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COURT OF CLAIMS
OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

ORIGINAL

Eugene Wrinn, Jr.,

Plaintiff,

v.

Ohio State Highway Patrol,

Defendant.

) Case No. 2006-05934
)
) Judge Alan C. Travis
)
) **PLAINTIFF EUGENE WRINN, JR.'S**
) **IMMUNITY HEARING STATEMENT,**
) **WITNESS, AND EXHIBIT LIST**
)
) Cary R. Cooper (0013062)
) Jacqueline M. Boney (0013050)
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At Plaintiff Eugene Wrinn, Jr.'s ("Wrinn") request, the Court scheduled a hearing to commence on December 15, 2010 to determine the immunity of three present or past employees of the Ohio State Highway Patrol: Sergeant Darren L. Johnson, Trooper Thomas K. Manley, and Lt. Kenneth J. Koverman (retired) (collectively sometimes referred to as the "OSHP Officers"). Wrinn anticipates that the hearing will take two or three days.

Under R.C. 2743.02(F), the immunity hearing determines 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

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manner. In this instance, Wrinn asserts that the OSHP Officers were acting within the scope of their employment, but acted in a wanton or reckless manner towards Wrinn.

Under established Ohio law, reckless conduct is that which is done with knowledge or reason to know of facts that would lead a reasonable law-enforcement officer to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than necessary to make the conduct merely careless or negligent; or conduct that creates an unreasonable risk of physical harm to another.¹ Wanton or wantonly means: the failure to use any care whatsoever.²

I. Facts

In the early morning hours of September 16, 2005, after working an evening shift, Wrinn was driving his Toyota Tacoma pick-up truck accompanied by two friends. After purchasing food and candy at Wal-Mart, Wrinn drove up the entrance ramp to enter the northbound lanes of I-75 in Allen County. Wrinn lost control of his vehicle on the wet pavement; the vehicle spun and stalled facing south; and was hit by a semi-trailer. Wrinn became unconscious for a period of time, with his head initially coming to rest on the leg of the front-seat passenger.

OSHP Sergeant Johnson was the first officer on the accident scene and, therefore, was the officer in charge of the scene throughout the incident. Sergeant Johnson observed Wrinn slumped in the passenger seat, and concluded that he was dead. Wrinn became conscious and moved to exit the vehicle on the passenger side where Johnson was standing. Johnson, who was not displaying a badge, and who did not inform Wrinn that he was a law enforcement officer, instructed Wrinn to stay in his vehicle. But Wrinn exited the vehicle, pushing past Johnson and beginning to walk north.

¹ *Alley v. Bettencourt* (4th Dist. 1999), 134 Ohio App. 3d 303, 314-315.

² *Id.* at 315.

Wrinn, who was described by a volunteer firefighter at the scene as appearing to be “out of it”, moved away from Johnson and did not follow Johnson’s instruction to get back into the vehicle. Johnson did not inform Wrinn that he was under arrest; nor did Johnson intend to arrest Wrinn. When Johnson attempted to grab Wrinn, Wrinn is reported to have put his hands on Johnson. Johnson admits that, in attempting to break loose from Wrinn, he swung his flashlight in an attempt to strike Wrinn in the vicinity of Wrinn’s shoulder at least three times, and admits that he “possibly” hit Wrinn in the head with his OSHP-issued flashlight at that time. When Wrinn then walked away, Johnson admits to trying to take Wrinn to the ground.

Wrinn is seen on video getting up from one knee, then walking back past his disabled truck and resting against the adjacent semi (perhaps at least 30 feet from Johnson), and being attended to by one of Wrinn’s friends. Video shows Johnson then coming at Wrinn with his taser out, prompting Wrinn to walk further away. Johnson decided to use a stun drive on Wrinn instead of trying to incapacitate him with the probes of the taser. The stun apparently had no effect since it was not in contact with Wrinn, and Wrinn is seen on video walking around Johnson’s patrol cruiser, and then walking north along the side of the semi and farther away from Johnson.

