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IN THE COURT OF CLAIMS OF OHIO

Eugene Wrinn, Jr.,

Plaintiff,

v.

Ohio State Highway Patrol,

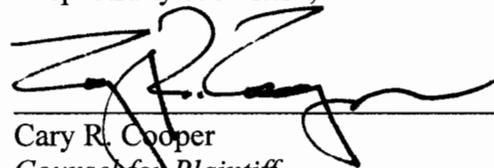
Defendant.

) Case No. 2006-05934
)
) Judge Alan C. Travis
)
) **MOTION FOR IMMUNITY HEARING**
)
) Cary Rodman Cooper (0013062)
) Sarah K. Skow (0081468)
) COOPER & WALINSKI, LPA
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)
) *Counsel for Plaintiff*

Plaintiff Eugene Wrinn, Jr. moves the Court under Court of Claims Local Rule 4.1 to determine, as required by R.C. 2743.02(F), whether Ohio State Highway Patrol officers Sergeant Daren Johnson, Trooper T. K. Manley, and Lieutenant K. J. Koverman, or any of them are entitled to personal immunity under R.C. 9.86 for their actions as alleged in the Complaint. The reasons and authorities supporting this Motion are set forth in the attached Memorandum.

Dated: April 15, 2010

Respectfully submitted,



Cary R. Cooper
Counsel for Plaintiff

ORIGINAL

MEMORANDUM IN SUPPORT

Wrinn requests a R.C. 2743.02(F) hearing to determine whether the OSHP's officers' actions were manifestly outside the scope of their employment or official responsibilities, or whether the officers acted with malicious purpose, in bad faith, or in a wanton or reckless manner towards Wrinn in the incident resulting in Wrinn's injuries. Wrinn requests that any immunity hearing be scheduled at the Court's earliest convenience because the Court's immunity determination directly implicates whether Wrinn's claims against the OSHP officers may be timely reinstated in his federal § 1983 action.

A. FACTUAL BACKGROUND.

On September 16, 2005, at approximately 2:00 a.m., Wrinn lost control of his pick-up truck as he merged from an on-ramp into the northbound lanes of Interstate 75 in Allen County, Ohio. Wrinn suffered injuries, including a head injury, and lost consciousness as a result of the crash.

OSHP Sergeant Johnson was the first officer on the accident scene. Sergeant Johnson instructed Wrinn to stay in the pick-up truck. But Wrinn was disoriented from the accident and unable to comprehend Johnson's instructions to stay in the truck. Sergeant Johnson never identified himself as a police officer and never told Wrinn that he was under arrest. Wrinn walked away from Johnson. And at some point, Wrinn sat down at the scene. Johnson confronted Wrinn and used excessive force against Wrinn, including tasing him and hitting him in the head with a metal flashlight.

OSHP Trooper Manley arrived at the scene within minutes of the dispatch. When Trooper Manley arrived, he immediately joined the altercation, and he too used excessive force against Wrinn. Trooper Manley never identified himself as a police officer and never told Wrinn that he was under arrest.

Wrinn never said anything to Sergeant Johnson or Trooper Manley, nor did he hit them or threaten them. Later, Lima Police and Allen County Sherriff's officers arrived at the accident scene and used excessive force against Wrinn. The OSHP officers not only acted in concert with the other law enforcement officers in using excessive force but they failed to prevent further violation of Wrinn's civil rights. OSHP Lieutenant Koverman failed to properly supervise the OSHP officers to prevent the incident and failed to properly investigate Wrinn's excessive force claims.

Before September 16, 2005, Lieutenant Koverman knew that Sergeant Johnson had personal problems and a history of provoking suspects, creating a hostile work environment, and using aggressive language and force with suspects; yet Lieutenant Koverman, Sergeant Johnson's immediate supervisor, failed to properly report, address, counsel, redress, train, and discipline Johnson regarding these issues that led to Johnson's use of excessive force on Wrinn.

As a result of the officers' use of excessive force, which included striking Wrinn several times in the head and body with metal flashlights, tasing him three or four times, shooting him in the face with pepper spray, delivering at least 12 knee strikes to his ribs, and standing on his head, Wrinn sustained severe injuries, some of which are permanent. Wrinn had at least 40 staples in his head caused solely by OSHP and police conduct, was placed in a medically-induced coma for nearly two days to control brain swelling, and spent five days in the hospital.

On September 11, 2006, Eugene Wrinn, Jr. sued officers of the Ohio State Highway Patrol in their individual capacities, individual Lima, Ohio police officers, and individual Allen County, Ohio sheriff's deputies, in the District Court for the Northern District of Ohio for false arrest, excessive force, and other civil-rights claims under 42 U.S.C. § 1983. On September 13, 2006, Wrinn sued the State of Ohio and the OSHP in the Ohio Court of Claims under the OCCA, Ohio Revised Code § 2743.02(A)(2), for state-law tort claims. Except for discovery, this case

has been stayed since Wrinn's federal complaint in September 2006 involving the individual OSHP officers.

On August 13, 2007, the District Court for the Northern District of Ohio granted the OSHP's Motion to Dismiss Wrinn's claims against the individually-named OSHP officers, holding that because Wrinn sued the State in the Court of Claims, the OCCA's waiver clause precluded Wrinn from pursuing the § 1983 claims against the OSHP officers in federal court. In its dismissal entry, the District Court noted that it would be bound to reinstate Wrinn's § 1983 claims against the individual officers if this Court were to find that the officers acted recklessly, in bad faith, or outside of the scope of their employment.¹ The United States Court of Appeals for the Sixth Circuit affirmed the District Court's dismissal of the claims against the OSHP officers. The United States Supreme Court denied Wrinn's petition for writ of certiorari on November 19, 2009. The District Court is anxious to proceed with the federal action; but it has further stayed the federal case pending the outcome of this Court's decision on whether the individual OSHP officers are entitled to immunity.

