

[Cite as *Williams v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7207.]  
IN THE COURT OF CLAIMS OF OHIO

DARRYL W. WILLIAMS :  
 :  
 Plaintiff :  
 :  
 v. : CASE NO. 2005-11094-AD  
 :  
 DEPARTMENT OF REHABILITATION : MEMORANDUM DECISION  
 AND CORRECTION :  
 :  
 Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Darryl W. Williams, an inmate incarcerated at defendant's Trumbull Correctional Institution ("TCI"), has alleged that on January 23, 2005, an unidentified individual entered his cell, broke into his locked locker box, and stole several items of personal property.

{¶ 2} 2) Plaintiff related tobacco products, food stuffs, and other miscellaneous items with a total value of \$76.48 were stolen. All of the alleged stolen property items were indistinguishable articles.

{¶ 3} 3) Plaintiff asserted he reported the theft to TCI employee, identified as Ragazzino, who then went to plaintiff's cell and confiscated magazines valued at \$30.50. Plaintiff contended the theft of his property was never investigated and the confiscated magazines were never returned to his possession.

{¶ 4} 4) In a completely different manner, plaintiff maintained his CD player was stolen from his cell by a fellow inmate on March 15, 2005. Plaintiff had purchased the CD player on or about December 20, 2004, for \$52.99. Plaintiff reported

the theft of the CD player on March 15, 2005, at approximately 3:30 p.m. TCI personnel conducted a prompt, but fruitless search for the CD player after the device was reported stolen.

{¶ 5} 5) On March 16, 2005, plaintiff was transferred from the TCI general population to a segregation unit for an institutional rules infraction. Incident to this transfer, plaintiff's property was packed and delivered into the custody of TCI staff. Plaintiff asserted that when he was subsequently permitted to examine his packed property he discovered several items were missing. Plaintiff contended property items valued at \$47.47 were missing from his pack-up. Plaintiff noted the missing property included: one mirror, a pack of batteries, a nail clipper, four envelopes, a deodorant, five pairs of socks, an extension cord (headphone), a jack, one lamp with light bulbs, a plug, and an adaptor. Plaintiff believed all his property was not packed on March 16, 2005, because defendant allowed his cellmate to pack his property and perhaps steal his property.

{¶ 6} 6) Plaintiff filed this complaint seeking to recover \$207.44, the stated replacement value of all alleged stolen, confiscated, or missing property items. Plaintiff also seeks reimbursement of the \$25.00 filing fee, which he paid. Additionally, plaintiff requested \$20.85 for postage and copying expenses. Postage and copying expenses are not compensable in a claim of this type. The request to include these expenses in the damage claim is denied and shall not be further addressed. Plaintiff's total damage claim is set at \$232.44. Plaintiff subsequently informed the court his stolen CD player was found

and returned to his possession on or about March 7, 2006. However, plaintiff claimed the recovered CD player was returned in a damaged condition, stating, "CD Player works then shuts down, CD Player door will not connect so CD Player will work."

{¶ 7} 7) Plaintiff insisted his cell door was locked by his cellmate before his property was stolen on January 23, 2005. Plaintiff suggested TCI personnel could have opened his cell door, thereby facilitating access to his locked locker box by unknown thieves.

{¶ 8} 8) In his response to defendant's investigation report, plaintiff reasserted the property he claimed as missing incident to the March 16, 2005, pack-up was stolen by his cellmate. All property missing from plaintiff's March 16, 2005, pack-up constituted indistinguishable items.

#### CONCLUSIONS OF LAW

{¶ 9} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶ 10} 2) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶ 11} 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.

{¶ 12} 4) The allegation that a theft may have occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams, supra*.

{¶ 13} 5) The fact defendant supplied plaintiff with a locker box and lock to secure valuables constitutes prima facie evidence of defendant discharging its duty of reasonable care. *Watson v. Department of Rehabilitation and Correction* (1987), 86-02635-AD.

{¶ 14} 6) Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 15} 7) Generally, defendant has a duty to conduct a search for plaintiff's property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility* (1981), 79-0132-AD.

{¶ 16} 8) However, a search is not always necessary. In *Copeland v. Department of Rehabilitation and Correction* (1985), 85-03638-AD, the court held that defendant had no duty to search for missing property if the nature of the property is such that it is indistinguishable and cannot be traced to plaintiff. In the instant case, the alleged stolen property was indistinguishable and, therefore, no duty to search arose. See also *Thomas v. Warren Correctional Inst.*, 2005-07224-AD; jud,

2005-Ohio-6586.

{¶ 17} 9) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶ 18} 10) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 19} 11) Defendant, when it retains control over whether an inmate's cell door is to be open or closed, owes a duty of reasonable care to inmates who are exclusively forced to store their possessions in the cell while they are absent from the cell. *Smith v. Rehabilitation and Correction* (1978), 77-0440-AD.

{¶ 20} 12) However, in the instant claim, plaintiff has failed to prove defendant negligently or intentionally failed to lock his cell door, and therefore, no liability shall attach to defendant as a result of any theft. *Carrithers v. Southern Ohio Correctional Facility* (2002), 2001-09079-AD.

{¶ 21} 13) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001),

2001-03135-AD.

{¶ 22} 14) Plaintiff has failed to show any causal connection between any damage to his CD player and any breach of a duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD; *Melson v. Department of Rehabilitation and Correction* (2003), 2003-04236-AD, 2003-Ohio-3615.

{¶ 23} 15) Plaintiff's failure to prove delivery of certain property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost, stolen, or discarded property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 24} 16) Plaintiff has failed to prove, by a preponderance of the evidence, his property was discarded as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

IN THE COURT OF CLAIMS OF OHIO

DARRYL W. WILLIAMS :

Plaintiff :

v. :

CASE NO. 2005-11094-AD

DEPARTMENT OF REHABILITATION AND CORRECTION :

ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant :

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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