Sergeant Johnson then stopped at his cruiser and put out an “88” call, which is a rarely used signal that means an officer is in distress.

A volunteer firefighter on the scene reported that, while Johnson was at his cruiser, Wrinn walked up to the front of the semi and sat down on the pavement.

Video then shows Sergeant Johnson running north on I-75N. Video also shows that OSHP Trooper Manley arrived at the scene within minutes of Johnson’s signal “88”, and ran forward. Nothing further of the encounter with Wrinn is recorded on Johnson’s dash camera.

Trooper Manley believed an officer was in distress due to the “88” call by Johnson.

Trooper Manley encountered Johnson on Wrinn, and immediately jumped on Wrinn also. Manley never identified himself as a police officer or told Wrinn that he was under arrest, but admits that he struck Wrinn several times in the thigh area with his flashlight because Wrinn would not be still to be handcuffed.

The next available video is recorded from a camera on a vehicle of the Lima Police Department, which responded to Sergeant Johnson's "Signal 88" call. When video resumes, an officer is observed administering "knee strikes" to Wrinn's body; and stepping on Wrinn's face. Wrinn is heard screaming.

It is undisputed that Allen County Sherriff's deputies arrived at the accident scene and immediately joined OSHP Sergeant Johnson and Trooper Manley, who were then being assisted by a volunteer firefighter and at least one medic. The Allen County Sherriff's officers were not told that Wrinn had been in a car accident. An Allen County deputy sprayed Wrinn in the face with mace in the presence of Johnson and Manley.

When two Lima Police Department officers arrived on the scene in response to Sergeant Johnson's "Signal 88" call, they also joined in without being told anything about Wrinn's behavior, or that he had been unconscious from a car crash. The Lima police officers admit that, in the presence of Sergeant Johnson and Trooper Manley, they: sprayed Wrinn in the face with "mace"; administered two separate "stun drives" to Wrinn's neck of 5 to 7 seconds each; used different "muscling" techniques to subdue Wrinn while he was on the ground; administered approximately 12 knee strikes to Wrinn's body; intentionally stepped on Wrinn's head twice; and addressed Wrinn with various obscenities.

Sergeant Johnson and Trooper Manley admit that Wrinn never made any verbal threats to anyone; never hit anyone; never again attempted to grab an officer; and never threatened anyone. Sergeant Johnson did not consider whether Wrinn's failure to follow the officers' commands was

due to a head injury sustained in the crash.

Neither Johnson nor Manley ever instructed either the Allen County deputies or Lima police officers to stop, or otherwise attempted to protect Wrinn from them.

All officers at the scene assert that their conduct toward Wrinn was intended to control him so they could assess any injuries he sustained in the crash. They assert their conduct to Wrinn was necessary because Wrinn was “flailing” and “thrashing” about and would not hold still to be restrained.

When Wrinn was restrained with handcuffs and a tow strap on a spine board, Sergeant Johnson requested that a medic give Wrinn something to “knock him out”. He was then sedated, and transported by ambulance to Lima Memorial Hospital, where he was hospitalized for five days. At the conclusion of his encounters with Sergeant Johnson, Trooper Manley, and others, witnesses reported that Wrinn’s blood was everywhere. Hospital records show that Wrinn had two lacerations to his mouth that required plastic surgery, and six to eight lacerations of 2.5 centimeters each on the back of his head which required 40 staples to close. Wrinn had multiple other contusions and abrasions on his body.

This and other evidence presented at the immunity hearing will compel a finding that OSHP Officers Johnson and Manley used unnecessary, unreasonable and excessive force under the circumstances, and thereby created an unnecessary risk of physical harm to Wrinn and recklessly failed to protect Wrinn from injury by others.

