

IN THE COURT OF CLAIMS OF OHIO

DAVID W. ROBERTS, #341-694	:	
1001 Olivesburg Road	:	
P.O. Box 8107	:	Case No. 2002-03031-AD
Mansfield, Ohio 44901	:	
	:	
Plaintiff	:	MEMORANDUM DECISION
	:	
v.	:	
	:	
RICHLAND 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} On July 17, 2001, plaintiff, David W. Roberts, an inmate incarcerated at defendant, Richland Correctional Institution, was working in the institution law library when an employee of defendant conducted a shakedown search of the area. Incident to the search, defendant's employee confiscated five cassette tapes which were stored in plaintiff's workstation desk. An additional eight cassette tapes were also confiscated. These eight tapes had been stored on a shelf inside of a bookcase located near plaintiff's work area. Both plaintiff and a fellow inmate, Richard Beaver, who was working in the law library, were issued conduct reports for possession of contraband in regard to the confiscated tapes. Subsequently, plaintiff regained possession of the five

tapes confiscated from his workstation desk. The additional eight confiscated tapes were lost while under defendant's custody. Plaintiff has alleged he was the rightful owner of the lost tapes. He has consequently filed this complaint seeking to recover \$96.00, the estimated total replacement value of the tapes, plus \$25.00 for filing fee reimbursement.

{¶2} Defendant acknowledged a total of thirteen cassette tapes were confiscated from two locations in the institution's law library on July 17, 2001. Defendant related five tapes were found at plaintiff's work station and eight tapes were seized from a common area at the law library site. Defendant explained these eight tapes were withheld from distribution pending ownership verification. According to defendant, plaintiff initially denied owning the eight confiscated tapes, but later claimed ownership. The eight tapes were subsequently lost while under defendant's control. However, defendant has denied liability based on the fact plaintiff has not offered sufficient proof to show he rightfully owned the tapes. Defendant has essentially contended plaintiff has not established he suffered any property loss incident to the July 17, 2001 seizure of property.

{¶3} Evidence has been submitted indicating plaintiff owned ten cassette tapes when he transferred to defendant's facility on July 2, 1999. Plaintiff did not purchase any additional tapes from July 2, 1999 to July 17, 2001. On August 12, 2001, defendant packed plaintiff's property with plaintiff present. The property inventory compiled at the time plaintiff's property was packed lists ten cassette tapes. Plaintiff signed this inventory on two separate occasions acknowledging the property listings as accurate. On May 1, 2002, plaintiff's living area was searched by defendant's personnel. Defendant stated ten cassette tapes were discovered in plaintiff's area during the course of the search. Evidence filed seemingly shows plaintiff did not rightfully possess more than ten cassette tapes and he remains in possession of ten

cassette tapes.

{¶4} Plaintiff submitted a response stating he never denied owning the eight lost cassette tapes. Plaintiff proclaimed he refused to acknowledge he owned the tapes until his hearing on the July 17, 2001 conduct report charges for possession of contraband.

Plaintiff clarified he did not deny ownership, but rather refused to claim ownership before a hearing was convened.

{¶5} Furthermore, plaintiff maintained he was the legitimate owner of the eight confiscated tapes. Plaintiff suggested the August 12, 2001 property inventory indicating he possessed ten tapes is inaccurate. Plaintiff asserted, in actuality, he possessed ten empty cassette tapes cases and not ten cassette tapes. Plaintiff proffered the inventory really reflects empty tape cases as opposed to cassette tapes.

{¶6} In reference to defendant's contentions regarding the May 1, 2002 search of plaintiff's living area, plaintiff denied he owned all ten cassette tapes discovered by defendant. Plaintiff professed five of the ten cassette tapes belonged to another inmate, Robert Annotico, characterized by plaintiff as his "neighbor." Plaintiff submitted an affidavit from Robert Annotico, who stated, "on May 1, 2002, while during the shakedown of inmate Roberts, five cassette tapes belonging to me were sitting on top of his cabinet between the two of us." Plaintiff insisted he possessed five cassette tapes on May 1, 2002; the same five tapes which were confiscated from his workstation desk on July 17, 2001 and later returned to him.

{¶7} Plaintiff reasserted he rightfully possessed thirteen cassette tapes on July 17, 2001, all of which were confiscated by defendant. Plaintiff related ten of these tapes were transferred with him to defendant's institution on July 2, 1999. Plaintiff declared the additional three tapes were, "obtained due to an inmate discarding them prior to his release," a method of procurement specifically proscribed by defendant's internal

regulations. Plaintiff offered an affidavit from fellow inmate, Richard Beaver, who stated none of the tapes confiscated on July 17, 2001 belonged to him. Beaver believed all the seized tapes belonged to plaintiff.

{¶8} On June 20, 2002, defendant filed a reply to plaintiff's response. Defendant reasserts plaintiff has failed to establish he legally possessed the eight cassette tapes he alleges defendant lost.

{¶9} After review of all evidence and assertions submitted by plaintiff, the trier of fact does not find plaintiff's evidence particularly persuasive. Plaintiff has not established he suffered any property loss of property he was legitimately entitled to possess.

{¶10} On June 4, 2002, plaintiff filed a motion for extension of time to respond to the investigation report. Plaintiff's response was filed on June 5, 2002.

CONCLUSIONS OF LAW

{¶11} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61.

{¶12} 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.

{¶13} In the instant claim, plaintiff has failed to show he sustained any loss as a result of any negligence on the part of defendant. Plaintiff has no legal right to possess the items obtained in violation of policy and plaintiff has failed to show he obtained the remaining items in a legal manner or had a legal right to possess those items. Consequently, plaintiff's claim is denied.

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

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's June 4, 2002 motion is MOOT;

{¶17} 2) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶18} 3) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

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6/13
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