

[Cite as *Hampton v. Ohio State Highway Patrol*, 2003-Ohio-105.]

IN THE COURT OF CLAIMS OF OHIO

|                           |   |                        |
|---------------------------|---|------------------------|
| DOUGLAS HAMPTON, JR.      | : |                        |
| 75 San Rafael             | : |                        |
| Toledo, Ohio 43607        | : | Case No. 2002-06979-AD |
| Plaintiff                 | : | MEMORANDUM DECISION    |
| v.                        | : |                        |
| OHIO STATE HIGHWAY PATROL | : |                        |
| Defendant                 | : |                        |

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

|                |                                 |
|----------------|---------------------------------|
| For Defendant: | Colonel Kenneth L. Morckel      |
|                | Ohio State Highway Patrol       |
|                | P.O. Box 182074                 |
|                | Columbus, Ohio 43218-2074       |
|                | : : : : : : : : : : : : : : : : |

{¶1} On July 10, 2002, plaintiff, Douglas Hampton, Jr., an employee at the Toledo Correctional Institution, drove his 1990 Plymouth Acclaim to work. As plaintiff entered the grounds of the institution he was directed to stop by employees of defendant, Ohio State Highway Patrol. Defendant's employees were handling drug detection dogs. Plaintiff indicated that after he stopped, a drug detection dog was led around his vehicle. Plaintiff related the dog scratched several areas of his automobile, mainly the passenger side rear door and right side of the trunk. Plaintiff asserted the dog was directed by an employee of defendant to jump on and around plaintiff's 1990 Plymouth. Plaintiff maintained he reported the damage done to his car by defendant's dog to his employer and to defendant's personnel.

{¶2} Plaintiff submitted photographs of his car depicting damage which appears to be scratch marks. Plaintiff filed this

complaint seeking to recover \$1,280.05, the cost of removing the scratch marks from his vehicle. Plaintiff has contended his automotive body damage was proximately caused by negligence on the part of defendant's staff in failing to properly supervise a drug detection dog.

{¶3} Plaintiff submitted an unsigned statement purportedly from C.V. Powers, an employee at the Toledo Correctional Institution, who witnessed the July 10, 2002 incident involving plaintiff's vehicle. This statement contained the following description:

{¶4} "On July 10, 2002 as we entered the grounds of the Toledo Correctional Institution all vehicles were stopped by the Ohio State Patrol, drug sniffing dogs then checked all vehicles. Two cars in front [sic] of me was Officer Hampton as the dog and handler went around the car the handler had the dog jump on the vehicle. I witnessed the dog jumped down from the trunk and approach the passenger side where it was directed to jump on the rear passenger door. The dog then furiously dug at the door before Officer Hampton was directed to move his car."

{¶5} Defendant acknowledged organizing a canine drug detection checkpoint for all incoming vehicles at Toledo Correctional Institution on July 10, 2002. Defendant explained this drug search operation ran from 5:00 a.m. to 8:00 a.m. on July 10, 2002 and involved vehicle searches of institution employees, delivery trucks and visitors. Although, defendant admitted plaintiff drove his car through the drug detection checkpoint, defendant denied any detection dog under its control alerted to plaintiff's automobile.

Defendant provided a list identifying all drivers and passengers of vehicles searched along with information regarding whether or not a dog alerted to a vehicle. Plaintiff's name appears on the list as a driver who passed through the checkpoint. However, under the list heading of "Alert" the word "No" appears on the line bearing plaintiff's name. Defendant has therefore contended

plaintiff did not offer sufficient proof to show his car was damaged by defendant's dog during the course of the July 10, 2002 operation. Defendant explained if a dog had alerted to plaintiff's vehicle plaintiff would have been directed to drive into a "holding area" near the initial check site for a thorough search. Defendant further explained the driver of the vehicle would then exit the vehicle and be subjected to a "pat down" search. Defendant has no record of plaintiff being directed to drive to the holding area search site. Furthermore, after reviewing the photographs depicting the damage to plaintiff's vehicle, defendant's personnel disputed the allegation the damage was caused by a drug detecting dog. Defendant insisted its dogs do not scratch vehicles in the manner reflected in the photographs showing the damage to plaintiff's car. Defendant argued plaintiff did not prove his car was damaged by a dog under defendant's control at a drug detection checkpoint on July 10, 2002.

{¶6} Plaintiff filed a response in which he reasserted his car was damaged by defendant's dog on July 10, 2002 at a drug detection checkpoint set up at the Toledo Correctional Institution. Plaintiff related defendant's dog jumped on his car scratching the vehicle in several places. Plaintiff maintained he was directed to drive to a holding area where he and his car were searched after defendant's dog made an initial alert.

{¶7} Plaintiff submitted statements from witnesses describing their recollections and observations of the July 10, 2002 incident as it related to plaintiff and the search by defendant's personnel.

The file contains a resubmission of a signed statement from C.V. Powers where she noted she saw defendant's dog jump on and scratch plaintiff's vehicle. An offered statement from Vernise L. Robinson indicates she saw plaintiff drive into the holding area site and wait for his car to be searched. Information in a statement from John Robinson included his recollection that he observed plaintiff being subjected to a pat down search by a uniformed employee of

defendant. R. Dela Matte recalled seeing plaintiff in the holding area set off by defendant. All statements were offered in support of plaintiff's main contention that his automobile was damaged by defendant's dog. Plaintiff has offered sufficient proof to establish his car was damaged by defendant's dog.

{¶8} In order to recover in a negligence action, the plaintiff must prove the defendant owed him a duty, the breach of the duty, and the damages resulting proximately therefrom. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282. Defendant, in the instant claim, owed plaintiff the duty of reasonable care in respect to protecting plaintiff's car from damage while conducting the search.

*Berry v. Swanton Post* (1992), 91-09685-AD. This duty encompasses an exercise of reasonable care to inhibit or curtail the destructive propensities of canines utilized as vehicle search enhancers. *Swain v. Ohio State Highway Patrol* (1991), 91-07232-AD.

{¶9} Defendant bears liability for property damage caused by canine units when false and inaccurate drug detection responses have been initiated. *Johnston v. Ohio State Highway Patrol* (1999), 98-10751-AD.

{¶10} Plaintiff in the instant claim has proven his vehicle was damaged by a canine unit responding to an inaccurate stimulus. Defendant is liable for the damage done by its dog. Plaintiff has suffered damages in the amount of \$1,280.05, 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.

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

{¶12} IT IS ORDERED THAT:

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

{¶14} 2) Defendant (Ohio State Highway Patrol) pay plaintiff (Douglas Hampton, Jr.) \$1,305.05 and such interest as is allowed by

law;

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

DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
12/6  
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