The evidence will also show that OSHP Lieutenant Koverman, Johnson’s post commander and direct supervisor, recklessly failed to properly supervise or discipline Sergeant Johnson. The evidence will show that Lieutenant Koverman knew or should have known that Johnson had a propensity for aggressive behavior. Among other warning signs, within weeks prior to the Wrinn incident, Lieutenant Koverman received an anonymous citizen’s complaint

that Koverman regarded as serious enough to merit forwarding to his superiors. Yet Koverman took no other immediate action to evaluate Sergeant Johnson's fitness for duty or to otherwise protect citizens from Johnson. Koverman's failure to supervise and discipline Sergeant Johnson recklessly contributed to Wrinn's injuries, suffered at the hands of Sergeant Johnson, and at a scene that Johnson was responsible to control.

In summary, the evidence presented at the immunity hearing will show that OSHP Sergeant Daren Johnson, Trooper Gerald Manley, and Lieutenant Kenneth Koverman are not entitled to immunity under Ohio law because they each engaged in reckless and/or wanton behavior that resulted in injury to Wrinn.

II. Witnesses.

Wrinn presently intends to present the following witnesses:

- Ohio State Highway Patrol Sgt. Daren Johnson;
- Ohio State Highway Patrol Trp. Gerald Manley;
- Ohio State Highway Patrol Lt. Kenneth Koverman;
- Ohio State Highway Patrol Lt. C. L. Kocab (f/k/a Brewster);
- Rule 30(B) witness Stephen Rine (by deposition pursuant to Civ. R. 32(A)(2));
- Rule 30(B) witness Capt. Kevin Teaford (by deposition pursuant to Civ. R. 32(A)(2));
- Allen County Deputy Robert Tomasi;
- Allen County Lt. Thomas Meyers (retired);
- Lima Police Department Officer Curt Hile;
- Lima Police Department Officer John H. Dunham, Jr.;
- Steven Ramsey;
- Travis Fanning;
- Brian Meader (via deposition);
- plaintiff, Eugene Wrinn, Jr.;
- Eugene Wrinn, Sr.; and
- Donald J. Van Meter, PhD. (Expert).

III. Expert.

Wrinn will call Donald J. Van Meter, PhD. to provide his expert opinion on whether Sgt. Daren Johnson, Trp. Gerald Manley, and Lt. Kenneth Koverman were reckless or wanton in their conduct toward Wrinn. A copy of Dr. Van Meter's report and his current Curriculum Vitae are

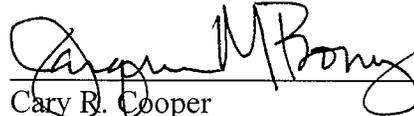
attached hereto.

IV. Exhibits.

Plaintiff's preliminary Exhibit List is attached. Plaintiff reserves the right to supplement the Witness and Exhibit List.

Dated: December 8, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served electronically and by overnight mail 8th day of December, 2010 upon: **James P. Dinsmore**, Assistant Attorney General, Court of Claims Defense Section, 150 East Gay St., 18th Floor, Columbus, Ohio 43215-3130.



Cary Rodman Cooper
Counsel for Plaintiff

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PRELIMINARY EXHIBIT LIST**

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At the immunity hearing, Plaintiff Eugene Wrinn, Jr. may introduce the following as exhibits:

1	Video – Ohio State Highway Patrol labeled “Case #05-010134-0102, Sgt. Johnson – Dash Cam 9/16/2005”
2	Video –Lima Police Department Cars 38 & 41 September 16, 2005
3	Video – Ohio State Highway Patrol Unit SP 439, 9/16/2005

