

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

KYLE SMITH

Plaintiff

v.

STATE HIGHWAY PATROL

Defendant

Case No. 2006-02609-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶1} On July 2, 2005, at approximately 1:00 a.m., plaintiff, Kyle Smith, was driving his four wheel all-terrain vehicle (“ATV”), on US Route 250 in Ashland County when he collided into the rear of a second ATV owned and operated by Nicholas A. Smith. Both the plaintiff and a passenger on plaintiff’s ATV were injured and required hospitalization as a result of the collision involving the ATVs. Defendant, Ohio State Highway Patrol (“OSHP”), was called to the scene to investigate the personal injury accident. The investigating OSHP Trooper had plaintiff’s ATV towed and impounded at a private lot since the vehicle, “was involved in a serious injury traffic crash and it was determined he [plaintiff] was operating the ATV while under the influence of alcohol.” Plaintiff had his blood drawn while in the hospital to determine the presence of alcohol in his system. An alcohol analysis test of plaintiff’s blood was conducted by an OSHP employee and test results revealed an alcohol concentration of “0.159 grams by weight of alcohol per one hundred milliliters (grams percent) of whole blood.” The alcohol concentration in plaintiff’s blood constituted evidence plaintiff had been operating a vehicle while impaired in violation of the law (see R.C. 4511.19(A)(1)(b)).<sup>1</sup> A submitted

---

<sup>1</sup> “(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

document of the alcohol analysis of plaintiff's blood was dated July 8, 2005. Defendant related the OSHP Trooper who was called to investigate the July 2, 2005, ATV collision, "believed Smith [plaintiff] was under the influence of alcohol and subsequently arrested him for operating a motor vehicle while impaired." Defendant also related, "[o]n January 12, 2006, a charge of operating a vehicle while impaired was filed against Smith in the Ashland County Municipal Court." Plaintiff was convicted of the charge on January 24, 2006. No record was submitted to establish the approximate date plaintiff was arrested for driving while impaired. Evidence suggests plaintiff was not taken into custody and charged with operating a vehicle while impaired during July, 2005. Furthermore, it does not appear plaintiff's ATV was impounded incident to him being charged with violating R.C. 4511.19, operating a motor vehicle while under the influence of alcohol ("OMVI").

{¶2} Defendant explained the OSHP Trooper investigating the ATV crash which involved serious personal injury to the ATV riders, prepared and presented a case to the Ashland County Prosecutor's Office for a possible felony prosecution against plaintiff. Defendant stated, "[plaintiff's] ATV was impounded after he was involved in a serious injury traffic crash and it was determined he was operating the ATV under the influence of alcohol." Defendant's documentation shows plaintiff's ATV was initially impounded on July 2, 2005, and he was convicted of OMVI on January 24, 2006, after being charged with OMVI on January 12, 2006. Defendant recalled the Ashland County Prosecutor's Office advised OSHP to hold both ATVs involved in the July 2, 2005, crash for evidence pending an investigation to pursue felony charges against plaintiff for aggravated vehicular assault. It appears defendant's employee, acting on advisement from the Ashland County Prosecutor, ordered plaintiff's ATV towed on July 2, 2005, from the crash scene and impounded in a private storage lot. Plaintiff's vehicle remained in storage at the private impound lot from July 2 to August 1,

---

"(b) The person has a concentration of eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood."

2005, when it was moved to the Ashland County Sheriff's impound lot.

{¶13} Plaintiff stated he paid towing and storage fees to the operator of the private lot where his ATV had been impounded from July 2 to August 1, 2005. Plaintiff recalled he made attempts on July 4, July 6, Jul 8, July 11, and July 12, 2005, to have his ATV released to him. Plaintiff noted he called the Ashland County Municipal Court on July 8, July 11, and July 15, 2005, to try to obtain the release of his ATV. Plaintiff further noted he then tried, "every two weeks for the next six months," to regain possession of his ATV. Plaintiff stated he was consistently told by defendant that his ATV was being held as evidence. Plaintiff related he was charged with OMVI in connection with the July 2, 2005, vehicle crash in January, 2006, and was then informed he could retrieve his ATV from storage by paying towing and impound fees to the operator of the private lot where the ATV was stored from July 2, to August 1, 2005. Plaintiff paid towing fees, storage costs, and tax totaling \$532.68. Plaintiff contended he does not believe OSHP had any right under law to order his ATV impounded at a private impound lot since the reason given for seizing the vehicle was to hold it for evidence pending a felony investigation. Consequently, plaintiff filed this complaint seeking to recover \$532.68, the total storage and towing fees he paid to the operator of the private impound lot where his ATV was stored for a thirty-day period. The filing fee was paid.

