

Legal Firearm Possession as Probable Cause



By Paul Engel

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- It's never fun to be pulled over by the police, especially if you be legally carrying a firearm.
- Does the mere legal possession of a firearm qualify as probable cause for law enforcement to search your vehicle.
- If an officer searches you and your vehicle due to the legal possession of a firearm, are they entitled to qualified immunity?

Encountering law enforcement can be a nerve wracking situation, even if you've done nothing wrong. Imagine you've been pulled over to safely deal with something in your vehicle, then have a police officer pull up behind you. Nothing to worry about, right? You've done nothing wrong. Then imagine, after providing your drivers license, you're pulled out of your car, searched, handcuffed, and "stuffed" into the back of the police cruiser while the officer searches your vehicle from stem to stern, even though you've done nothing wrong. Now imagine, after this harrowing abuse of power, the officer claims "qualified immunity" and asks the court to dismiss your case against him. That is what happened to Basel Soukaneh in Waterbury, CT. The current state of that case is certainly worth looking into.

Is legally carrying a firearm probable cause that you are committing a crime? An officer of the Waterbury, CT police

department used Mr. Soukaneh's legally possessed firearm as "probable cause" to both detain him and to search his vehicle. After Mr. Soukaneh filed a complaint in the U.S. District Court for Connecticut, the officer, Nicholas Andrzejewski asked to have the case dismissed because he, as a police officer, had qualified immunity. While the details of this case should disturb everyone, not just gun owners, the outcome so far should give us hope.

Background

I remember when I first started carrying a firearm. I thought everyone could see it and that every officer would give me a hard time about it. After I got used to carrying though, I didn't think much about it anymore. Which is probably how Basel Soukaneh felt before November 12, 2018.

At approximately 8:43 p.m. on November 12, 2018, Basel Soukaneh stopped his car with the engine running on the side of a street in Waterbury, Connecticut. Soukaneh's iPhone GPS, located in a holder mounted to the car's dashboard, was frozen, and he stopped his car to fix it.

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Here we have a responsible driver. He's having problems with his phone, and rather than trying to fix it while driving, he pulls over. Unfortunately, where he pulled over may have started his encounter with the law.

The area "was dark and [known as] a high crime area well known for prostitution, drug transactions and other criminal activity." ... Within seconds after Soukaneh stopped his car, Officer Nicholas Andrzejewski approached the vehicle, knocked on the driver's side window, and according to Soukaneh, loudly demanded Soukaneh's driver's license.

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OK, unsavory part of town or not, it's not uncommon for an officer to pull over to check on a possible driver in distress. There are many reasons for the officer to "loudly demand" Soukaneh's drivers license, but it should not be a problem, right? After all, Soukaneh has done nothing wrong, only pulled over to deal with a slight technical problem.

The interior vehicle light was on, so although the area was dark, Andrzejewski could see the activity inside of the car when he approached the window. As Soukaneh complied and handed his license over, he also provided Andrzejewski with a facially valid firearms permit. While doing so, Soukaneh also disclosed to Andrzejewski that, per the permit, he was in lawful possession of a pistol that was located in the driver's side door compartment.

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So far, Soukaneh is doing things by the book, especially for a person carrying a firearm. He has the interior light on so the officer can see, he hands over his license, along with his firearms permit, and informs the officer that he was also in lawful possession of a firearm, including where it was at the time.

Following that exchange, Andrzejewski ordered Soukaneh out of the vehicle. According to Soukaneh's description, Andrzejewski then violently "dragged [him] out of the car," pushed him to the ground, yelled and screamed at him, handcuffed him, and pat-searched his person, recovering neither a weapon nor contraband.

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Here's where things start going wrong. Officer Andrzejewski has no reason to be concerned for his safety, since Mr. Soukaneh is being compliant with his commands. Instead, Officer Andrzejewski is treating Mr. Soukaneh as if he just caught a felon in the act of committing a crime. Still,

officer Andrzejewski didn't stop there.

Andrzejewski then "shoved [Soukaneh] into the rear area of [Andrzejewski's police] cruiser," and left Soukaneh "bent over and partially on the floor of the vehicle." ... Soukaneh remained "in that position, facing down and unable to see, until another police officer came along several minutes later and helped him sit up."

