

# Court of Claims of Ohio

The Ohio Judicial Center  
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LYNDSEY HOWELL

Plaintiff

v.

OHIO UNIVERSITY POLICE DEPARTMENT

Defendant

Case No. 2013-00001

Magistrate Holly True Shaver

## DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging negligence. The case proceeded to trial on the issues of liability and damages.

{¶2} At all times relevant, plaintiff was a student at Ohio University. On January 21, 2012, while plaintiff was driving her vehicle, she was pulled over by defendant's employee, Lieutenant Eric Hoskinson, for suspicion of driving under the influence of alcohol. After performing a series of sobriety tests, Lt. Hoskinson placed plaintiff under arrest. Lt. Hoskinson placed handcuffs on plaintiff before he escorted her to his cruiser. Plaintiff claims that Lt. Hoskinson failed to use reasonable care when he placed the handcuffs on her wrists, and that his failure was the proximate cause of her injuries, specifically, a fractured left thumb. Defendant denies liability.

{¶3} Plaintiff testified that she was pulled over shortly before 1:00 a.m., during weather conditions of snow and ice. Plaintiff stated that she had no injuries to her left hand before she was pulled over. According to plaintiff, after performing a series of sobriety tests outside of her vehicle, Lt. Hoskinson asked her to turn around and place her hands behind her back. Plaintiff complied with Lt. Hoskinson's commands. Lt. Hoskinson then informed plaintiff that she was under arrest, and during the handcuffing

procedure as he grabbed her fingers and pulled them downward, she felt a “pop” in her left thumb, and severe pain immediately thereafter. According to plaintiff, it felt like her thumb “caught” on something during the handcuffing procedure. Plaintiff testified that she immediately informed Lt. Hoskinson she was injured, but he ignored her complaints. Plaintiff complained to others at the police station and an EMS crew was called. After plaintiff was taken by squad to O’Bleness Memorial Hospital, x-rays were taken and she was diagnosed with a fracture of her left thumb.

{¶4} Lt. Hoskinson testified that he has served as a law enforcement officer for more than 20 years and that he has been trained in handcuffing procedure. With regard to the series of events relating to plaintiff’s arrest, Lt. Hoskinson testified that he pulled plaintiff over because she had been driving without her headlights illuminated, which is an indicator that a driver may be under the influence of alcohol. Plaintiff informed him that her headlights were on “auto,” meaning that they should have been illuminated automatically when she started her car. Lt. Hoskinson asked plaintiff whether she had consumed any alcohol and plaintiff responded that she had consumed one beer approximately 30 minutes earlier. Lt. Hoskinson testified that he asked plaintiff whether she was injured before they began the field sobriety tests, and she stated that she was not. According to Lt. Hoskinson, plaintiff was able to understand his instructions and her responses were appropriate throughout his interactions with her.

{¶5} Lt. Hoskinson described the handcuffing procedure as follows: he asked plaintiff to turn around; once plaintiff was faced away from him he told her that she was under arrest; he then asked her to place her hands behind her back, palms together as if she were praying; he then grabbed her fingers and placed the handcuffs on her wrists without incident. Lt. Hoskinson stated that plaintiff did not resist arrest in any way and that there was no struggle. Lt. Hoskinson testified that he did grab plaintiff’s fingers but

did not recall making any contact with her thumbs; he also admitted that he pulled her fingers in a downward motion.

{¶6} According to Lt. Hoskinson, plaintiff began to complain of pain when they were at the police station. Lt. Hoskinson took plaintiff to the dispatcher, who was a certified EMT. Lt. Hoskinson called the EMS once he determined that plaintiff was claiming that she had been injured in his custody. Lt. Hoskinson stated that he did not observe plaintiff injure herself in his presence. Lt. Hoskinson denied causing plaintiff's injuries, but agreed that if proper handcuffing techniques are followed, a broken bone should not occur.

{¶7} Ronald Herbert Jr. testified that he is a paramedic with Athens County Emergency Medical Services and was called to the police station to examine plaintiff. Herbert testified that his partner, Zack Sirus, wrote the EMS report, but he agreed that the statements contained in the run report are accurate. (Plaintiff's Exhibit 4.) Herbert testified that he observed "obvious swelling" of plaintiff's left hand, and that plaintiff was taken to O'Bleness Memorial Hospital for treatment.

{¶8} Plaintiff's medical records from O'Bleness Memorial Hospital show that after she was examined, x-rays were taken of her left hand, and she was diagnosed with a "non-displaced fracture of the proximal metacarpal of the left hand." (Plaintiff's Exhibit 1.) Her chief complaint was "left thumb swelling from handcuffs." *Id.* She was fitted with a short cast for her left hand and was discharged home with prescriptions for pain medication. In her medical records from Holzer Clinic, the following Monday, she states that her left thumb/hand was "jerked back while being placed in handcuffs." (Plaintiff's Exhibit 2.) According to the medical records, plaintiff described left hand pain involving her thumb, second, and third fingers, that the pain was sudden with injury, and that the injury occurred on Friday when she was handcuffed by police.

{¶9} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that defendant's

acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Meniffee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). This court has held that state law enforcement officers owe a duty of ordinary care to drivers encountered within the scope of the officers' duties. See, *Burr v. Ohio State Highway Patrol*, 10th Dist. Franklin No. 12AP-26, 2012-Ohio-4906, ¶ 24, citing *Legg v. Ohio State Hwy. Patrol*, 66 Ohio Misc.2d 118, 122 (Ct. of Cl.1993). A law enforcement officer having custody of an arrestee owes a duty of reasonable care and protection. *Clemets v. Heston*, 20 Ohio App.3d 132 (6th Dist.1985). Once the relationship begins, the duty to act affirmatively to protect the arrestee from harm and provide for her care and safety continues for the duration of that relationship. *Id.* Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties Inc.*, 2 Ohio St.2d 310 (1965). Inasmuch as this case originated during a traffic stop by an officer of the Ohio University Police Department, the court finds that, similarly, Lt. Hoskinson owed plaintiff a duty of ordinary care.

