

IN THE COURT OF CLAIMS OF OHIO

TIMOTHY E. COLSTON, #337-203 :  
P.O. Box 7010 :  
Chillicothe, Ohio 45601 : Case No. 2002-03945-AD  
  
Plaintiff : MEMORANDUM DECISION  
  
v. :  
  
ROSS 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 or about October 30, 2001, plaintiff, Timothy E. Colston, an inmate incarcerated at defendant, Ross Correctional Institution (RCI), was transferred from the institution's general population to a segregation unit.

{¶2} 2) Defendant's personnel were charged with packing and securing plaintiff's personal property incident to his transfer. Plaintiff has alleged his AIWA cassette player and Koss headphones were left in an unsecured area and were either lost or stolen. Plaintiff filed a theft report on February 20, 2002, regarding the loss of his cassette player and headphones.

{¶3} 3) Plaintiff asserted on January 18, 2002, a fire occurred in the segregation unit where he was housed. Plaintiff indicated he was moved from the unit and subsequently returned. Plaintiff stated he was escorted on January 23, 2002 to the RCI property vault to inspect

his stored property. Plaintiff alleged the following property items could not be located: a watch, five deodorants, a dental floss container, a mouthwash, an allergy tablet, four tubes of toothpaste, three bars of soap, a toothbrush, a bottle of shampoo, an Afta shave, two hats, two shaving creams, one anti-fungal cream, one bottle of lotion, one brush, a comb, and a legal complaint.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$176.29, the total estimated replacement value for all his alleged missing property. Plaintiff submitted the filing fee with the complaint.

{¶5} 5) Defendant admitted liability for plaintiff's property loss occurring on or about January 23, 2002 with the exception of one hat and a legal complaint. Defendant admitted damages in the amount of \$82.10. Defendant denied ever exercising control over plaintiff's cassette player and headphones incident to plaintiff's October 30, 2001 transfer. Defendant has denied any negligence in respect to the loss of plaintiff's cassette player and headphones.

{¶6} 6) Plaintiff filed a response insisting his cassette player and headphones were lost by defendant's staff. An inventory of plaintiff's property compiled on October 30, 2001 does not list a cassette player and headphones. Plaintiff signed this inventory on October 30, 2001 acknowledging the document contained a complete and accurate listing of his personal property. Plaintiff asserted his legal complaint was lost by defendant during January, 2002. Plaintiff indicated the complaint was listed as packed under the "papers" category of plaintiff's January 18, 2002 property inventory. The trier of fact agrees.

#### CONCLUSIONS OF LAW

{¶7} 1) 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.

{¶8} 2) 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.

{¶9} 3) Negligence has been shown in respect to all property claimed lost in January 2002 with the exception of one hat. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶10} 4) Plaintiff has failed to prove, by a preponderance of the evidence, his cassette player and headphones were lost or stolen as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶11} 5) Defendant is liable to plaintiff in the amount of \$92.10, plus the 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.

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

{¶13} IT IS ORDERED THAT:

{¶14} 1) Plaintiff's claim is GRANTED in part and DENIED in part;

{¶15} 2) Defendant (Ross Correctional Institution) pay plaintiff (Timothy E. Colston) \$117.10 and such interest as is allowed by law;

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

\_\_\_\_DANIEL R. BORCHERT  
Deputy Clerk