[Soukaneh v. Andrzejewski](#)

I'm not familiar with the police guide in Waterbury, CT, but I doubt it includes roughly handling a compliant detainee, much less leaving him in an awkward position while handcuffed and therefore unable to right himself.

Once the other officer repositioned Soukaneh in the cruiser, Soukaneh saw Andrzejewski search his "entire car, both front and rear," as well as the car's trunk. ... After the search, Andrzejewski returned to the cruiser and kept Soukaneh handcuffed and detained in it for an additional half hour, during which time "a group of seven to ten police officers gathered."

[Soukaneh v. Andrzejewski](#)

Even after searching Mr. Soukaneh and his vehicle, finding nothing, officer Andrzejewski detains him for an additional half-hour, while additional officers gathered at the scene. You'd think officer Andrzejewski had captured a terrorist or other extremely dangerous person to draw such a crowd.

At one point, Andrzejewski began writing on his onboard computer and turned to a fellow officer who had arrived at the scene and asked, "What should I write him up for?" ... The other officer laughed and the sergeant, who had also since arrived, told Andrzejewski what to write.

[Soukaneh v. Andrzejewski](#)

All of this and Officer Andrzejewski did not even have an articulable crime to charge Mr. Soukaneh. However, the officer still wanted to write him up, for doing nothing wrong. There was a footnote in the opinion stating they were not sure if a citation was even written for Mr. Soukaneh.

Both parties agree that at some unspecified point during Soukaneh's handcuffed detention while in the vehicle, Andrzejewski ran a check on Soukaneh's firearm permit and confirmed that the permit was validly held.

[Soukaneh v. Andrzejewski](#)

At some point in all of this craziness then, apparently no one knows when, officer Andrzejewski did actually confirm that Mr. Soukaneh's firearm permit was valid.

Soukaneh was subsequently released.

[Soukaneh v. Andrzejewski](#)

Finally, after who knows how long, Mr. Soukaneh was released to go on his way.

The Case

Many people would have just been happy to leave and not follow up. Thankfully, Mr. Soukaneh was not one of them.

On July 25, 2019, Soukaneh filed a complaint in the United States District Court for the District of Connecticut. He principally alleged that Andrzejewski's actions deprived him of his Fourth Amendment right to be free from "unreasonable and warrantless arrest and/or detention," and "warrantless and unreasonable search and seizure of his person, vehicle and effects," and sought compensatory and punitive damages pursuant to 42 U.S.C. §§ 1983 and 1988.

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Mr. Soukaneh sued Officer Andrzejewski under two federal laws.

- 1983. Civil action for deprivation of rights

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 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[42 U.S.C. §1983](#)

- 1983 provides for people to file a civil case against anyone who, under color of law, deprives them of a right protected by the Constitution or laws of the United States. In this case, §1988 appears to be more about collecting attorney and expert fees.

On December 31, 2020, Andrzejewski moved for partial summary judgment under Federal Rule of Civil Procedure 56(a), arguing that his actions were justified because he had reasonable suspicion and probable cause, or alternatively, that he was entitled to qualified immunity as to the claims asserted against him because if any rights were violated, they were not "clearly established."

[Soukaneh v. Andrzejewski](#)

Officer Andrzejewski asked for the district court to dismiss the case because, he argued, he was entitled to qualified immunity, because he had reasonable suspicion and probable cause to treat Mr. Soukaneh as he had.

On August 6, 2021, the district court granted Andrzejewski's motion for summary judgment in part and denied it in part. ... The district court granted Andrzejewski's motion for summary judgment with regard to the initial stop. It concluded that since "[Andrzejewski's] basis for stopping [Soukaneh's] vehicle was that the car was stopped at night in the roadway with the engine running in an area known for drugs and prostitution," it was reasonable for Andrzejewski to believe that Soukaneh was committing a traffic violation, "giving him reasonable suspicion to stop [Soukaneh], check his driver's license, and require him to step out of the car."

[Soukaneh v. Andrzejewski](#)

If an officer sees a car stopped on the side of the road, especially in a part of town known for crime, is it reasonable to stop and ask the driver for his license? Yes. I'm not so sure about having him step out of the car, but if the officer had simply patted Mr. Soukaneh down, I doubt this case would have been filed. After all, Soukaneh did hand over his license when asked and even told officer Andrzejewski he was carrying. What about the rest of the "stop"?

