

IN THE COURT OF CLAIMS OF OHIO

LAMBERT F. DEHLER, #273-819 :  
5701 Burnett Road  
Leavittsburg, Ohio 44430-0901 : Case No. 2002-02906-AD

Plaintiff : MEMORANDUM DECISION

v. :

TRUMBULL CORRECTIONAL :  
INSTITUTION :

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 May 24, 2002, at approximately 8:15 a.m., plaintiff, Lambert F. Dehler, an inmate incarcerated at defendant, Trumbull Correctional Institution, left his cell to go to work. Plaintiff insisted when he left his cell he locked his cell door.

{¶2} 2) Plaintiff asserted when he returned to his cell, he discovered his radio/cassette player was missing. Plaintiff indicated he immediately reported the theft of his radio/cassette player to defendant's Unit Manager, Mr. Rummel. Plaintiff stated he reported the theft a second time to Sgt. Lewis. Plaintiff related Sgt. Lewis investigated the theft.

{¶3} 3) Plaintiff has alleged the theft of his radio/cassette player was facilitated by an unidentified employee

of defendant. Plaintiff maintained this unidentified employee unlocked his cell door when he was gone at work and consequently gave a thief access to his cell and the property stored there.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$61.83, an amount including the value of his radio/cassette player, plus the value of a cassette tape contained inside the machine, and the value of two batteries also contained inside the radio/cassette player. On May 20, 2002, plaintiff submitted the filing fee.

{¶5} 5) Defendant filed an investigation report denying any liability in this matter. Defendant acknowledged its employee unlocked plaintiff's cell door to allow plaintiff's cellmate, inmate Amstutz access to the cell. Defendant's personnel searched plaintiff's cell after being informed of the theft. Defendant asserted plaintiff was supplied with a locker box where he could store his valuables, such as the radio/cassette player. Defendant denied breaching any duty owed to plaintiff which proximately caused the loss of his property.

{¶6} 6) Plaintiff filed a response explaining he did not possess adequate space in his locker box to secure his radio/cassette player.

#### CONCLUSIONS OF LAW

{¶7} 1) The mere fact that a theft occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶8} 2) Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶9} 3) 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.

{¶10} 4) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶11} 5) 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.

{¶12} 6) Defendant, when it retains control over whether an inmate's cell door is to be open or closed, owes a duty of reasonable care to inmates who are exclusively forced to store their possessions in the cells while they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD. Evidence has shown defendant breached the duty of care owed to plaintiff by unlocking his cell door, thereby facilitating a theft.

{¶13} 7) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD. By not searching for plaintiff's property outside the confines of plaintiff's cell defendant breached the duty to make reasonable attempts to recover property. *Mullett, Id.*

{¶14} 8) Plaintiff has proven defendant's negligence proximately caused his property loss. *Stevens v. Warren Correctional Institution* (2000), 2000-05134-AD.

{¶15} 9) Plaintiff has suffered damages in the amount of \$61.83, 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.

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

{¶17} IT IS ORDERED THAT:

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

{¶19} 2) Defendant (Trumbull Correctional Institution) pay plaintiff (Lambert F. Dehler) \$86.83 and such interest as is allowed by law;

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

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DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
7/25  
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