

[Cite as *Loper v. Ohio Dept. of Corr.*, 2002-Ohio-4560.]

IN THE COURT OF CLAIMS OF OHIO

CARL E. LOPER, #182-026 :  
P.O. Box 209 :  
Orient, Ohio 43146 : Case No. 2002-01560-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPARTMENT OF CORRECTIONS :

Defendant :

: : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel  
Department of Rehabilitation and  
Correction  
1050 Freeway North  
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} 1) On or about October 17, 2001, plaintiff, Carl E. Loper, an inmate incarcerated at defendant's London Correctional Institution (LOCI), was transferred to an isolation unit. Incident to plaintiff's transfer, his personal property was delivered into the custody of defendant's personnel. On or about December 14, 2001, plaintiff and his property items were transferred from LOCI to defendant's Pickaway Correctional Institution.

{¶2} 2) Plaintiff has asserted his radio was stolen and his cassette player was irreparably damaged while under the control of LOCI staff.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$350.00, the estimated value of his missing radio and damaged cassette player. Plaintiff submitted the filing fee with

the complaint;

{¶4} 4) Defendant admitted plaintiff's radio was lost or stolen while under the control of LOCI staff. Therefore, defendant has admitted liability for the loss of this item. However, defendant contended damages for the radio should be limited to \$90.00 considering the article was approximately twelve years old at the time of loss.

{¶5} 5) Defendant specifically denied plaintiff's cassette player was damaged while in the custody of any LOCI employee. Defendant has asserted plaintiff has failed to prove his cassette player was damaged.

{¶6} 6) Plaintiff filed a response asserting his cassette player was damaged while under defendant's control. However, plaintiff conceded he cannot offer sufficient proof to establish his cassette player was damaged when defendant maintained custody over the property.

#### CONCLUSIONS OF LAW

{¶7} 1) It has been determined by this court that when a defendant engages in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶8} 2) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶9} 3) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶10} 4) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm.

*Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶11} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained any loss as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶12} 6) Plaintiff has failed to show any causal connection between the damage to his cassette player and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶13} 7) Negligence has been shown in respect to the loss of plaintiff's radio. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶14} 8) Defendant is liable to plaintiff in the amount of \$90.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶15} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶18} 2) Defendant (Department of Rehabilitation and Correction) pay plaintiff (Carl E. Loper) \$115.00 and such interest as is allowed by law;

{¶19} 3) Court costs are assessed against defendant.

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DANIEL R. BORCHERT  
Deputy Clerk

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