

Court of Claims of Ohio

The Ohio Judicial Center
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JULIE L. JORDAN, et al.

Plaintiffs

v.

OHIO DEPARTMENT OF PUBLIC SAFETY

Defendant

Case No. 2012-05932

Judge Patrick M. McGrath

DECISION

{¶1} Plaintiffs brought this action alleging assault, battery, invasion of privacy, intentional infliction of emotional distress, false arrest, and negligent supervision. Plaintiffs also sought an immunity determination pursuant to R.C. 9.86 and 2743.02(F) regarding whether Randall Skaggs, Ryan Stanley, Dwayne Shephard, and Daniel Edelbrock were acting within the course and scope of their state employment at all times relevant to this case. On February 11, 2015, the court granted defendant's motion for partial summary judgment with respect to the claim for false arrest. Additionally, the court previously ordered that any immunity issues be determined in conjunction with a trial on the merits and that the issues of liability and damages would not be bifurcated. The case then proceeded to trial.

{¶2} This case arises out of allegations by plaintiffs, Julie Jordan and her son Jeremy Tomlinson, that defendant's officers used excessive, unnecessary, and inappropriate force upon them during an August 5, 2011 incident in the parking lot of Crew Stadium following a concert associated with the Ohio State Fair. By all accounts, the Ohio State Fair and the concert at Crew Stadium drew a large crowd of people for the evening.

{¶3} The Ohio State Fair hosted a concert that evening at Crew Stadium featuring rock bands Night Ranger, Foreigner, and Journey. Julie and Jeremy along with family friends Glenna Niese and her husband Andrew Niese and Teri Tucker and her son Nathan Johnson met at a White Castle restaurant prior to the concert.¹ After several members of the party purchased food at White Castle, the group shared a ride to the concert in Teri's Ford Escape. Upon arrival, the group parked in the parking lot adjacent to Crew Stadium and proceeded to the concert. While at the concert, several members of the group consumed 12 ounce alcoholic beverages. Julie testified that she purchased two beers for both herself and Jeremy. Jeremy testified that he consumed two beers. Glenna, the designated driver, did not consume any alcoholic beverages.

{¶4} After the concert concluded at approximately 10:30 p.m., the group returned to the Ford Escape whereupon Jeremy and Nathan climbed into the back of the vehicle.

Nathan subsequently threw a White Castle bag filled with left over fast food wrappers out of the vehicle. The White Castle bag apparently struck the leg of a female concertgoer, enraging her male companion. According to Julie, the unknown male appeared to be very intoxicated and began yelling at Nathan. Julie testified that she apologized, picked up the White Castle bag, and placed herself between Nathan and the unknown male to separate the two of them. According to Julie, the unknown male then punched her in the face. Julie testified that she has no memory of any of the subsequent events of that evening. Glenna testified that she did not see the unknown male punch Julie, but she testified that she helped Julie get up off the ground.

{¶5} Jeremy subsequently became aware of the altercation, alighted from the vehicle, and saw the unknown male standing over Julie. Jeremy confronted the unknown male and the two began cursing at each other and exchanging punches as they migrated away from the Ford Escape. At some point during the altercation, Teri grabbed Nathan by the arm and removed him from the affray. Andrew testified that he remained about 10 feet away from the ruckus nearby the vehicle rather than follow the fight as he did not wish to get involved; however, Glenna testified that the group, which according to her included Andrew, migrated away from the Ford Escape as the altercation continued. Jeremy testified that several other individuals separated him from the unknown male whereupon they continued to engage in a verbal altercation.

¹Teri's and Nathan's deposition transcripts were admitted as Defendant's Exhibits Z1 and AA1.

Glena testified that Julie, Jeremy, the unknown male and his companion were agitating each other and that several other individuals who were nearby were egging them on. According to Jeremy, Julie approached the two of them and the unknown male subsequently punched Julie in the face for the second time. Jeremy then ran at the unknown male, collided with him, and resumed punching him. Jeremy described his agitation level at this point to be a 9 or 10 on a 10 point scale with 10 being the most agitated. Jeremy testified that a security guard wearing a neon shirt with a Crew logo subsequently grabbed him by the forearms, told him to calm down, and told him to go back to his vehicle. Jeremy testified that at this point he significantly calmed down and began walking toward the vehicle.

{¶6} Ohio State Highway Patrol (OSHP) Troopers Steve Robison and Patrick Pfouts worked traffic control in the parking lot of the Crew Stadium following the concert.² OSHP troopers from all over the state of Ohio either volunteer or are assigned to work 12-hour shifts on special assignment for the duration of the Ohio State Fair.

{¶7} Trooper Robison testified that a passerby alerted him that there was a large fight nearby and directed him toward the fight, which was only a few hundred feet away from the intersection where he was working traffic control. Trooper Pfouts testified that he noticed a large crowd in the general area and that it seemed like there was a fight. Troopers Robison and Pfouts quickly proceeded to the location of the disturbance and informed other troopers over the radio regarding a large fight in progress in the parking lot. Trooper Robison testified that upon arrival at the scene, 15-20 people appeared to be in a chaotic mode with lots of yelling and pushing although there were no active punches at that time. Trooper Pfouts testified that it appeared like there had been a fight but that it was over by the time he arrived.

{¶8} Troopers Robison and Pfouts attempted to disperse the crowd by directing everyone back to their vehicles. According to Trooper Robison, an individual whom he later learned was Jeremy yelled that someone had punched his mom and that the troopers needed to find and arrest the assailant. Trooper Robison testified that Jeremy appeared to be drunk based upon his behavior, which he described to be stumbling, staggering, slurred speech, irrational, and agitated. Trooper Pfouts testified that Julie

² Trooper Robison's and Trooper Pfouts' deposition transcripts were admitted as Plaintiffs' Exhibits 110 and 114.

smelled of alcohol, had glassy and bloodshot eyes, and was yelling and cussing loudly.

Troopers Robison and Pfouts testified that neither Julie nor Jeremy provided a description of the unknown male who punched Julie in the face.