{¶14} On July 5 and July 28, 2005, OSHP contacted the Ashland County Prosecutor's Office in regard to releasing plaintiff's ATV to him. On both occasions, OSHP was advised to hold the ATV. A document submitted by defendant titled "Vehicle Inventory/Custody Report" listed under the caption, reasons for custody of plaintiff's ATV-"crash." The Vehicle Inventory/Custody Report has other listings under the reasons for custody caption including, "#\_\_\_\_\_ OMVI" and "evidence." These designated listings have not been marked. On August 1, 2005, OSHP personnel again contacted the Ashland County Prosecutor's Office about plaintiff's impounded vehicle and this time OSHP was directed to transfer the ATV to the Ashland County Sheriff's

impound lot. Plaintiff's ATV was then moved to the Ashland County Sheriff's lot and remained there until January, 2006.

{¶15} Defendant denied any liability in this matter for the cost of towing and storing plaintiff's impounded ATV. Defendant stated, "OSHP lawfully took possession of (plaintiff's) ATV after a trooper was called to US 250 to investigate a serious injury traffic crash involving (plaintiff) and three other individuals." Additionally, defendant stated, "the (investigating) OSHP trooper believed plaintiff was under the influence of alcohol and subsequently arrested him for operating a motor vehicle while impaired." Defendant did not provide documentation directing when plaintiff was arrested. Also, defendant did not assert plaintiff's vehicle was towed and impounded pursuant to an arrest and charged for an OMVI violation. Defendant observed, "[a]s part of the performance of his duties, the [OSHP] trooper took possession of plaintiff's ATV and ordered it into storage." Defendant contended OSHP has statutory authority (R.C. 4513.61)<sup>2</sup> to order into storage a vehicle coming into its possession. Defendant asserted R.C. 4513.61 is applicable to the instant claim and therefore has implied it is immune from liability for vehicle impound costs even under such circumstances when the vehicle is not subject to forfeiture. As part of investigatory procedure regarding the July 2, 2005, collision, the case was presented to the Ashland County Prosecutor's Office to decide whether or not to bring felony charges (aggravated vehicular assault) against plaintiff. At the recommendation of the Ashland County Prosecutor's Office, plaintiff's ATV involved in the crash on US Route 250 was requested to be held as evidence. Defendant's investigating trooper, acting on this request, ordered plaintiff's

---

<sup>2</sup> Defendant cited the following portion of R.C. 4513.61:

". . . [A] state highway patrol trooper . . . may order into storage any motor vehicle . . . that has come into the possession of the . . . state highway patrol trooper as a result of the performance of the . . . trooper's duties . . . except that when such a motor vehicle constitutes an obstruction to traffic it may be ordered into storage immediately."

Plaintiff's ATV came into defendant's possession due to the fact the vehicle was essentially seized as evidence. It should be noted this part of the Revised Code specifically deals with "abandoned vehicles."

ATV towed and impounded at a private facility. Defendant maintained OSHP had statutory authority to seize plaintiff's vehicle incident to a felony investigation.

{¶6} Furthermore, defendant contended OSHP had statutory powers under R.C. 5503.02<sup>3</sup> to seize plaintiff's ATV and should not bear any responsibility for any impound fees related to the exercise of that statutory authority. Defendant asserted that OSHP, under the motor vehicle operation law enforcement and investigatory mandates, had the power and duty to seize plaintiff's ATV. Defendant seemingly argued OSHP cannot be held liable for the impound fees claimed under the circumstances presented where a seized vehicle is held as evidence as part of a felony investigation or alternatively is impounded in connection with a potential OMVI charge. Defendant insisted plaintiff rightfully should be responsible for fees incurred for storage, not OSHP. It should be noted OSHP under R.C. 5503.02(D)(1)<sup>4</sup> has the statutory right to seize evidence. However, this statutory provision does not grant immunity from liability.

