

[Cite as *Freeman v. S. Ohio Corr. Facility*, 2007-Ohio-1758.]

# 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  
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DWIGHT FREEMAN

Plaintiff

v.

SOUTHERN OHIO CORR. FACILITY

Defendant

Case No. 2006-06949-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) On August 24, 2006, plaintiff, Dwight Freeman, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), was involved in a physical altercation with SOCF employee, Officer Mitchell. After the altercation, plaintiff was escorted to a segregation unit and Officer Mitchell was ordered to the SOCF infirmary for a medical examination.

{¶2} 2) Plaintiff alleges that later in the day on August 24, 2006, several articles of his personal property were stolen from his cell by unidentified inmates. Plaintiff further alleges that Officer Mitchell permitted the theft of property from his cell.

{¶3} 3) Plaintiff asserts that the following property was stolen: one pair of headphones, one fan, one set of trimmers, one blanket, four towels, two pairs of sweat pants, one remote control, five cassette tapes, one pair of gym shoes, thirteen boxes of cigars, and twenty packs of loose tobacco. Plaintiff filed this complaint seeking to recover \$278.05, the estimated value of the property allegedly stolen from his cell. Plaintiff contends that his property items were stolen as a proximate cause of Officer Mitchell’s alleged acts of facilitating and encouraging a theft. Payment of the filing fee was waived in this action.

{¶4} 4) Defendant denies any liability for any property loss. Defendant contends that plaintiff did not provide sufficient proof to support his allegation that SOCF employee Mitchell facilitated the theft of his property. Defendant explains that plaintiff assaulted Officer Mitchell who in turn used force to gain control of plaintiff. After this altercation both plaintiff and Mitchell left the cellblock unit, plaintiff was removed to a segregation unit, and Mitchell went to the SOCF infirmary for medical attention and for filling out paperwork. Defendant relates that when Mitchell returned to plaintiff’s cellblock unit he discovered that plaintiff’s property had already been packed and secured. Defendant states that all of plaintiff’s property was packed and subsequently returned to him. Defendant denies taking possession of any property items not listed on the August 24, 2006, property inventory compiled by SOCF staff at the time plaintiff’s property was packed.

{¶5} 5) Defendant submitted a statement from Officer Mitchell regarding his involvement in the events of August 24, 2006. In his statement Mitchell recorded that he was assaulted by plaintiff on August 24, 2006, at about 10:18 a.m. and force was used against plaintiff to restrain him. Mitchell noted, immediately after plaintiff was restrained, “I was relieved and sent to the infirmary to be checked by a nurse for the injuries to the right

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side of my head.” According to Mitchell, after receiving medical treatment he then filled out paperwork concerning the assault incident before returning to the SOCF L-4 cellblock unit (plaintiff was housed in L-4 cell #41). Mitchell stated plaintiff’s property had already been packed by the time he returned to L-4. Mitchell denied removing any property from cell #41 and denied permitting inmates to remove property from cell #41.

{¶6} 6) Defendant submitted a copy of plaintiff’s property inventory compiled at 4:00 p.m. on August 24, 2006. The inventory does not list headphones, sweat pants, trimmers, a fan, remote control, cigars, or tobacco. Two state-issue blankets and two state-issue towels are listed. Two personal towels are listed, but no personal blanket is listed. One pair of gym shoes and fifteen cassette tapes (the maximum limited amounts) are listed. All property listed on the inventory was apparently returned to plaintiff on September 22, 2006.

{¶7} 7) Plaintiff filed a response insisting that he was indeed assaulted by Officer Mitchell and that then Officer Mitchell facilitated the theft of property from his cell #41 in the SOCF L-4 unit. Plaintiff suggested that defendant’s assertion that his property was already packed when Mitchell returned from the SOCF infirmary is a total fabrication. Plaintiff also suggested the statement Mitchell wrote and the conduct report charging plaintiff with assault on August 24, 2006, are fabrications. Plaintiff pointed out that his property inventory recorded the time his property was packed at 4:00 p.m. The incident between plaintiff and Officer Mitchell occurred about 10:18 a.m. Plaintiff explained that employee shift changes at SOCF are observed at 2:00 p.m. and that his property was packed by an SOCF employee at 4:00 p.m. on the second shift. Therefore, plaintiff reasoned that Officer Mitchell had time and opportunity after the 10:18 altercation, for the visit to the infirmary, for the subsequent filing of paperwork, his return to the L-4 cellblock unit before the 2:00 p.m. shift change, which could have permitted inmates time to steal property from L-4 cell #41. Plaintiff did not offer additional evidence to support his supposition regarding Officer Mitchell’s alleged conduct other than to point out Mitchell’s account of the incident claims that when he returned to L-4, plaintiff’s property was already

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packed and that the property inventory lists pack-up time at 4:00 p.m, which was two hours after Mitchell's work shift supposedly ended.

{¶8} 8) Plaintiff reasserted that his property loss claim does not involve any property listed as packed on the August 24, 2006, inventory. However, plaintiff contended defendant lied when noting the packed property was returned to plaintiff's possession on September 22, 2006. Plaintiff recalled he was still in isolation on September 22, 2006, and was only permitted to retain certain specific property, not all his items.

#### CONCLUSIONS OF LAW

{¶9} 1) The mere fact if, actually proven that a theft 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-AD. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶10} 2) Defendant is not responsible for actions of other 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.

{¶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) 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.

{¶13} 5) 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 issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶14} 6) 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)

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with respect to inmate property, but that it does have the duty to make “reasonable attempts to protect, or recover” such property.

{¶15} 7) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness’s testimony. *State v. Antill* (1964), 176 Ohio St. 61. The court does not find plaintiff’s assertions particularly persuasive.

{¶16} 8) 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.

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SOUTHERN OHIO CORR. FACILITY

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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MILES C. DURFEY  
Clerk

Entry cc:

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RDK/laa  
2/1  
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