{¶9} Trooper Robison testified that within 20-30 seconds after arriving on the scene, a number of other troopers arrived to assist. Glena testified that 5 or 10 troopers subsequently arrived and directed everyone to return to their vehicles. Glena testified that she along with Julie, Jeremy, and Andrew told the troopers that Julie had been punched by an unknown male but that the troopers just wanted the crowd to disperse. According to Glena, the troopers told everyone to get in their vehicles and leave or they would be arrested. Glena testified that she identified the assailant, but the troopers failed to acknowledge her statements. Glena testified that the scene subsequently deescalated and that she and Julie started walking back toward the vehicle with one or two troopers closely behind them. Glena stated that Jeremy and Andrew were further behind with one or two troopers, but she was unable to see them.

{¶10} According to Trooper Robison, the troopers “escorted” Julie and Jeremy away from the altercation. Trooper Robison testified that Julie was walking about 20 feet ahead of him flanked by troopers to either side, while Jeremy was behind him by about 20 feet with two troopers on either side. Trooper Pfouts testified that Julie was disorderly and continued to curse. Trooper Robison testified that Jeremy continued to “run his mouth.” Trooper Robison subsequently turned around and saw what appeared to be Jeremy trying to swing his arm or pull away from the two troopers. Trooper Robison did not clarify whether Jeremy’s arm was in forward motion or backward motion. The two troopers who were “escorting” Jeremy then took him to the ground and told him to stop resisting. Trooper Robison described Jeremy as very agitated and actively resisting while he was on the ground. According to Trooper Robison, one of the troopers “drive stunned” Jeremy with a Taser. Drive stun is a technique where the Taser is applied directly to an individual’s skin rather than deployed at a distance by ejecting prongs from the Taser.

{¶11} Trooper Pfouts testified that he heard someone yell “Taser, Taser,” turned around and saw three troopers take Jeremy to the ground. Trooper Pfouts could not recall whether the Taser was applied to Jeremy before or after he saw Jeremy on the ground. Trooper Pfouts who had his back turned to Julie recalled his green reflective traffic control vest suddenly being ripped off whereupon he turned around and saw Julie

on the ground with his green vest. Trooper Pfouts testified that he knelt down to determine whether Julie was stable and called for the squad.

{¶12} Jeremy, however, testified that after the security guard in the neon shirt released him, he calmed down and walked back toward the vehicle. Jeremy testified that he took several steps and felt electricity in his chest and back. Jeremy stated that he did not see or speak with any troopers prior to the application of the Taser. According to Jeremy, after he felt the electricity in his back, he fell to the ground and felt several people on his neck, back and knees. Jeremy testified that troopers yelled at him to stop resisting and that he then felt the electricity for the second time. Jeremy testified that he was not warned that he would receive an application of the Taser. Jeremy insisted that he was not combative, that he did not swing an arm at any trooper, and that he did not act aggressively toward any troopers. Additionally, Jeremy denied that he failed to comply with the troopers' orders. Jeremy was subsequently handcuffed and placed in the back of a patrol vehicle.

{¶13} Trooper Dwayne Shephard was working at an intersection outside Crew Stadium on August 5, 2011, when he heard a call over the radio regarding a fight in the parking lot. Trooper Shephard testified that he ran toward the location of the fight and upon arrival observed several individuals who were not cooperating with troopers' requests to return to their vehicles. According to Trooper Shephard, all the people involved in the affray appeared to be intoxicated. Trooper Shephard noted that two troopers were escorting a female whom he later learned was Julie while one trooper was escorting Jeremy. Trooper Shephard then began assisting with Jeremy. According to Trooper Shephard, as they were walking toward their vehicle, Jeremy clenched his fist back, "rearing up" as if to take a swing with his fist. However, Trooper Shephard acknowledged that Jeremy's fist did not move forward. Trooper Shephard testified that he and Trooper Daniel Edelbrock subsequently tackled Jeremy to the ground and attempted to handcuff him. According to Trooper Shephard, Jeremy's arm was under his chest and that he warned Jeremy that if he did not "cuff up," he would apply his Taser. Trooper Shephard testified that after he applied his Taser, he repeated that Jeremy needed to cuff up and again applied his Taser.

{¶14} Trooper Edelbrock testified that he was working traffic control at an intersection outside Crew Stadium on August 5, 2011, when he heard a call over the radio regarding a fight in the parking lot. Trooper Edelbrock subsequently ran toward

the location of the affray. Trooper Edelbrock stated that when he arrived on the scene, there was no active fight and that Julie was being escorted by two troopers. Trooper Edelbrock testified that after he arrived, he saw Jeremy raise his fist in the air to hit a trooper in the back of the head. Trooper Edelbrock testified that he grabbed Jeremy's unraised arm and took Jeremy to the ground. Trooper Edelbrock stated that several other troopers assisted in taking Jeremy to the ground. According to Trooper Edelbrock, Jeremy appeared to be highly intoxicated and smelled of alcohol. Trooper Edelbrock testified that he subsequently ordered Jeremy to comply with the troopers' orders once they were both on the ground. Trooper Edelbrock testified that he did not hear anyone say "Taser, Taser" and that eventually Jeremy was placed into handcuffs and escorted to a patrol vehicle.

{¶15} Trooper Ryan Brillhart testified that he was working traffic control at the Ohio State Fair on August 5, 2011, when he heard a call over the radio regarding a fight in the parking lot. Trooper Brillhart proceeded to the location of the fight. Trooper Brillhart testified that when he arrived, the fighting had already ended; however, the troopers were on the ground struggling with Jeremy. According to Trooper Brillhart, Jeremy did not comply with orders to be placed into handcuffs. Trooper Brillhart subsequently assisted in securing Jeremy and thereafter escorted him to the patrol vehicle.

{¶16} While Jeremy was in the back of the patrol vehicle, he was questioned by Trooper Elizabeth Petro. Trooper Petro testified that Jeremy was in investigative detention while he was in the patrol vehicle. Trooper Petro testified that Jeremy was polite and cooperative during their conversation. Jeremy was subsequently taken to an OSHP trailer for further questioning. While at the trailer, Jeremy provided a statement to the investigating trooper. According to Jeremy, the trooper wrote the questions and answers and provided him an opportunity to review the pages. Jeremy testified that he attempted to correct two mistakes: (1) Jeremy insisted that a reference to a police officer telling him to walk away prior to receiving an application of a Taser should state that he interacted with a security guard rather than a police officer and (2) Jeremy insisted that he drank two beers rather than four beers as is listed on the statement. Jeremy testified that he was not allowed to make the changes and that he signed the statement so he could leave. Jeremy acknowledged, however, that he was allowed to cross out two other portions of the statement.