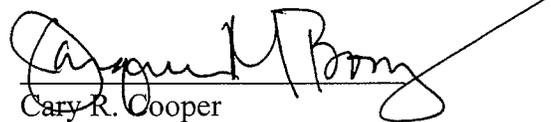
4	Composite Exhibit – Photographs of the vehicles involved in the crash, and crash scene
5	Composite Exhibit – Photographs of Eugene Wrinn, Jr. at Lima Memorial Hospital
6	Photograph of Eugene Wrinn, Jr.'s head
7	Mag Flashlight
8	ASP Baton
9	Lima Memorial Hospital Records regarding Eugene Wrinn, Jr. for admission from 9/16/2005 – 9/21/2005
10	Lima Police Department Report of Wrinn Incident
11	Lima Police Department Internal Investigation of Citizen Complaint regarding Wrinn Incident
12	Ohio State Highway Patrol Report of Wrinn Crash
13	Ohio Department of Public Safety Policy No. DPS-505.05 Workplace Violence Prevention
14	Ohio State Highway Patrol Policy Number OSP-203.20 Response to Resistance
15	Ohio State Highway Patrol Policy No. 203.03 Powers/Duties/Authority/Code of Ethics/Oath/Rules & Regulations
16	Ohio State Highway Patrol – Policy No. 103.19 Administrative Investigations
17	Ohio State Highway Patrol - Policy No. 203.20-03 Response to Resistance – Foot Pursuits
18	Ohio State Highway Patrol – Policy No. 203.20-02 Response to Resistance – Less-Lethal Weapons

19	Ohio State Highway Patrol Records Pertaining to Darren L. Johnson AI 2004-4127
20	Ohio State Highway Patrol Records Pertaining to Darren L. Johnson AI 2004-4669
21	Ohio State Highway Patrol Records Pertaining to Darren L. Johnson AI 2004-4145
22	Ohio State Highway Patrol Inter-Office communication regarding Darren L. Johnson, June 9, 2005
23	Anonymous letter from "The Concerned Citizen", August 2005
24	Ohio State Highway Patrol records pertaining to Darren L. Johnson AI 2005-6245
25	CV of Dr. D.J. Van Meter, Ph.D.
26	Opinion of Dr. D.J. Van Meter, Ph.D.

The plaintiff reserves the right to supplement the above witness and exhibit list as the hearing approaches and will notify defendants of any additions.

Dated: December 8, 2010

Respectfully submitted,



Cary R. Cooper
 Jacqueline M. Boney
 Sarah K. Skow

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 21st day of December, 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.



Cary Rodman Cooper
Jacqueline M. Boney
Sarah K. Skow

Counsel for Plaintiff

Opinion of Donald J. Van Meter, Ph.D.

Van Meter and Associates, Inc.

In the case of
Wrinn v The Ohio State Highway Patrol, et al.

Case No. 2006-05934

Qualifications

I served as a sworn officer on the Ohio State Highway Patrol for 15 years. During that time, I was a Trooper, Assistant Post Commander, and a Lieutenant stationed at the Patrol's Training Academy in Columbus, Ohio. During my career as a sworn officer I was involved in numerous high speed pursuits, investigated dozens of fatal and injurious motor vehicle accidents annually, and physically encountered and arrested violent resisters and armed felons.

As a Lieutenant at the Patrol's Training Academy in Columbus, I was the physical fitness training officer, I had responsibility for the recruit driving and in-service driving and response driving programs, taught motor vehicle laws, accident investigation courses and officer-suspect encounters.

In 1983, I formed Donald J. Van Meter and Associates, Incorporated. For more than 10-12 years thereafter, I actively taught hands-on street officer survival tactics to literally hundreds of police officers - nationwide.

Currently, I have continued to study police use of force issues and cases, teach company courses on management's rights, employee discipline and termination, Internal Affairs Investigations, employee performance improvement programs and employee performance evaluations. Additionally, I research and write standard operations policies and procedures manuals for police agencies.

My years serve as a sworn officer, coupled with my professional law enforcement training, my undergraduate and graduate studies, and understanding of proper police policies and protocol as they relate directly to the facts of this case are the basis for opinions offered in the case.

A summary of my expertise and experiences is attached.

