

response, Costa became angry and made threatening remarks. Specifically, Costa said: "This is bullshit. You guys messed with the wrong people, you opened up a can of worms. This is bullshit."

Meanwhile, plaintiff purportedly remained quiet and acted in a peaceful manner. As a result of the disturbance, the BMV clerk summoned assistance. State Highway Patrol Sergeant Karl Teter, along with another trooper, responded, arrested Costa, and placed plaintiff under "investigative custody." Both Costa and plaintiff were detained in an office cubicle designated for use by the highway patrol. The cubicle was approximately 10' by 12', with two, two-person benches, filing cabinets, and a desk. Costa was placed on one of the benches and restrained with a leg iron that was attached to his wrist.

{¶3} Plaintiff alleges that while he was detained, an unidentified individual approached him and made disrespectful remarks that were racially motivated. The unidentified individual allegedly stated that plaintiff should be "grateful" and that "we have to be careful with you people after 9/11." Furthermore, plaintiff also alleges that he was restrained by a leg iron that was attached to his left wrist. However, Sergeant Teter testified that he could not recall whether plaintiff was physically restrained. Sergeant Teter estimated that it took him 20 minutes to determine that plaintiff was not a part of the reported disturbance. Additionally, Sergeant Teter then spent approximately 40 minutes ascertaining the validity of plaintiff's green card. Sergeant Teter released plaintiff once he confirmed plaintiff's citizenship.

{¶4} Plaintiff first argues that defendant should be held liable for intentional infliction of emotional distress regarding the derogatory comments made by the unidentified BMV employee. The following elements must be met in order to sustain a claim for

intentional infliction of emotional distress: "(1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff, (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community, (3) that the actor's actions were the proximate cause of the plaintiff's psychic injury, and (4) that the mental anguish suffered by the plaintiff is serious and of a nature that no reasonable man could be expected to endure it." *Burkes v. Stidham* (1995), 107 Ohio App.3d 363, 375, citing *Ashcroft v. Mt. Sinai Medical Ctr.* (1990), 68 Ohio App.3d 359.

{¶5} The court finds that the third prong of the above-cited elements could arguably be satisfied in this case, inasmuch as the unidentified BMV employee's statement might be construed as a proximate cause of plaintiff's emotional distress. However, the remaining elements have not been met by a preponderance of the evidence. "*** Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community ***. The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Restatement of the Law 2d, Torts (1965) 71, Section 46. The statements allegedly made to plaintiff do not rise to that level of outrageous conduct necessary to establish liability.

{¶6} Plaintiff's next claim is for false imprisonment. The tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and*

Corr. (1991), 60 Ohio St.3d 107. Based on the testimony, plaintiff was intentionally confined in Sergeant Teter's cubicle pending the investigation of both the disturbance with the clerk and the validity of plaintiff's green card. As stated earlier, plaintiff was placed under investigative custody while these two issues were resolved. Plaintiff contends that Sergeant Teter took an unreasonable amount of time verifying the validity of his green card. Sergeant Teter testified that he called a friend in law enforcement to check out plaintiff's green card. According to the testimony, this process lasted approximately 40 minutes, after which plaintiff was promptly released. However, plaintiff argues that an internet service existed where one could quickly obtain answers to questions of this nature. Sergeant Teter testified that he was not familiar with the website, but did not contest its existence. Whether or not the internet site exists, the court finds that Sergeant Teter did not spend an unreasonable amount of time verifying plaintiff's status. Therefore, plaintiff has failed to prove that Sergeant Teter was without privilege to detain him or that he failed to release him upon notice that the privilege no longer existed.

{¶7} Finally, plaintiff's amended complaint lists claims based upon violations of Section 1983, Title 42, U.S.Code.

{¶8} Section 1983, Title 42, U.S.Code states:

{¶9} "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ***."

{¶10} Under Section 1983, liability is imposed upon a "person" who deprives a citizen of constitutional rights. The United States Supreme Court has determined that a state is not a "person" for purposes of Section 1983, Title 42, U.S.Code. *Will v. Michigan Dept. of State Police* (1989), 109 S.Ct. 2304, 2312. Therefore, violations of Section 1983, Title 42, U.S.Code are not cognizable in this court. *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

{¶11} Plaintiff claims that defendant engaged in a "knowing interference or deprivation of constitutional rights." It has been consistently held that this court is without jurisdiction to consider claims for relief premised upon alleged violations of the either Ohio or United States Constitutions. See, e.g., *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230; *White v. Dept. of Rehab. & Corr.* (Dec. 22, 1992), Franklin App. No. 92AP-1229.

{¶12} On another matter, the parties requested prior to trial that an immunity determination be made regarding the unidentified BMV employee. However, the parties were unable to identify this individual during trial; therefore, the issue of immunity is moot.

{¶13} In the final analysis, the court finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence. Judgment shall therefore be rendered in favor of defendant.

{¶14} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. The issue of civil immunity regarding an unidentified employee of defendant is moot. Court costs are assessed against plaintiff. The clerk shall serve

upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

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