuit against the City of Montgomery. *See Mitchell et al, v. City of Montgomery*, 2014-cv-186 (M.D. Ala. 2014). That case involved a major investigation and landmark litigation to end widespread injustices involving the jailing of impoverished people by the City of Montgomery over a period of years for their non-payment of debt from traffic tickets.<sup>4</sup>

41. The Plaintiff is also represented in this case by local Class Counsel J. Mitchell McGuire,<sup>5</sup> who has devoted time and resources to investigating the City’s policies and practices,

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<sup>4</sup> Counsel was also previously the lead attorney in a constitutional civil rights class action against the District of Columbia in the United States District Court for the District of Columbia. *See* 1:13-cv-00686-ESH (D.D.C. 2013). In that litigation, undersigned counsel was responsible for investigating and building the complex constitutional claims against the District of Columbia, authoring the legal filings in the class action case, and negotiating a Memorandum of Understanding with the District of Columbia Attorney General that stayed the class action litigation and began to implement sweeping changes to the County’s policies and practices governing the civil forfeiture of property by the District’s Metropolitan Police Department—procedures that affect thousands of putative class members every year.

<sup>5</sup> J. Mitchell McGuire is Managing Partner of McGuire & Associates, in Montgomery.

and who has experience in the functioning of Alabama municipal police departments and courts, including post-arrest procedures. Attorney McGuire also regularly represents impoverished and marginalized people in civil and criminal actions in Alabama and federal courts. He was also class counsel in the *Mitchell* and *Jones* class action lawsuits before this Court. The interests of the members of the Class will be fairly and adequately protected by the Plaintiff and his attorneys.<sup>6</sup>

**E. Rule 23(b)(2)**

42. Class action status is appropriate because the City, through the policies, practices, and procedures that make up its post-arrest detention scheme has acted in the same unconstitutional manner with respect to all class members. The City of Dothan has created and applied a simple scheme of post-arrest detention and release: it charges standard secured money amounts for every misdemeanor arrestee. The City releases those who can pay and detains those who cannot. The detained arrestees are eventually taken to court on the following Thursday for a first appearance, sometimes as many as six days after arrest.

43. The Class therefore seeks declaratory and injunctive relief to enjoin the City from continuing in the future to detain impoverished arrestees who cannot afford cash payments. Because the putative Class challenges the City's scheme as unconstitutional through declaratory and injunctive relief that would apply the same relief to every member of the Class, Rule 23(b)(2)

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<sup>6</sup> At least with respect to a Damages Class under Rule 23(b)(3) (which the Plaintiff does not seek here), courts have held that "ascertainability" is, in essence, a fifth Rule 23 prerequisite. A class must be "adequately defined and clearly ascertainable." *De Bremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970). "In other words, the class must meet a minimum standard of definiteness which will allow the trial court to determine membership in the proposed class," although "it is not necessary that the members of the class be so clearly identified that any member can be presently ascertained." *Earnest v. GMC*, 923 F. Supp. 1469, 1473 & n.4 (N.D. Ala. 1996) (quoting *Carpenter v. Davis*, 424 F.2d 257, 260 (5th Cir. 1970)).

Although it is doubtful that such a requirement should exist with respect to a purely injunctive class under Rule 23(b)(2), see, e.g., *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 592-593 (3d Cir. 2012), that requirement is easily met here. The County of Montgomery already has in its possession the identity of each and every person who it is keeping in its custody after an arrest because of the inability to post a cash bond. Also, by necessity, the County will come to know the identity of each person that it arrests in the future.

is appropriate and necessary.

44. Injunctive relief compelling the City to comply with these constitutional rights will similarly protect each member of the Class from being subjected to the City's unlawful policies and practices. A declaration and injunction stating that the City cannot use a fixed secured money bail scheme that jails indigent arrestees but frees arrestees with financial means would provide relief to every member of the Class. Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

45. Plaintiff seeks the following relief and hereby demands a jury in this cause for all matters so appropriate.

#### **Claims for Relief**

##### **Count One: Defendant City of Dothan Violates Plaintiff's Rights By Jailing Him Because He Cannot Afford A Monetary Payment Prior to a First Court Appearance.**

46. Plaintiff incorporates by reference the allegations in paragraphs 1-45.

47. The Fourteenth Amendment's due process and equal protection clauses have long prohibited imprisoning a person for the person's inability to make a monetary payment. Defendant violates Plaintiff's rights by jailing him when he cannot afford to pay the secured bail amount generically set by the City of Dothan.

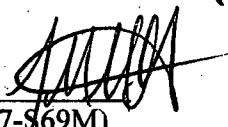
#### **Request for Relief**

WHEREFORE, Plaintiff and the other Class members request that this Court issue the following relief:

- a. A declaratory judgment that the Defendant City violates the Plaintiff's and Class members' constitutional rights by jailing them because of their inability to pay a generically set amount of money to secure release after an arrest;
- b. An order and judgment preliminarily and permanently enjoining Defendant City of Dothan from enforcing the unconstitutional post-arrest money-based detention policies and practices against the Plaintiff and the Class of similarly situated people that he represents;

- c. A judgment compensating the individual named Plaintiff for the damages that he previously suffered as a result of the City's unconstitutional and unlawful conduct, including damages resulting from his confinement in jail;
- d. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and any other relief this Court deems just and proper.

Respectfully submitted,

/s/ J. Mitch McGuire   
J. Mitch McGuire (ASB-8317-369M)

Managing Partner  
McGuire & Associates, LLC  
31 Clayton Street  
Dothan, AL 36104  
(334)-517-1000  
<http://www.mandabusinesslaw.com>

/s/ Alec Karakatsanis  
Alec Karakatsanis (D.C. Bar No. 999294)  
(Pending admission *Pro Hac Vice*)

Co-Founder  
Equal Justice Under Law  
916 G Street, NW Suite 701  
Washington, DC 20001  
(202)-681-2409  
[alec@equaljusticeunderlaw.org](mailto:alec@equaljusticeunderlaw.org)

*Attorneys for Plaintiffs*



- 1) I, Anthony Cooper, am a 56 year-old man.
- 2) I was arrested on Friday June 12, 2015, by the City of Durham Police for a misdemeanor offense.
- 3) When I got to jail, I was told I had to pay \$350 standard bond for my misdemeanor offense or else I would be kept in jail.
- 4) My sole income is \$780<sup>00</sup> per month from social security benefits. I own no real property. I ~~pay~~ <sup>pay</sup> ~~rent~~ <sup>to</sup> my brother.
- 5) I suffer from life-long mental health problems and cannot read or write. I have high blood pressure. I have not been given meds.
- 6) I cannot afford to buy my release from jail. I have been in jail since June 12, 2015 and will not go to court until Thursday, June 18, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

6/16/2015 Mr Anthony Cooper  
 A. MILANU COOPER