{¶17} Glenna testified that while she and Julie walked back to the vehicle, she heard a yell from Jeremy, turned around and saw Jeremy on the ground with 3 or 4 troopers on top of him. According to Glenna, Julie yelled that Jeremy was just a kid and that he had not done anything wrong whereupon the trooper closest to Julie put his right hand on Julie's right shoulder and left hand on Julie's left shoulder and threw her to the ground. Glenna testified that the force was so strong that Julie's legs lifted horizontally in the air and that her head hit the ground, knocking Julie unconscious.

{¶18} Trooper Ryan Stanley testified that he was working traffic control with Trooper Shephard at an intersection outside Crew Stadium on August 5, 2011, when he heard the call over the radio regarding the disturbance. Trooper Stanley testified that he and Trooper Shephard subsequently ran about 175 yards to the location of the affray. Trooper Stanley explained that while he was proceeding to the location of the affray, he dropped his expandable baton and had to retrieve it, and that as a result, he arrived at the scene after Trooper Shephard. Trooper Stanley testified that once he arrived, he noticed a crowd surrounding the area where two troopers were on the ground with Jeremy. Trooper Stanley described the crowd as a "wall" of people surrounding the troopers. Trooper Stanley testified that he continued to move quickly toward the left side of the circle to both reach the troopers on the ground and form a perimeter inasmuch as he was concerned about the number of other people gathered around the troopers. Trooper Stanley testified that he planted his left foot to quickly move around the wall of people and felt contact with his shoulder. Trooper Stanley explained that he immediately turned and saw feet flying in the air, saw Julie attempt to grab a safety vest of another trooper, and heard a thud as Julie hit the ground. Trooper Stanley testified that he did not see Julie prior to making contact with her.

{¶19} Trooper Stanley testified that he subsequently bent down and held Julie's head in a "c-spine" position in an attempt to immobilize her head. Trooper Stanley testified that Julie was unconscious and that he was concerned that she had a head or neck injury. As a result, Trooper Stanley called for a squad. Trooper Stanley estimated that Julie remained unconscious for 5-8 minutes.

{¶20} Sergeant Randall Skaggs was the assigned supervisor of the troopers who were directing traffic in the parking lot of Crew Stadium on August 5, 2011. Sergeant Skaggs testified that he heard a call over the radio regarding a fight in the parking lot and proceeded on a golf cart to the location. Sergeant Skaggs testified that when he

arrived, several troopers were dealing with Jeremy, who was on the ground, Julie was on the ground, and there were several other troopers standing around. Sergeant Skaggs stated that the situation appeared to have deescalated, but that a small group of people were still yelling. Sergeant Skaggs testified that he questioned a group of troopers regarding what had happened and learned that Jeremy had been loud, belligerent, obnoxious, and vulgar, warned by troopers, and subsequently drive stunned with a Taser. Sergeant Skaggs testified that he also learned that Julie had been knocked out, but he could not recall anyone telling him that Julie was knocked down as a result of contact with a trooper. Sergeant Skaggs testified that he then proceeded to attend to Julie.

{¶21} According to Sergeant Skaggs, Julie was conscious and complained about how the troopers had treated Jeremy and about the unknown male who had punched her. Sergeant Skaggs testified that while the two spoke, Trooper Stanley continued to hold Julie's head in the c-spine position. Sergeant Skaggs testified that he also spoke with Trooper Stanley and Glena, who continued to stay by Julie, and learned that Julie had previously been unconscious as a result of hitting her head in a fall. Sergeant Skaggs testified that he then proceeded to check Julie for injuries. Sergeant Skaggs recalled seeing abrasions on Julie's knuckles, elbows, and knees. Sergeant Skaggs testified that he put his hand on the back of Julie's neck at the base of the skull and moved his hand down while asking Julie whether such touching caused pain. Sergeant Skaggs testified that he checked for injuries by touching Julie's legs, thighs, and shins. Sergeant Skaggs testified that Julie moved her legs as if she wanted to get up and that he placed his hand on her stomach in an attempt to both keep her on the ground and to calm her down. Sergeant Skaggs explained that he did not want Julie to move while she was on the ground, fearing that she may be further injured.

{¶22} Emergency Medical Services (EMS) squad subsequently arrived and Julie refused medical treatment. After Julie refused medical treatment, Sergeant Skaggs escorted Julie to his golf cart where she sat down. Sergeant Skaggs testified that Julie thereafter complained of a head injury, grabbed his hand, and placed it on her head telling him to feel a bump on her head. Sergeant Skaggs described Julie as very emotional, angry, and sorrowful. Sergeant Skaggs added that he was able to detect an odor of alcohol. Sergeant Skaggs explained that he remained on the right side of

the golf cart while Julie sat in the golf cart until it was determined that she was free to leave.

{¶23} Glenna testified that Trooper Stanley asked her to talk to Julie as she was on the ground. Glenna explained that Trooper Stanley held Julie's neck while Sergeant Skaggs held Julie's legs. Glenna testified that she questioned Sergeant Skaggs as to why he was touching Julie and holding her legs without wearing gloves. According to Glenna, Sergeant Skaggs responded that he did not want Julie to move and hurt herself.

Glenna testified that after the squad arrived, Julie refused medical treatment and she was moved to a golf cart to sit down. According to Glenna, while Julie was sitting in the golf cart, Sergeant Skaggs "rubbed" the back of Julie's neck and shoulders with his hand.

{¶24} Trooper Brillhart also recalled seeing Julie on the ground. Trooper Brillhart testified that he saw Sergeant Skaggs kneel down and touch Julie's legs. Trooper Brillhart testified that he saw Sergeant Skaggs move Julie's legs and position his body in between her legs whereupon he touched her legs. In a previous deposition Trooper Brillhart characterized the touching as caressing, but at trial he described it as touching but not massaging. Trooper Brillhart added that he did not believe the touching to be sexual in nature. Trooper Brillhart explained that he was standing 6-10 feet away from Sergeant Skaggs and that he only recalls seeing him touch the inside of Julie's upper thigh in an exposed area of her skin. Trooper Brillhart explained that Julie was wearing short shorts and that Sergeant Skaggs did not touch anywhere covered by her shorts. Trooper Brillhart admitted that he was watching the crowd at the same time and that he did not focus solely on Sergeant Skaggs. Trooper Brillhart further admitted that he did not hear any conversation between Julie and Sergeant Skaggs.