{¶10} Upon review, the court finds that plaintiff has proven by a preponderance of the evidence that Lt. Hoskinson failed to use ordinary care when he placed handcuffs on her. The court finds that plaintiff was credible when she testified that she felt a "pop" in her left thumb when Lt. Hoskinson grabbed her fingers during the handcuffing procedure. The court further finds that plaintiff's testimony regarding her injury, and the fact that she immediately complained of pain is more credible than Lt. Hoskinson's testimony. The court finds that it is more probable than not that Lt. Hoskinson's actions of pulling plaintiff's fingers downward behind her back while placing handcuffs on her resulted in the injury to her left hand.

{¶11} The court also notes that whether plaintiff was driving under the influence of alcohol does not affect her credibility. Plaintiff was cross-examined at length

regarding her alcohol consumption prior to her arrest. The incident report completed by Lt. Hoskinson states that she admitted to having consumed one alcoholic beverage approximately 30 minutes prior to being detained. Although Lt. Hoskinson's opinion regarding plaintiff's alcohol consumption might differ from plaintiff's account to him, the court finds that it is likely that any motorist who is detained on suspicion of driving under the influence would be inclined to minimize his or her alcohol consumption. The court further finds that although plaintiff's credibility may be called into question about the amount of alcohol she consumed, her credibility about being injured during the handcuffing procedure was substantiated. First, the hospital records substantiate the nature of her injury and when it occurred. Second, Herbert's testimony and the EMS run sheet substantiate that plaintiff was complaining of pain as a result of being handcuffed. Third, Lt. Hoskinson testified that he asked plaintiff before he began the sobriety testing whether she was injured in any way and she stated that she was not. Fourth, there is no evidence that any struggle ensued after the handcuffs were placed, or that plaintiff injured herself during or after the sobriety tests.

{¶12} Conversely, the court finds that Lt. Hoskinson's testimony was not particularly persuasive. For example, in his police report, Lt. Hoskinson stated that the pavement conditions were "icy" and the weather conditions were "cloudy, rain, and snow." (Defendant's Exhibit A.) At trial however, Lt. Hoskinson testified that there was no snow or ice on the ground where plaintiff was attempting to perform sobriety tests.

{¶13} The greater weight of the evidence shows that Lt. Hoskinson failed to use ordinary care in the course of placing handcuffs on plaintiff, and that his failure was the proximate cause of her injuries. Accordingly, the court finds that plaintiff has proven her negligence claim by a preponderance of the evidence.

{¶14} Plaintiff also asserts a claim for negligent hiring or retention of Lt. Hoskinson. The elements necessary for a plaintiff to prove an action for negligent

hiring or retention are: “(1) the existence of an employment relationship; (2) the employee’s incompetence; (3) the employer’s actual or constructive knowledge of such incompetence; (4) the employee’s act or omission causing the plaintiff’s injuries; and (5) the employer’s negligence in hiring or retaining the employee as the proximate cause of plaintiff’s injuries.” *Evans v. Ohio State University*, 112 Ohio App.3d 724, 739 (10th Dist.1996). The court notes that the evidence at trial shows that Lt. Hoskinson was not incompetent. Indeed, Lt. Hoskinson has approximately 20 years of experience in law enforcement, and he has completed training in handcuffing procedures. Therefore, the court finds that plaintiff has failed to prove by a preponderance of the evidence her claim for negligent hiring or retention.

{¶15} Although not set forth in her complaint, assuming *arguendo* plaintiff’s claims can be construed as a battery, the court finds that plaintiff has proven her claim of battery by a preponderance of the evidence. Lt. Hoskinson intended to place handcuffs on plaintiff during the course of her arrest, and such contact caused her harm.<sup>1</sup>

{¶16} Plaintiff testified that she was required to wear a cast on her left hand for six to eight weeks after the incident; that she suffered pain and swelling; and that her pain was especially severe during the first two weeks after the incident. Plaintiff further testified that the brace was an inconvenience to her, but that she did not miss any classes as a result of the incident. With regard to medical care, plaintiff testified that she underwent approximately three follow-up visits at Holzer Medical Clinic. Plaintiff’s fracture healed without surgery and her only current complaints are occasional pain during changes in the weather.

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<sup>1a</sup>In tort, an assault is the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact. *Smith v. John Deere Co.* (1993), 83 Ohio App.3d 398, 406, 614 N.E.2d 1148. Battery is an intentional contact with another that is harmful or offensive. *Love v. Port Clinton* (1988), 37 Ohio St.3d 98, 99, 524 N.E.2d 166.” *Stafford v. Columbus Bonding Ctr.*, 177 Ohio App.3d 799, 2008-Ohio-3948 (10th Dist.) ¶ 15.

{¶17} Plaintiff's total out-of-pocket medical expenses are \$2,529.06. (Plaintiff's Exhibit 3.) Upon review of the evidence, the court recommends judgment in favor of plaintiff in the amount of \$22,554.06 as follows: \$2,529.06 in medical expenses; \$20,000 in pain and suffering; and the \$25 filing fee.

{¶18} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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HOLLY TRUE SHAVER  
Magistrate

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