

IN THE COURT OF CLAIMS OF OHIO

JOHNNIE WALKER, #373-377 :
P.O. Box 56 :
Lebanon, Ohio 45036 : Case No. 2002-03341-AD

Plaintiff : MEMORANDUM DECISION

v. :

DEPARTMENT OF REHABILITATION :
AND CORRECTION :

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) Plaintiff, Johnnie Walker, an inmate incarcerated at defendant's Lebanon Correctional Institution, has alleged that on January 29, 2002 or January 30, 2002, at approximately 2:00 p.m., several property items were stolen from his cell. Plaintiff indicated he was at work when the theft occurred and he had locked his cell when he went to work.

{¶2} 2) Plaintiff asserted his radio, walkman, headphones, and seven cassette tapes were stolen. Plaintiff stated he reported the theft to defendant's personnel, a subsequent search was conducted, but no property was recovered.

{¶3} 3) Plaintiff suggested an unidentified member of defendant's staff facilitated the theft by unlocking plaintiff's

cell door while he was at work.

{¶4} 4) Plaintiff filed this complaint seeking to recover \$144.94, the estimated value of his stolen property. Plaintiff submitted the filing fee with the complaint.

{¶5} 5) Defendant denied any of its staff members unlocked plaintiff's cell. Defendant asserted plaintiff was supplied with a locker box where he could store his valuables. Defendant denied breaching any duty owed to plaintiff which proximately caused any property loss.

{¶6} 6) On August 13, 2002, plaintiff submitted a response to defendant's investigation report. Plaintiff asserts defendant conducted no investigation into the loss of his property.

{¶7} 7) On September 20, and 23, 2002, plaintiff filed motions to supplement his pleading and to allow direct telephone communication with the court.

CONCLUSIONS OF LAW

{¶8} 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.

{¶9} 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.

{¶10} 3) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶11} 4) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that the 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.

{¶12} 5) 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.

{¶13} 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.

{¶14} 7) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to secure plaintiff's cell thereby facilitating theft attempts. *Stevens v. Warren Correctional Institution* (2000), 2000-05142-AD.

{¶15} 8) Ex parte communications with the court are not allowed since defendant has the right to be party to all communications.

{¶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 September 20, and 23, 2002 motions are DENIED;

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

{¶20} 3) The court shall absorb the court costs in this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

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