{¶25} Trooper Edelbrock testified that he also saw Sergeant Skaggs touch Julie's inner thigh, above the knee, in addition to her lower back. Trooper Edelbrock characterized the touching as "rubbing" and "massaging" but not sexual in nature. Trooper Edelbrock added that he was not close enough to hear any conversation between Sergeant Skaggs and Julie. Trooper Shephard testified that he saw Sergeant Skaggs touch Julie's legs in what he described as the mid-thigh area. Trooper Shephard described the touching as "groping" in a written statement; however, at trial, Trooper Shephard explained that such a term was too strong. Trooper Shephard

further testified that Sergeant Skaggs did not touch Julie in a sexual manner as suggested by the term grope and that he misunderstood the word when he used it.

{¶26} Trooper Stanley testified that Sergeant Skaggs touched Julie's elbows, arms, shoulders, and knees, and ran his hand up Julie's spine. Trooper Stanley testified that after the squad left, Sergeant Skaggs regained physical contact with Julie and continued to touch her. Trooper Stanley stated that he did not know whether Sergeant Skaggs had advanced medical training and never asked him to stop touching Julie. Trooper Stanley testified that Sergeant Skaggs asked Julie whether she was hurt while he touched her but was unable to recall whether Julie responded. Trooper Stanley denied that the touching appeared sexual in nature but rather characterized it as more akin to a parent touching a child.

{¶27} Sergeant Anetra Sims-Byrd testified that she was working at the Ohio State Fair on August 5, 2011, as a plain clothes investigative trooper when she became aware of the incident in the parking lot. Sergeant Sims-Byrd stated that she arrived at the scene about the same time that the squad arrived, and proceeded to gather Julie's biographical information for a case report. Sergeant Sims-Byrd testified that while she was near Julie, she observed Sergeant Skaggs' hand resting on Julie's belly area. At some point thereafter, Sergeant Sims-Byrd became aware that Julie refused medical treatment. According to Sergeant Sims-Byrd, Sergeant Skaggs attempted to convince Julie to allow the medics to provide medical treatment and at one point appeared to look through Julie's hair for an injury. Sergeant Sims-Byrd testified that it appeared that Sergeant Skaggs had developed a rapport with Julie as evidenced by an incident where Julie turned to Sergeant Skaggs appearing to seek protection from another trooper who threatened to arrest her. Sergeant Sims-Byrd added that she did not see anything wrong with Sergeant Skaggs contact with Julie.³

{¶28} Captain Edward Crispen, the night shift commander of traffic and security at the Ohio State Fair on August 5, 2011, testified that he received a call over his radio regarding a fight in the parking lot. Captain Crispen testified that when he arrived, he attempted to ascertain what had occurred whereupon he was approached by a group of

³Trooper James Richardson testified by way of deposition that he was assigned to the parking lot of Crew Stadium on August 5, 2011. Trooper Richardson testified that he was drawn to an incident that evening by a call over his radio; however, he was not able to recall the specific nature of the call. Trooper Richardson testified that when he arrived, there were several other troopers on scene and it did not appear that they needed his assistance. Trooper Richardson testified that after he ensured that he was

troopers who expressed concern regarding Sergeant Skaggs' conduct with Julie. According to Captain Crispen, he was informed by the troopers that Sergeant Skaggs was touching Julie and spending too much time with her. Captain Crispen added that they believed such conduct was "inappropriate." Captain Crispen testified that at one point he observed Sergeant Skaggs by a golf cart with his hand on Julie's shoulder. Captain Crispen testified that he was not alarmed by such conduct. Captain Crispen explained that he was concerned that Sergeant Skaggs was spending time with Julie rather than supervising the troopers and fulfilling his supervisory responsibilities. Troopers Stanley, Brillhart, Shephard, and Edelbrock subsequently provided written statements to internal OSHP investigators regarding Sergeant Skaggs' conduct. Sergeant Skaggs testified that he did not receive any discipline as a result of his conduct with Julie.

{¶29} Sergeant Robert Hilderbrandt, a certified Taser instructor for OSHP, who is currently assigned to the OSHP training academy, testified by way of deposition that there are five levels in the OSHP use-of-force continuum.⁴ Sergeant Hilderbrandt explained that the first level is more of a deterrent and simply involves the presence of a trooper in uniform. Sergeant Hilderbrandt testified that the second level involves a trooper issuing voice commands to the public to encourage compliance. Sergeant Hilderbrandt explained that the second level is primarily used for crowd dispersion in places like the Ohio State Fair or for directing traffic. Sergeant Hilderbrandt testified that the third level is reserved for when someone is non-compliant, non-combative. Sergeant Hilderbrandt explained that such a person is typically not making any type of physical threat toward the trooper or anybody else. According to Sergeant Hilderbrandt, a trooper is authorized to use force on such a person in order to gain compliance. Such force could include the use of a Taser, chemical Mace, takedowns, escorts, joint manipulations, or physical force on pressure points. Sergeant Hilderbrandt testified that the fourth level is reserved for assaultive or combative resistance. According to Sergeant Hilderbrandt, level four force could be used to compel someone to put his or her hands behind his or her back. Sergeant Hilderbrandt added that if someone pulls away from a trooper while the trooper is attempting an arrest or if an individual raises his or her hand in a striking manner, level

not needed, he returned to his assigned location in the parking lot. Trooper Richardson's deposition transcript was admitted as Plaintiffs' Exhibit 111.

four force would be authorized. Sergeant Hilderbrandt explained that level four force includes striking techniques with hands, elbows, or knees, deployment of an expandable baton or ASP, use of a canine if available, and other soft tissue manipulation of an individual's sensitive areas such as the eyes or groin. Sergeant Hilderbrandt testified that the fifth level of force is deadly or lethal force. Sergeant Hilderbrandt added that troopers are trained to use the least amount of force necessary for the situation and that troopers may commence force at whichever level is necessary for a given situation rather than working their way up through the use-of-force continuum.