However, the district court denied summary judgment on the remaining issues related to (1) handcuffing and detaining Soukaneh in the police cruiser, (2) searching the interior of Soukaneh's car, and (3) searching the car's trunk.

[Soukaneh v. Andrzejewski](#)

The district court, however, was not willing to let officer Andrzejewski off on the search and seizure.

The district court reasoned that Andrzejewski did not possess

the requisite arguable probable cause to justify this conduct, explaining that a reasonable officer would not believe that Soukaneh was committing a crime, or “posed a meaningful threat of being ‘armed and dangerous’” for merely disclosing the presence of the firearm and its accompanying permit. ... That was especially true in light of Soukaneh’s compliant and non-threatening behavior, and “the absence of any articulable reason for Defendant to believe the [gun] permit was counterfeit or otherwise invalid.”

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Guess what, legally possessing a firearm is not probable cause that you’re armed and dangerous or that you are committing a crime. Remember when officer Andrzejewski asked another officer “What should I write him up for?” That should be a clue that you do not have probable cause that someone was committing a crime before you violated his rights. The district court pointed out just how absurd officer Andrzejewski’s claim was.

The district court concluded that “[a]ny contrary holding would make it practically impossible for the lawful owner of a firearm to maintain a Fourth Amendment right to privacy in his or her automobile.” ... Accordingly, the district court determined that Andrzejewski was not entitled to qualified immunity on these issues, and thus denied Andrzejewski’s motion for summary judgment in remaining part.

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Officer Andrzejewski appealed the court’s decision.

Qualified Immunity

Before we go on, let’s take some time and look at the court’s explanation of qualified immunity.

Qualified immunity shields officials “when [their] conduct

does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” White v. Pauly

[Soukaneh v. Andrzejewski](#)

The court has decided that government officers have some level of immunity from civil lawsuits. The qualification for such immunity is that their conduct does not violate clearly established rights protected by the Constitution or laws of the United States. The problem we run into is who “establishes” what a reasonable person should know?

“The Supreme Court has instructed that ‘[q]ualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.’” Vega v. Semple

[Soukaneh v. Andrzejewski](#)

Notice, it’s not the Constitution or a law passed by Congress, but the Supreme Court that simply made up this “qualified immunity” because they thought it was necessary.

It’s an important principle of our legal system that law enforcement officers must have the necessary discretion to perform their required duties. That principle must be balanced, however, with a core tenet enshrined in the Fourth Amendment—the right to be free from unreasonable search and seizure. Thus, it has long been the “essential purpose of the proscriptions in the Fourth Amendment [] to impose a standard of ‘reasonableness’ upon the exercise of discretion by . . . law enforcement agents, in order ‘to safeguard the privacy and security of individuals against arbitrary invasions.’” Delaware v. Prouse

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In other words, the actions of law enforcement when conducting a search or seizure must be reasonable. Based on my research, the law defines “reasonableness” as what a reasonable person would find reasonable. I was taught that you cannot define a word by itself. Then again, I am not a lawyer, thank God.

Soukaneh’s Detention

When officer Andrzejewski appealed the district court decision about summary judgment to the Second Circuit Court of Appeals, there were two main areas of this case the court needed to examine, Soukaneh’s detention and the search of his person and vehicle. We start with the detention.

Andrzejewski first argues that he did not violate Soukaneh’s constitutional rights by handcuffing and detaining him in the police cruiser for over half an hour because the detention should be “governed by the standard set forth in Terry v. Ohio, 392 U.S. 1 (1968),” and Andrzejewski possessed reasonable suspicion of criminal activity to make a lawful “Terry stop.”

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Ah, the infamous “Terry stop”, or as it’s colloquially known, “Stop and Frisk”. If you are asking yourself, “But did officer Andrzejewski do more than just stop and frisk Mr. Soukaneh?” You are correct.

Alternatively, Andrzejewski contends that even if the detention constituted an arrest, he possessed the requisite probable cause based on Soukaneh’s possession of a gun, irrespective of the facially valid firearms permit.

[Soukaneh v. Andrzejewski](#)

In other words, according to officer Andrzejewski, the legal possession of a firearm is probable cause for a person to be arrested. Apparently, to officer Andrzejewski, the legal

possession of a firearm is itself a crime. Those aren't my words, they are the words of officer Andrzejewski in court filings.

