

[Cite as *Cooper v. Ohio State Highway Patrol*, 2005-Ohio-2035.]

IN THE COURT OF CLAIMS OF OHIO

GARY L. COOPER :
Plaintiff :
v. : CASE NO. 2004-10124-AD
OHIO STATE HIGHWAY PATROL : MEMORANDUM DECISION
Defendant :

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{¶1} On September 29, 2004, at approximately 1:30 p.m., plaintiff, Gary L. Cooper, drove his truck onto the parking lot of the Toledo Correctional Institution ("TOCI"). Plaintiff is employed at TOCI as a Corrections Officer. Plaintiff related, as he drove in the TOCI parking lot he noticed employees of defendant, Ohio State Highway Patrol ("OSHP"), checking vehicles in the lot. Plaintiff noted this vehicle check operation consisted of about 15 to 20 OSHP Troopers and 2 dogs. According to plaintiff, the dogs were used to sniff each vehicle in the lot, then stand on their hind legs, and climb upon the sides of the vehicles using their front paws. Plaintiff maintained one OSHP dog used to check his truck scratched the vehicle on both sides and along the outside of the truck bed. After the dog made this apparent alert to plaintiff's truck, plaintiff explained he was told by an OSHP Trooper to move his vehicle to another area of the TOCI parking lot and surrender his truck keys. Plaintiff stated he not only complied with these instructions, but also handed over a remote control device he uses to start and lock his truck. Plaintiff additionally stated, his truck was then thoroughly searched by OSHP Troopers. Subsequently, plaintiff's keys and remote control device

were returned. However, plaintiff asserted the returned remote was broken, with an exposed spring. Plaintiff claimed, because of this exposed spring the "remote doesn't work half the time."

{¶2} Plaintiff has alleged the body of his truck was damaged as a proximate cause of negligence on the part of OSHP personnel in handling the dogs alerting to vehicles in the TOCI parking lot. Furthermore, plaintiff has alleged his remote control device was damaged while under the custody of defendant's employee. Consequently, plaintiff filed this complaint seeking to recover \$846.85, the cost of repairing his truck, plus \$165.17, the replacement cost of a remote control device. The filing fee was paid. Photographs depicting plaintiff's property damage were submitted. Some photographs show scratches on what appears to be the blue body surface of plaintiff's truck. Other photographs of plaintiff's remote control depict an exposed metal spring protruding from the top of the device. The photographs were taken on October 31, 2004.

{¶3} Defendant denied any liability in this matter. Defendant acknowledged a canine ("K-9") under the control of OSHP personnel alerted to plaintiff's pick-up truck. However, defendant explained this particular dog alerts passively, meaning the dog does not scratch at vehicles upon alert. Additionally, defendant maintained OSHP employees Trooper Romero and Trooper Ashenfelter inspected plaintiff's truck and offered the opinion that the scratches on plaintiff's vehicle were not caused by a dog. Defendant noted, "[t]he scratches on the vehicle were parallel to the ground and inconsistent with anything resulting from our K-9." Defendant also denied any OSHP personnel damaged plaintiff's remote control. Defendant related OSHP Troopers involved with the September 29,

2004, incident were interviewed and all asserted, "there was never anything done to or with the Plaintiff's remote to his vehicle." Written statements from the parties involved were not provided.

{¶4} Plaintiff pointed out the marks on his truck body were not present before defendant's vehicle search of September 29, 2004. Plaintiff asserted his truck was checked by Trooper Romero after the OSHP dog alerted to the vehicle. Plaintiff maintained Trooper Romero when inspecting the truck stated there could be some marks that could possibly be made by a dog. Also, plaintiff recalled he discussed the condition of his remote control with Trooper Ashenfelter. Plaintiff related Trooper Ashenfelter denied breaking the remote. Plaintiff declared, "my remote was handed back to me in a condition other than the way it was handed to the officers." Plaintiff did not further elaborate on this declaration.¹

{¶5} On September 30, 2004, plaintiff filed an incident report with TOCI concerning his property damage. In this submitted report, plaintiff wrote, "I Officer G L Cooper was involved in a employee shakedown conducted by OSP in the TOCI parking lot. My GMC pick-up truck now has scratches on the driver side of the bed of the truck. My remote for my truck is now broken. When I handed it to the female officer so she could get in the bed of the truck the remote had a piece covering the spring and worked fine. When the remote was handed back to me the spring was exposed and now using it the remote doesn't show if the doors are locked or if the truck is running." [sic]

{¶6} Defendant may be held liable for property damages caused by a dog under the control of OSHP employees. *Spradlin v. Ohio*

¹ Plaintiff filed a response on February 7, 2005.

State Highway Patrol (2003), 2002-08971-AD, 2003-Ohio-118. Also, defendant may bear liability for property damage caused by the negligent acts of OSHP personnel. See *Moro v. Ohio State Highway Patrol* (2002), 2002-04429-AD, 2002-Ohio-4635.

{¶7} 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. This court, as trier of fact, determines questions of proximate causation. *Schinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, plaintiff failed to produce sufficient evidence to prove his property damage was proximately caused by the acts of defendant's employees or canine units under OSHP control.

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OHIO STATE HIGHWAY PATROL : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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