{¶30} Sergeant Hilderbrandt reviewed several statements made by the responding troopers regarding the August 5, 2011 incident. Sergeant Hilderbrandt also reviewed Jeremy's deposition. There is no dispute that Sergeant Hilderbrandt did not personally witness the events of that evening; nevertheless, Sergeant Hilderbrandt testified that if Jeremy raised his fist as if to strike a trooper, the troopers would have been authorized to use level four force. Sergeant Hilderbrandt explained that application of a Taser and a takedown are on the third level of the OSHP use-of-force continuum. Sergeant Hilderbrandt testified that if Jeremy continued to disregard troopers' orders to place his hands behind his back that a second application of the Taser would be authorized.

{¶31} Lieutenant Heidi Marshall, who currently is assigned to work in the OSHP office of personnel analyzing investigations regarding use-of-force cases, testified by way of deposition regarding some of the training troopers receive in connection with the use of the Taser.⁵ Lieutenant Marshall previously taught such training as a certified Taser instructor. Lieutenant Marshall testified that there are two types of noncompliance: active and passive. Lieutenant Marshall defined passive noncompliance as a situation when a trooper tells an individual to do something and the individual fails to comply in contrast to active noncompliance which occurs when a trooper tells an individual not to do something but the person goes ahead and does it anyway. According to Lieutenant Marshall, in the best case scenario, the trooper would warn the individual prior to the use of the Taser. Lieutenant Marshall cautioned, however, that whether to issue a warning would depend on the individual

⁴Sergeant Hilderbrandt's deposition transcript was admitted as Plaintiffs' Exhibit 117.

⁵Lieutenant Marshall's deposition transcript was admitted as Plaintiffs' Exhibit 115.

circumstances. Lieutenant Marshall additionally testified that investigative detention occurs when a trooper secures an individual for the benefit of the troopers' safety or the safety of that individual in order to further investigate a given situation. Lieutenant Marshall added that if such an individual were handcuffed, she would consider that person to be in custody, but not necessarily under arrest. Finally, Lieutenant Marshall testified that troopers are trained to make split second decisions as to which level of force is necessary in a given situation and that the use-of-force continuum is a tool to assist the troopers in making such a decision. Lieutenant Marshall did not testify regarding the specifics of this case.

{¶32} Plaintiff also presented the court with the testimony of Dennis Root a consultant regarding police practices and use-of-force. Root testified that he was asked to render an opinion on whether the incident involving Julie resulted from her bumping into Trooper Stanley. Root testified that he reviewed the police reports, audio interviews of several troopers, depositions of several troopers, dash cam video, and policies and procedures. Root testified that he also interviewed Glena and Jeremy. Root opined that it was more likely that Julie was grabbed from behind and pulled forcefully backward. Root testified that "glancing contact," as he believed Trooper Stanley described, would have caused Julie to rotate to the ground rather than lift her feet off the ground, landing on her back and striking her head on the ground. Root admitted, however, that he does not hold a degree in physics or kinetic energy. Root further admitted that he has never written any scholarly peer reviewed articles regarding body movement in a use-of-force setting or testified in a court regarding the same.

{¶33} At the conclusion of plaintiffs' case, defendant moved for dismissal of all of plaintiffs' claims pursuant to Civ.R. 41(B)(2) and for a determination that Troopers Stanley, Shepherd, and Edelbrock and Sergeant Skaggs are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Plaintiffs' subsequently voluntarily dismissed their claims identified in the complaint as Count V Negligent Supervision, Count VI Respondeat Superior, Count VII Vicarious Liability, and Count VIII Special Relationship.

Upon reviewing the parties' arguments and the evidence presented, the court granted defendant's motion, in part, with respect to Jeremy's claims of assault, battery, and intentional infliction of emotional distress. The court also granted defendant's motion, in part, with respect to Julie's claim for assault. The court denied defendant's motion with respect to Julie's claims of battery, invasion of privacy, and intentional infliction of

emotional distress. Finally, the court found that Troopers Stanley, Shephard, and Edelbrock were entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). The court reserved ruling regarding the immunity of Sergeant Skaggs. Plaintiffs subsequently moved pursuant to Civ.R. 52 for the court to make findings of fact and conclusions of law of the dismissed claims, which will be addressed below. Before proceeding to testimony regarding damages, the court will begin by analyzing whether plaintiffs have prevailed upon any of their claims.

ASSAULT AND BATTERY

{¶34} “[T]he tort of assault is defined as 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.*, 83 Ohio App.3d 398, 406 (10th Dist.1993). “A person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful contact results.” *Love v. Port Clinton*, 37 Ohio St.3d 98, 99 (1988).

{¶35} “Officers are privileged to commit battery when making a lawful arrest, but the privilege is negated by the use of excessive force.” *Alley v. Bettencourt*, 134 Ohio App.3d 303, 313 (4th Dist.1999). Whether or not making an arrest, peace officers are also privileged to use force against another to terminate an affray if “(a) the other is or the actor reasonably believes him to be participating or about to participate in the affray, and (b) the confinement or force is not intended or likely to cause death or serious bodily harm, and (c) the actor reasonably believes that the force or confinement is necessary to prevent the other from participating in the affray or other equally serious breach of the peace.” Restatement of the Law 2d, Torts 252, Section 141 (1965).

{¶36} “The use of force against another for the purpose of effecting the arrest or recapture of the other, or of maintaining the actor’s custody of him, is not privileged if the means employed are in excess of those which the actor reasonably believes to be necessary.” *Id.* at 236, Section 132. “[I]f the actor is making or attempting to make an arrest for a criminal offense he is acting for the protection of the public interest and is permitted even a greater latitude of discretion than when he acts in self-defense, and he is not liable unless the means which he uses are clearly excessive.” Restatement of the Law 2d, Torts 236, Section 132, comment a (1965).

{¶37} “Ohio courts also recognized that a police officer is justified at common law to use reasonable force in the course and scope of his law enforcement duties.” *State v. White*, 142 Ohio St.3d 277, 2015-Ohio-492, ¶ 14. “A peace officer duly empowered is not liable for injuries inflicted by him in the use of reasonably necessary force to preserve the peace and maintain order, or to overcome resistance to his authority.” *Id.* quoting *State v. Sells*, 30 Ohio Law Abs. 355, 357-358, 1939 WL 3272 (2d Dist.1939).

{¶38} Therefore, “only in cases where excessive force is used, that is, force going clearly beyond that which is reasonably necessary to make an arrest, can such force be claimed an assault and battery by the person arrested.” *Schweder v. Baratko*, 103 Ohio App. 399, 403 (8th Dist.1957). “The reasonableness of force is measured by the facts and circumstances of each particular case, including the severity of the crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Alley, supra*, citing *Graham v. Connor*, 490 U.S. 386, 396 (1989).