Wrinn was finally able to obtain the discovery deposition of witness Jennifer Mengerink on January 7, 2010 and OSHP Lieutenant K. J. Koverman on February 3, 2010. After taking Ms. Mengerink's and Lieutenant Koverman's depositions, it became clear that Wrinn has claims against the OSHP and the officers for reckless conduct in dealing with Wrinn and for the OSHP's negligent training, supervising, disciplining, and retaining of Sergeant Daren Johnson, all of which proximately and directly caused Wrinn's injuries and damages. Wrinn filed a Motion for Leave to Amend his Complaint to include claims based on the officers' reckless conduct towards him and the OSHP's negligent supervision, training, and retention of OSHP

¹ Memorandum Opinion, Aug. 13, 2007, at 7, citing R.C. 2743.02(A) and *Turker v. Ohio Dep't of Rehabilitation and Corrections* (6th Cir. 1998), 157 F.3d 453, 458. Attached as Exhibit 1.

Sergeant Johnson, and on March 24, 2010, the Court granted Wrinn leave to file his First Amended Complaint.

B. ARGUMENT.

Under R.C. 2743.02(F), the Court of Claims has exclusive, original jurisdiction to determine whether an officer or employee is entitled to immunity. Where an officer's conduct is reckless but is within the course and scope of his employment, the officer is not entitled to immunity (he can be sued individually) and the plaintiff's case can also proceed against the state agency.² Wrinn argues that OSHP officers, Sergeant Johnson, Trooper Manley, and Lieutenant Koverman are not entitled to immunity because they acted recklessly, in bad faith, and/or outside the scope of their employment in their actions that led to Wrinn's injuries from the September 15, 2005 incident.

The evidence will show, at the very least, that the OSHP officers were reckless in their conduct with and towards Wrinn. Moreover, if Sergeant Johnson, Trooper Manley, and/or Lieutenant Koverman were reckless, they were in the scope and course of their employment as officers of the OSHP. Accordingly, because of their reckless conduct Sergeant Johnson, Trooper Manley, and Lieutenant Koverman are not entitled to immunity under R.C. 2743.02(A) and R.C. 9.86; any waiver of Wrinn's § 1983 claims against Sergeant Johnson, Trooper Manley, and Lieutenant Koverman is void;³ and Wrinn's claims against the OSHP may proceed in this action.

² See e.g., *Elliott v. Ohio Dep't of Rehab. & Correction* (Ohio App. 10 Dist. 1994), 92 Ohio App.3d 772, 775-776 (holding that the officer was not entitled to immunity due to his reckless conduct and that the ODRC could be held liable for the officer's actions under the doctrine of *respondeat superior*).

³ *Id.* at 776 (noting that because the officer's actions were reckless, the waiver found in R.C. 2743.02(A)(1) was void and the officer could be sued individually for his actions).

Dated: April 15, 2010

Respectfully submitted,

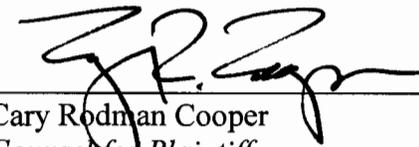


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 15th day of April, 2010 by ordinary U.S. mail, postage prepaid, upon: **James P. Dinsmore**, Assistant Attorney General, Court of Claims Defense Section, 150 East Gay St., 18th Floor, Columbus, Ohio 43215-3130; **Anthony Geiger**, Law Director, CITY OF LIMA, 209 N. Main St., 6th Floor, Lima, Ohio 45901; upon **Todd M. Raskin** and **Carl E. Cormany**, MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A., 100 Franklin's Row, 34305 Solon Road, Cleveland, Ohio 44139; upon **Michael S. Loughry**, MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A., 250 Civic Center Drive, Suite 400, Columbus, Ohio 43215; and upon **Jane M. Lynch** and **Jared A. Wagner**, GREEN & GREEN, LAWYERS, 800 Performance Place, 109 North Main Street, Dayton, Ohio 45402-1290.



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April 15, 2010

Miles C. Durfey, Clerk
COURT OF CLAIMS OF OHIO
The Ohio Judicial Center
65 S. Front Street, 3rd Floor
Columbus, Ohio 43215

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RE: *Eugene Wrinn, Jr. v. Ohio State Highway Patrol*
Court of Claims of Ohio Case No. 2006-05934

Dear Mr. Durfey:

I enclose an original and two copies of Plaintiff's Motion for Immunity Hearing. Please file the Motion with the Court and return at least one, file-stamped copy to our office in the enclosed, self-addressed, stamped envelope. Thank your for your assistance in this matter.

Sincerely,


Cary Rodman Cooper

✓ JS
04/16/10

CRC/lmk
Enclosures

cc: James P. Dinsmore, Esq. w/encl.
Anthony L. Geiger, Esq. w/encl.
Carl E. Cormany, Esq. w/encl.
Todd M. Raskin, Esq. w/encl.
Michael S. Loughry, Esq. w/encl.
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Eugene M. Wrinn, Sr. w/encl.