Documents Reviewed

In preparation for this report I have reviewed, among other things, the following:

1. Lieutenant K. Koverman (Ohio State Highway Patrol) Report of Investigation related to this incident;
2. Statements and/or depositions of:
 - a. Sergeant Daren Johnson and Trooper G.K. Manley of the Ohio State Highway Patrol;
 - b. Daniel Blizzard (driver of the semi-tractor trailer involved);
 - c. EMS personnel on the scene: Troy Gronas, Steve Ramsey, Jeb Sheidler and Bruce Music;
 - d. Brian Meader and Travis Fanning, passengers in the Wrinn vehicle;

- e. Joseph Dailey, witness;
 - f. Lieutenants C.L. Kocab and Rine of the Ohio State Highway Patrol;
 - g. Lieutenant Thomas Myers and Deputy Robert Tomasi (Allen County Sheriff's Office);
 - h. Sergeant Mary Cosgrove, Ohio State Highway Patrol
 - i. Captain Mark Teaford, Ohio State Highway Patrol
 - j. Lieutenant Steven Rine, Ohio State Highway Patrol; and
 - k. Jennifer Mengerink, girlfriend of Sergeant Daren Johnson
3. Lima City Police Department internal investigation report;
 4. Allen County Sheriff's Office incident report;
 5. Numerous CDs and videos containing photos of vehicular damage, Eugene Wrinn Jr.'s injuries;
 6. Sergeant Johnson's and Trooper Manley's Division training and discipline history;
 7. Ohio State Highway Patrol policies and procedures, including Use of Force and Response to Resistance.

Opinion

I have been asked to provide opinions concerning:

1. whether Sergeant Daren Johnson had the necessary probable cause to lawfully arrest Mr. Wrinn;
2. whether Sergeant Daren Johnson used necessary and reasonable force in the seizure of Mr. Wrinn;
3. whether Trooper Manley used necessary and reasonable force in the seizure of Mr. Wrinn;
4. whether Sergeant Daren Johnson acted recklessly or wantonly in his actions regarding the rights and safety of Mr. Eugene Wrinn;
5. whether Trooper Manley acted recklessly or wantonly in his actions regarding the rights and safety of Mr. Eugene Wrinn;
6. whether Lieutenant Koverman was reckless and wanton regarding his supervision of Sergeant Daren Johnson.

As used in this opinion, reckless or recklessly means: conduct that is done with knowledge or reason to know of facts that would lead a reasonable law-enforcement officer to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than necessary to make the conduct merely careless or negligent; or conduct that creates an unreasonable risk of physical harm to another.

And as used in this opinion, wanton or wantonly means: the failure to use any care whatsoever.

It is understood that additional documents may be submitted for my review at a later date and time. Should such documents (e.g., depositions, background information on the

defendants involved, operational policies from the police agencies involved, and the like) be submitted, I reserve the right to amend, supplement this report and it's subsequent opinion, if indicated.

Based on documents reviewed (listed above), I am of the following opinions:

1. At the time Sergeant Johnson first laid hands on and seized Mr. Wrinn, Sergeant Johnson had no probable cause to believe that Mr. Wrinn had committed any crime. It is well established, and reasonable officers know that any force used on Mr. Wrinn to take him into custody would be excessive and therefore unnecessary.
2. If Trooper Manley's testimony is complete, accurate and true, I am of the opinion that Trooper Manley did not act unreasonably or use force that was excessive under the circumstances known to him at the time of his encounter with Mr. Wrinn. Consequently, I am not of the opinion that Trooper Manley acted in a wanton or reckless manner regarding Mr. Wrinn.
3. I am of the opinion that Sergeant Johnson committed multiple acts contrary to the OSHP's Response to Resistance Policy (Policy Number OSP-203-20); his acts were reckless and wanton, endangering Wrinn, and his acts set into motion a series of events that ultimately resulted in severe injuries to Mr. Wrinn.
4. I am of the opinion that Lieutenant Koverman (Sergeant Johnson's post commander and direct supervisor) had knowledge of Sergeant Johnson's propensity for aggressive conduct - prior to Sergeant Johnson's encounter with Mr. Wrinn; and with that, Koverman recklessly and wantonly failed to properly supervise Johnson.

Summary of Events

On September 16, 2005 at approximately 01:40-1:45 a.m. Mr. Wrinn drove onto Interstate 75 from the exit ramp at State Route 309. Wrinn had two passengers in the vehicle. Rain was reported as heavy. Wrinn's vehicle spun out of control and was struck by an approaching semi-tractor trailer. After vehicles came to rest, Wrinn's two passengers exited leaving Wrinn slumped over and motionless in the front seat of his pickup truck.