{¶39} Turning to Jeremy’s claims that the officers used unreasonable and unnecessary force by taking him to the ground and administering two applications of a Taser, the court finds that plaintiffs have failed to prove that such force was unreasonable or unnecessary. The evidence demonstrates that Troopers Shephard and Edelbrock used force against Jeremy by taking him to the ground and applying a Taser two times prior to placing Jeremy in handcuffs.

{¶40} There is no dispute that Jeremy was participating in an affray with an unknown male and that several troopers arrived as a result of being alerted to a fight in the parking lot. Upon arrival, the troopers discovered a chaotic scene involving a number of individuals who were pushing and screaming. Glena, Jeremy, Julie, and Andrew yelled and screamed for troopers to arrest the unknown male. However, the troopers immediately began attempting to disperse the crowd and commenced escorting Jeremy away from the location of the fight. Troopers Edelbrock, Robison, and Shephard each observed Jeremy raise his fist in the air as if to strike a trooper. The evidence establishes that Jeremy was subsequently taken to the ground and ordered to place his hands behind his back. Trooper Robison observed that Jeremy continued to actively resist while he was on the ground. As a result, Trooper Shephard applied his Taser and ordered Jeremy to place his hands behind his back. Jeremy failed to place his hands behind his back and Trooper Shephard applied his Taser for a

second time. Trooper Brillhart observed that Jeremy was recalcitrant to Trooper Shephard's orders to place his hands behind his back and, as a result, he subsequently assisted to accomplish the task of placing handcuffs on Jeremy.

{¶41} The court finds Jeremy's testimony regarding the events of August 5, 2011 to lack credibility. Jeremy's version of the events differs greatly from that of the other witnesses who testified at trial. Glenna testified that the troopers began ordering everyone to disperse once they arrived. According to Glenna, Jeremy was among the group attempting to explain to the troopers that Julie had been punched by the unknown male. Glenna recalls troopers ordering everyone to return to their vehicles and escorting the group, including Jeremy, toward the vehicle. However, Jeremy testified that he had absolutely no contact with troopers and did not see or hear any troopers prior to receiving an application of the Taser and being taken to the ground. Additionally, Jeremy admitted that he was extremely agitated that evening and even rated his agitation to be a 9 out of 10 on an anger scale, but he insisted that once he was told to calm down by a security guard, he calmly walked back to the vehicle when he subsequently felt electricity and was taken to the ground. However, there is no dispute that Jeremy was fighting, yelling, screaming, and extremely agitated in the moments preceding the alleged assault and battery. Additionally, many of the troopers described Jeremy as intoxicated while Jeremy, who was under the age of 21 at the time, claimed that he only drank two beers even though there is evidence to suggest he consumed four. Such evidence supports a conclusion that Jeremy failed to maintain control of his emotions and actions and undermines Jeremy's version of events.

{¶42} The court further finds that Troopers Shephard and Edelbrock were privileged to use force upon Jeremy by taking Jeremy to the ground to prevent him from striking a trooper. Troopers Shephard and Edelbrock reasonably believed such force was necessary to prevent Jeremy, who raised his fist in the air, from possibly striking a trooper and such force was not intended or likely to cause serious bodily harm or death.

The troopers did not need to wait until Jeremy physically assaulted a trooper; rather, once Jeremy raised his fist in the air, the troopers reasonably believed that Jeremy posed an immediate threat to the safety of the troopers or others. Therefore, the troopers were justified to use force to prevent Jeremy from resisting, striking a trooper, or attempting to evade by flight as demonstrated by his raised fist. Additionally, Trooper Shephard was privileged to apply two applications of a Taser to Jeremy in

order to gain compliance with orders and place him in handcuffs inasmuch as Jeremy continued to resist orders. Trooper Shephard reasonably believed such force was necessary to gain compliance with his orders and place Jeremy in handcuffs due to Jeremy's continued resistance. Moreover, as stated in the court's decision granting, in part, defendant's motion for partial summary judgment, Jeremy was subsequently arrested and charged with disorderly conduct and obstructing official police business. Additionally, Jeremy pleaded guilty to a misdemeanor charge of disorderly conduct in violation of R.C. 2917.11(A)(1). Such a guilty plea is prima facie evidence justifying an arrest in which reasonable force may be used. Based upon the foregoing, the court finds that plaintiffs failed to prove Jeremy's claims of assault and battery by a preponderance of the evidence.

{¶43} With respect to Julie's claims of assault and battery regarding being either knocked or thrown to the ground, the court finds that plaintiffs failed to prove such claims by a preponderance of the evidence. As to the alleged assault, plaintiffs did not present the court with any evidence regarding a willful threat or attempt to harm which reasonably placed Julie in fear of harmful contact. Indeed, Julie testified that she has no recollection of the events of August 5, 2011, after being punched in the face by the unknown male. Additionally, Trooper Stanley did not see Julie prior to making contact with her. As Trooper Stanley explained, he had been running toward the area of the fight, planted his foot and put his arm out to get around the people who were surrounding the area, at which point he felt a bump on the back of his shoulder, turned to look, and saw Julie fall to the ground. In short, plaintiffs failed to present evidence regarding a wilful threat or attempt to harm which reasonably placed Julie in fear of harmful contact.

{¶44} Turning to Julie's claim of battery, the court finds that Trooper Stanley was privileged to use reasonable force to make his way through the crowd in an attempt to reach Jeremy and the other troopers. Indeed, troopers are privileged to use reasonable force while attempting to preserve the peace, maintain order, and overcome resistance to troopers' orders. *State v. White* at ¶ 14. Additionally, troopers are justified in using reasonable force in the scope and course of their law enforcement duties. *Id.*

{¶45} Glenna testified that while the troopers were escorting her group away from the fight, a trooper grabbed Julie by the shoulders and forcibly threw her to the ground.

If that were true, Trooper Stanley would have had to have been part of the escort behind Julie; however, the credible evidence establishes that Trooper Stanley was proceeding toward the altercation when he made contact with Julie who was being escorted away from the altercation. As Trooper Stanley quickly proceeded toward the troopers, he made contact with Julie. Julie attempted to brace herself, grabbed Trooper Pfouts' green reflective vest, and fell to the ground. Glena's testimony is further undermined by the fact that she was unable to recall that it was Trooper Stanley, the trooper who knocked Julie to the ground, who held Julie's neck in order to prevent further injury even though Glena remained by Julie's side while she remained on the ground.

