

tapes. The tapes were never formally classified as contraband. Defendant did not charge plaintiff with possession of contraband. Defendant submitted a copy of plaintiff's property inventory dated October 18, 2002. This inventory shows plaintiff possessed fifteen cassette tapes. Defendant has no record of plaintiff obtaining additional cassette tapes between the time period from October 18, 2002 to December 30, 2002 when RiCI personnel discovered twenty-five cassette tapes in plaintiff's possession. Defendant surmised plaintiff obtained the ten confiscated tapes through illegal means. Defendant maintained plaintiff did not rightfully own the confiscated tapes and, consequently, he has no right to pursue an action for the loss of property he had no right to possess.

{¶6} 6) On January 7, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff asserted he, "was never given the opportunity to explain or prove ownership of this property (ten confiscated cassette tapes) before they were lost, stolen, or destroyed." Plaintiff maintained he purchased all the cassette tapes he possessed through legitimate methods. Plaintiff related he purchased all the tapes he possessed from an approved vendor through mail order. Plaintiff has not offered any proof other than his assertion to establish he purchased all the tapes he possessed from an approved vendor.

CONCLUSIONS OF LAW

{¶7} 1) Plaintiff has no right to pursue a claim for destroyed, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss or destruction of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶8} 2) 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. Anthill* (1964), 176 Ohio St. 61.

{¶9} 3) 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.

{¶10} 4) 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 items in a legal manner or had a legal right to possess those items. *Roberts v. Richland Correctional Institution* (2002), 2002-03031-AD, jud. Consequently, plaintiff's claim is denied.

{¶11} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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4/14
Filed 5/5/04
Sent to S.C. reporter 5/24/04