We disagree, however, that this was a Terry stop requiring only reasonable suspicion, because the facts before us demonstrate that Soukaneh's detention was a de facto arrest for which probable cause was required but lacking. We further conclude that the detention violated Soukaneh's clearly established rights.

[Soukaneh v. Andrzejewski](#)

OK, the court disagrees that this was a Terry stop, which only requires reasonable suspicion of criminal activity. I guess, if the officer had run Soukaneh's license and firearm permit, found them valid, and gone on his way, that would have been considered a Terry stop. That's not what officer Andrzejewski did.

It "has long been the law that 'an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.'" ... A reasonable officer in Andrzejewski's position who had a desire to check the validity of an individual's licensing information would know that the circumstances here could barely justify a Terry stop, let alone a prolonged, handcuffed detention.

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Officer Andrzejewski did not follow the law. This detention was more than temporary, lasting longer than necessary to check Mr. Soukaneh's credentials. By placing Mr. Soukaneh in handcuffs and roughly placing him in the police cruiser for an extended period of time, Mr. Andrzejewski violated both the law and Mr. Soukaneh's rights.

This is not a case in which there were circumstances, however insufficient to establish probable cause, that might suggest

to a reasonable officer that there was something illegal about a suspect's possession of a weapon. Here, there was literally no reason to believe that Soukaneh's possession of the gun—whose presence Soukaneh freely acknowledged, and for which he provided a facially valid permit that Andrzejewski had no reason whatsoever to believe was forged or had been revoked—was unlawful.

[Soukaneh v. Andrzejewski](#)

In short, it appears quite apparent, by both the actions and words of officer Andrzejewski, that he arrested Mr. Soukaneh for the alleged crime of legally possession a firearm.

However, the record here, taken in the light most favorable to Soukaneh, supports a finding that the detention continued far longer than was necessary to effectuate any of Andrzejewski's alleged reasons for his actions (legitimate and not)—demonstrating that he did not conduct the stop efficiently or in the least intrusive way possible. In the absence of facts suggesting some irregularity to justify the nature of the detention, the constitutional question and the unreasonableness of Andrzejewski's actions here are “beyond debate” for a reasonable officer in Andrzejewski's position.

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Even if officer Andrzejewski's reasons for detaining Mr. Soukaneh were legitimate, by not using the least intrusive methods to assuage his concern, he not only violated Mr. Soukaneh's rights, but did so in a manner that is beyond debate.

The Searches of Soukaneh's Vehicle and Trunk

The other area of concern for this court was the searches, both of Mr. Soukaneh's vehicle and trunk.

Andrzejewski argues that there was no constitutional violation

as to his search of the interior of Soukaneh's car because it was a lawful Terry frisk of a car. He further argues that the warrantless search of Soukaneh's trunk was lawful under the automobile exception to the warrant requirement.

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Officer Andrzejewski claims that his search of the vehicle was legitimate because it was a "Terry frisk of the car". However, as the court has pointed out, by the time officer Andrzejewski initiated his alleged Terry frisk of the car, he had already de facto arrested Mr. Soukaneh, having handcuffed him and placed him in his cruiser. And what about this "automobile exception"?

Under the automobile exception, states may allow the warrantless search of an automobile, except for the trunk, if the police officer reasonably believes that the vehicle holds evidence of a crime. The U.S. Supreme Court has determined that this exception is not a violation of the Fourth Amendment because drivers have a "reduced expectation of privacy" and because a vehicle is inherently mobile.

[Automobile Exception](#) – [West's Encyclopedia of American Law, edition 2.](#)

Notice that the automobile requires the officer to reasonably believe that the vehicle holds evidence of a crime, yet nothing in what Mr. Soukaneh said or did, other than stopping in a bad neighborhood, provided any reason to believe the vehicle held evidence of a crime. Furthermore, the automobile exception specifically excludes the trunk. Not only was there no risk of the vehicle leaving the scene with evidence since the operator and only occupant was cuffed and detained in the officer's cruiser, the officer also detained Mr. Soukaneh for thirty minutes after conducting the search, in which there was plenty of time to call in for a warrant.

However, we reject Andrzejewski's contentions that either of

these searches were justified and that they did not violate clearly established rights. ...

In addition to being necessary for Soukaneh's de facto arrest, probable cause was also needed for the warrantless searches of his car. As discussed above, no such probable cause existed.