{¶46} Regarding the nature of the fall, the court notes that Trooper Stanley is much larger than Julie. Additionally, Julie testified that she is fiercely protective of her children, including Jeremy. Glena recalled that as she and Julie were being escorted away from the scene, Jeremy's screams drew their attention. Julie had been described by witnesses as highly agitated, intoxicated, and stumbling and was wearing a high wedge sandal. Additionally, Julie had already been punched in the head twice by the unknown male. All of these factors combined to make Julie vulnerable to being unsteady and easily knocked to the ground. Trooper Stanley encountered a chaotic scene involving several individuals yelling and screaming and several troopers on the ground with Jeremy. The contact occurred while Trooper Stanley was attempting to quickly reach the location where other troopers were trying to restrain Jeremy. Therefore, the court finds that the nature of the fall is entirely consistent with the account provided by Trooper Stanley.

{¶47} Plaintiffs argue that the nature of the fall undermines the notion that the force used was reasonable under the circumstances as testified to by Root. Defendant argues that Root's testimony concerning the manner in which Julie fell does not satisfy the requirements for admissibility pursuant to Evid.R. 702. Indeed, much of the principles and methodology, or lack thereof, expressed by Root fails to satisfy the criteria regarding reliability as expressed in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Root's theory of Julie's fall was not tested, subjected to peer review, and does not appear to have gained general scientific acceptance. *Miller v. Bike Ath. Co.*, 80 Ohio St.3d 607, 611 (1998), citing *Daubert* at 593-594. Additionally, Root does not hold a degree in physics or kinetic energy and has not

written any scholarly articles. Even if Root were qualified as an expert, the court is not persuaded by Root's testimony. Root did not witness the event and performed no calculations taking into account Julie's small size, Trooper Stanley's large size, the speed at which Trooper Stanley was proceeding, Julie's level of intoxication, the size of Julie's heel, or the fact that she had previously been punched twice in the head. Moreover, Root did not interview any of the troopers involved, did not perform a "reconstruction," and is not professionally qualified to perform one. Accordingly, the court is not persuaded by such testimony. Based upon the foregoing, the court finds that plaintiffs have failed to prove by a preponderance of the evidence that Trooper Stanley committed a battery by knocking Julie to the ground.

{¶48} Turning to plaintiffs' claims that Sergeant Skaggs battered Julie by intentionally and offensively contacting her body, the court finds that such a claim is not supported by a preponderance of the evidence. Sergeant Skaggs testified that over the course of his 28-year career for the highway patrol, he is often the first responder to the scene of an automobile accident and that he frequently assesses the individuals involved for injuries. Additionally, Sergeant Skaggs, along with the other troopers, is trained in first aid. Once Sergeant Skaggs arrived on the scene and learned the Julie had been knocked down, he proceeded to check for injuries. In addition to checking for injuries, Sergeant Skaggs attempted to calm Julie and prevent her from moving or getting up off the ground until she could be evaluated by EMS. After EMS arrived and Julie refused medical treatment, Sergeant Skaggs continued to attempt to calm Julie, who remained in an agitated state as noted by Sergeant Sims-Byrd who testified that her supervisor threatened to arrest Julie if she did not calm down.

{¶49} Sergeant Sims-Byrd even testified that it appeared that Sergeant Skaggs had developed a rapport with Julie as demonstrated by Julie turning to Sergeant Skaggs as if for protection when another trooper instructed her to calm down and assist with the investigation. At a later point in their interaction, Julie grabbed Sergeant Skaggs' hand and placed it on her head while telling him to feel the bump on her head. Much of the interaction between Sergeant Skaggs and Julie is captured by the dash cam video of a patrol car. At one point during the video, after being helped up off the ground, Julie attempts to place her arm around Sergeant Skaggs as he escorts her to a golf cart where she can sit down and continue to recover. Additionally, the video does

not show any “inappropriate” touching by Sergeant Skaggs. Such interaction does not support a conclusion that Sergeant Skaggs’ contact with Julie was harmful or offensive.

{¶50} Moreover, Julie’s friend, Glena, remained by Julie’s side while she was on the ground and remained by Julie’s side while Julie sat in the golf cart. At no point did Glena ever ask Sergeant Skaggs to stop touching Julie or question the purpose or manner of Sergeant Skaggs’ actions. Glena did ask Sergeant Skaggs if he should be wearing gloves, but gloves would only offer Sergeant Skaggs protection. Additionally, Glena admitted that when she was later contacted by an investigator for the highway patrol, she did not complain about Sergeant Skaggs’ interaction with Julie. Glena even admitted to stating that the troopers were very nice to her group.

{¶51} Sergeant Skaggs’ actions were also witnessed by several troopers including Captain Crispen and Sergeant Sims-Byrd, neither of whom believed that Sergeant Skaggs’ conduct necessitated their intervention. Captain Crispen maintained such an opinion even after he had been made aware of complaints from several troopers regarding Sergeant Skaggs’ behavior. The court recognizes that several troopers believed that Sergeant Skaggs’ conduct with Julie was inappropriate and that they filed complaints regarding their concerns. However, the court finds that the troopers’ belief that Sergeant Skaggs’ conduct was inappropriate relates to the higher standard to which the troopers believe they should be held. Indeed, the troopers testified that they believe that they should be held to a higher standard and they expressed their concern that the public might misinterpret Sergeant Skaggs’ actions. Additionally, at trial, the troopers tempered their opinions of Sergeant Skaggs’ conduct. The troopers’ trial testimony does not support a conclusion that Sergeant Skaggs touched Julie in a harmful or offensive manner. In addition, the testimony of Captain Crispen, Sergeant Sims-Byrd and Glena, does not support a finding that Sergeant Skaggs’ conduct was harmful or offensive. Furthermore, none of the troopers intervened to stop Sergeant Skaggs and several troopers insisted that they would have intervened if the conduct would have constituted a sexual assault, which they insisted it was not. Moreover, the court has already found that Sergeant Skaggs’ conduct was motivated by a desire to check for injuries and to calm Julie. Finally, it should be noted that Sergeant Skaggs was not disciplined for his actions involving Julie. In short, the court finds that Sergeant Skaggs’ conduct with Julie was not harmful or offensive. For

all of the foregoing reasons, the court finds that plaintiffs have failed to prove their claim that Sergeant Skaggs battered Julie by intentionally and harmfully touching her.