{¶7} Based on the evidence presented and plaintiff's January 24, 2006, conviction it is apparent plaintiff operated an ATV on a state highway in violation of R.C. 4511.19. Although plaintiff's actions during the early morning hours of July 2, 2005, constituted an OMVI violation, plaintiff was not charged with this particular offense until January 12, 2006, more than six months after the offense occurred and blood-alcohol

---

<sup>3</sup> Defendant cited the following pertinent parts of R.C. 5503.02 to pursue the argument OSHP had the authority to seize plaintiff's vehicle. The cited parts states OSHP:

"shall enforce . . . the laws relating to the operation and use of vehicle on the highways

\*\*\*

"State highway patrol troopers shall investigate and report all motor vehicle accidents on all roads and highways outside of municipal corporations . . ."

<sup>4</sup> R.C. 5503.02(D)(1) states:

"(D)(1) State highway patrol troopers have the same right and power of search and seizure as other peace officers.

"No state official shall command, order, or direct any state highway patrol trooper to perform any duty or service that is not authorized by law. The powers and duties conferred on the patrol are supplementary to, and in no way a limitation on, the powers and duties of sheriffs or other peace officers of the state."

test results were available to OSHP. Under certain circumstances involving arrest for a second OMVI offense, law enforcement acting under statutory authority shall seize the arrested person's vehicle. (See R.C. 4511.195.) Additionally, the sentencing court in specific OMVI cases shall order vehicle immobilization in accordance with R.C. 4503.233. From the evidence available in the instant claim, it does not appear plaintiff was arrested or charged with driving while impaired until many months after the incident occurred and his ATV had been released. No evidence has been presented to establish the seizure of plaintiff's vehicle was completed incident to an OMVI arrest or court ordered immobilization. Evidence has shown defendant seized plaintiff's ATV for the sole purpose of preserving evidence for a criminal investigation that eventually dissolved without prosecution. It is certain defendant seized plaintiff's vehicle at the behest of the Ashland County Prosecutor's Office and not in connection with any charge relating to OMVI.

{¶8} It has been previously held that an innocent third party owner of a seized vehicle is not liable for towing and storage fees in a situation where criminal charges relating to the use of the seized vehicle are dismissed. *State v. Britton* (1999), 135 Ohio App. 3d 151, 733 N.E. 2d 288. Accordingly, the court has previously concluded the owner of a seized vehicle legally held as evidence pending a criminal investigation where no charges are subsequently pursued is not liable for towing and storage expenses related to the vehicle seizure. See *Smith v. State Highway Patrol*, Ct. of Cl. No. 2006-02625-AD, jud, 2007-Ohio-1279. In the instant claim, the court concludes defendant is liable to plaintiff for the towing and impound expenses claimed under the circumstances where charges were filed several months after expenses were incurred and defendant refused to release the vehicle in the interim. Defendant, as the party who ordered the seizure of plaintiff's vehicle while excessively delaying in filing charges unrelated to the seizure action, shall bear liability for the towing and storage damages claimed, plus reimbursement of the filing fee pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E.

Case No. 2006-02609-AD

- 7 -

MEMORANDUM DECISION

2d 990.

## Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

KYLE SMITH

Plaintiff

v.

STATE HIGHWAY PATROL

Defendant

Case No. 2006-02609-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE  
DETERMINATION

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 plaintiff in the amount of \$557.68, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Kyle Smith  
404 Twp. Rd. 1600  
Jeromesville, Ohio 44840

Colonel Richard H. Collins  
Ohio State Highway Patrol  
P.O. Box 182074  
Columbus, Ohio 43218-2074

RDK/laa  
8/15  
Filed 9/11/07  
Sent to S.C. Reporter 11/29/07