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So officer Andrzejewski had no reasonable suspicion that the car contained evidence, and had no probable cause either to arrest Mr. Soukaneh or search his vehicle. The court notes, there is another way officer Andrzejewski's search could be considered constitutional.

However, another inquiry for determining the lawfulness of a vehicle search during a traffic stop is whether an officer had a reasonable apprehension of danger—which may permit a Terry frisk of the automobile.

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Did officer Andrzejewski have a reasonable apprehension of danger?

Andrzejewski argues that the Supreme Court's holding in *Michigan v. Long* precludes us from finding that he violated Soukaneh's constitutional rights when he searched the interior of Soukaneh's car because of the known presence of the gun.

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Yes, there was a gun present. In fact, Mr. Soukaneh told the officer that he legally possessed a firearm, produced his permit to have the firearm, and even told him where it was in the car, but that wasn't good enough for officer Andrzejewski.

However, a straightforward analysis of *Long* leads us to conclude that this is not correct—the presence of a lawful

weapon alone does not automatically make someone suspicious, nor a situation dangerous, such as would justify the Terry frisk of a car.

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The lawful presence of a firearm alone does not make someone suspicious or dangerous. If that were true, every law enforcement officer would be considered suspicious and dangerous. Considering the actions not only of officer Andrzejewski, but of his fellow officers, including his sergeant, it is understandable why people are suspicious, not of legal gun owners, but of law enforcement.

Conclusion

After all of the bad things that happened to Mr. Soukaneh, this case is a glimpse of vindication for him.

This is not a close case, about which reasonable officers could differ. The law as it stood at the time of the events in question left no doubt that a person in possession of a firearm and a facially valid permit for that firearm had a clearly established right to be free from the kind of forcible and prolonged detention to which Soukaneh was subjected, absent any objective reason to suspect that the permit was forged or otherwise invalid.

[Soukaneh v. Andrzejewski](#)

This wasn't even a close case. It's not like officer Andrzejewski made a judgment call supported by the law. Rather, he ignored the law, apparently assuming that a lawful gun owner was, by definition, suspicious and dangerous. That type of thinking is what got officer Andrzejewski into trouble.

For those reasons, we hold that Andrzejewski's alleged conduct violated Soukaneh's constitutional rights where the detention

constituted a de facto arrest without probable cause, and where case law from the Supreme Court and this Circuit clearly established Soukaneh's right to be free from such a detention under the circumstances.

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I agree with the court, but I would go one step further. Yes, officer Andrzejewski violated Mr. Soukaneh's rights protected by the Constitution of the United States. Officer Andrzejewski's actions were not only reprehensible, but were criminal.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both;

18 USC §242

Officer Andrzejewski clearly deprived Mr. Soukaneh of rights protected by the Constitution and laws of the United States, and did so under color of law. Furthermore, since officer Andrzejewski allegedly roughly removed Mr. Soukaneh from his vehicle and tossed him into the back of his cruiser, It is quite possible that Mr. Soukaneh was injured by the illegal actions of officer Andrzejewski, triggering another part of §242.

and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both;

18 USC §242

It seems to me that officer Andrzejewski should face criminal charges for his actions, though that was not the question before this court. The question was, did the district court err by denying officer Andrzejewski's motion of summary judgment and dismissal under qualified immunity. Thankfully not.

For the foregoing reasons, we AFFIRM the judgment of the district court

and REMAND the case for further proceedings consistent with this opinion.

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That doesn't mean Mr. Soukaneh's ordeal is over. This decision merely means that the district court can proceed with Mr. Soukaneh's lawsuit based on the facts at hand. Mr. Soukaneh has a long way to go before he finds out if he will receive a favorable redress of his grievance. Even if Mr. Soukaneh wins his day in court, this does not mean that officer Andrzejewski will be personally punished for his crime. Since this is a civil lawsuit, the city of Waterbury, CT will pay any judgments against officer Andrzejewski. Unless a criminal complaint is filed, there will be nothing to prevent officer Andrzejewski from doing this to other law-abiding citizens who are not only exercising their right to keep and bear arms, but complying with the unconstitutional and therefore invalid laws Connecticut has put place.

If complying with the law is not enough to keep you from police harassment, how can we call ourselves a nation of laws, not men?

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