INVASION OF PRIVACY

{¶52} With regard to plaintiff's claim for invasion of privacy, four varieties of this cause of action are recognized under Ohio law: 1) wrongful intrusion upon the seclusion of another; 2) public disclosure of one's private affairs; 3) unwarranted appropriation of one's personality; and 4) publicity that places another in a false light. See *Housh v. Peth*, 165 Ohio St. 35 (1956), paragraph two of the syllabus; *Welling v. Weinfeld*, 113 Ohio St. 3d 464, 2007-Ohio-2451, syllabus. Plaintiffs assert that wrongful intrusion upon the seclusion of another applies in this case.

{¶53} In order to establish such a claim, one must prove a "wrongful intrusion into one's private activities in a manner that outrages or causes mental suffering, shame, or humiliation to a person of ordinary sensibilities." *Peitsmeyer v. Jackson Twp. Bd. of Trustees*, 10th Dist. Franklin No. 02AP-1174, 2003-Ohio-4302, ¶ 26. "To be actionable, [this] type of invasion of privacy must be predicated upon an unreasonable intrusion into the private life of another." *Strutner v. Dispatch Printing Co.*, 2 Ohio App.3d 377, 380 (10th Dist.1982). Having reviewed the evidence, and for the reasons stated above, the court is unable to conclude that defendant's conduct was wrongful. Therefore, plaintiffs' claim of invasion of privacy likewise fails.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

{¶54} "A claim for intentional infliction of emotional distress requires plaintiff to show that (1) defendant intended to cause emotional distress, or knew or should have known that actions taken would result in serious emotional distress; (2) defendant's conduct was extreme and outrageous; (3) defendant's actions proximately caused plaintiff's psychic injury; and (4) the mental anguish plaintiff suffered was serious." *Hanly v. Riverside Methodist Hosps.*, 78 Ohio App.3d 73, 82 (10th Dist.1991).

{¶55} "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. * * * The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 374-5 (1983). Having

reviewed the evidence, and for the reasons stated above, the court cannot conclude that defendant intended to inflict serious emotional distress or that defendant's conduct was extreme and outrageous. Therefore, plaintiffs' claim fails.

IMMUNITY

{¶56} R.C. 2743.02(F) states, in part:

{¶57} "A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims that has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action."

{¶58} R.C. 9.86 states, in part: "[N]o officer or employee [of the state] shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner."

{¶59} The issue whether an employee is entitled to immunity is a question of law. *Nease v. Medical College Hosp.*, 64 Ohio St.3d 396 (1992), citing *Conley v. Shearer*, 64 Ohio St.3d 284, 292 (1992). The question whether an employee acted outside the scope of employment, or with malicious purpose, in bad faith, or in a wanton or reckless manner is one of fact. *Theobald v. Univ. of Cincinnati*, 111 Ohio St.3d 541, 2006-Ohio-6208 ¶ 14. Plaintiff bears the burden of proving that the state employee should be stripped of immunity. *Fisher v. Univ. of Cincinnati Med. Ctr.*, 10th Dist. Franklin No. 98AP-142, 1998 Ohio App. LEXIS 3900 (Aug. 25, 1998).

{¶60} For purposes of R.C. 9.86, "[m]alicious purpose encompasses exercising 'malice,' which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. Bad faith has been defined as the opposite of good faith, generally implying or involving actual or constructive fraud or a design to mislead or deceive

another. Bad faith is not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Finally, reckless conduct refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than that necessary to make the conduct negligent. The term 'reckless' is often used interchangeably with the word 'wanton' and has also been held to be a perverse disregard of a known risk." (Citations omitted.) *Caruso v. State*, 136 Ohio App.3d 616, 620-621 (10th Dist.2000).

{¶61} "An employee's wrongful act, even if it is unnecessary, unjustified, excessive or improper, does not automatically take the act manifestly outside the scope of employment. * * * The act must be so divergent that it severs the employer-employee relationship." *Elliott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 93API09-1268, 1994 Ohio App. LEXIS 340 (Feb. 3, 1994).

{¶62} There is no dispute that Sergeant Skaggs, and Troopers Stanley, Shephard, and Edelbrock are employees of the state. Plaintiffs have asserted in their complaint that Sergeant Skaggs, and Troopers Stanley, Shephard, and Edelbrock are not entitled to immunity. In their post-trial brief, however, plaintiffs state that they shall defer to the court regarding an immunity determination. Plaintiffs bear the burden of proving that state employees should be stripped of their immunity. *See Fisher supra*. Nevertheless, the court finds that plaintiffs have not met such a burden. Indeed, the court has already concluded that the conduct of Sergeant Skaggs, and Troopers Stanley, Shephard, and Edelbrock was not unjustified, excessive, or improper. Therefore, based upon the evidence and testimony submitted, the court finds that Sergeant Skaggs and Troopers Stanley, Shephard, and Edelbrock did not act outside the scope of their employment, or with malicious purpose, in bad faith, or in a wanton or reckless manner. The court finds that Sergeant Skaggs, and Troopers Stanley, Shephard, and Edelbrock did not intend to cause serious harm, did not demonstrate a perverse disregard of a known risk, did not undertake any unnecessary risk of physical harm, and that their actions were not motivated by a sinister purpose as outlined above.

Accordingly, the court finds that Randall Skaggs, Ryan Stanley, Dwayne Shephard, and Daniel Edelbrock are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

PATRICK M. MCGRATH
Judge

Court of Claims of Ohio

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JULIE L. JORDAN, et al.

Plaintiffs

v.

OHIO DEPARTMENT OF PUBLIC SAFETY

Defendant

Case No. 2012-05932

Judge Patrick M. McGrath

JUDGMENT ENTRY

{¶63} This case was tried on plaintiffs' claims of assault, battery, invasion of privacy, and intentional infliction of emotional distress. 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. Additionally, the court determines that Randall Skaggs, Ryan Stanley, Dwayne Shephard, and Daniel Edelbrock are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil action that may be filed against them based upon the allegations in this case. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

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