At approximately 01:54 a.m. Ohio Highway Patrol Sergeant Daren Johnson arrived on the scene, parked his cruiser in the left-hand lane of the roadway, just south of the accident site, exited his cruiser and proceeded on foot to the crash site. Johnson made no effort to secure and protect the scene and bystanders.

Johnson reports that as he approached the vehicles a person, whom he had interpreted to have been a passenger in one of the vehicles, approached him and told him he was okay, but was worried about the condition of a friend still in the pickup truck (i.e., Mr. Eugene Wrinn, Jr.).

As Sergeant Johnson approached the Wrinn vehicle, Johnson reported that he saw an individual slumped across the seat who appeared lifeless and thought that he was dead. As Johnson approached closer Wrinn arose and exited his vehicle.

Johnson reported that he instructed Wrinn several times that he needed to stay in his vehicle so he could assess his injuries. Johnson reported that Wrinn pushed him away and walked in a northerly direction.

Johnson reported that he followed Wrinn and grabbed him by the arm, but lost his grip as Wrinn violently swung loose. Wrinn then continued to walk away, this time back towards the south.

As Wrinn walked away, Sergeant Johnson reported that he continued to direct Wrinn to calm down and have a seat in the car. Johnson described Wrinn as appearing to get "angry and physiqued up." Johnson reported that Wrinn stopped walking, turned around and grabbed him.

Johnson reported that he warned Wrinn twice that if he did not let go of him, he (Johnson) was going to hit him. When Wrinn did not let go, Johnson reported that he struck Wrinn, with a downward swing, in the neck and shoulder areas with his flashlight (i.e., a patrol-issued metal flashlight). Johnson says that after the third strike, Wrinn let loose, but again grabbed Johnson around the waist area and pinned him (Johnson) up against a concrete barrier dividing the north and southbound roadways of Interstate Highway 75. A bystander (i.e., identified as Joseph Daily) is reported to have helped Johnson by pulling Wrinn away. Johnson reported that Wrinn again started to walk away from him to the south (Lieutenant K. Koverman's Report of Investigation, page 1).

Sergeant Johnson reported that he again started to follow Wrinn. Johnson reported that he removed the cartridge from his Taser weapon and stunned Wrinn on the back of his leg. Wrinn is reported to have fallen to the ground momentarily, but was able to get back up and started to walk away again.

Johnson reported that at this point he went to his cruiser and radioed dispatch for help (a signal 88 -"Officer-in-Distress). However, without waiting for help to arrive, Sergeant Johnson reported that he again went after Wrinn. This time Johnson says he grounded Wrinn by kicking him in the back of his legs. Wrinn fell to the ground and Johnson reported that he began to strike Wrinn repeatedly with his hands and knees while giving verbal commands to stop resisting.

It should also be noted that Steve Ramsey, a Bath Township Volunteer Firefighter present at the scene, testified that after Wrinn walked south and was followed by Sergeant Johnson, Wrinn returned northward to the front of the semi-truck and sat down in the road; and that he was sitting there for 20-30 seconds. (Ramsey Deposition at pp. 48, 54-55). And that Sergeant Johnson again followed Wrinn to where Wrinn was sitting and attempted to handcuff him.

Trooper G. K. Manley of the Ohio State Highway Patrol arrived on the scene and rushed to Sergeant Johnson's aid, who at that time was engaged with Wrinn in front of the semi that was involved in the crash. (Manley Depo. at 54-57). While Johnson and Manley were struggling to pin Wrinn on the ground, two officers from the Lima Police Department, and deputies from the Allen County Sheriff's Office arrived on the scene and joined in the fray.

Collectively, after Manley and other officers arrived on the scene to in response to Sergeant Johnson's "Officer-in-Distress" call (i.e. Signal 88), Mr. Wrinn was sprayed with chemical mace, stunned with the Taser, struck with blunt instruments, kneed more than a dozen times, had his head and neck stood on twice, and was called a "Motherfucker" and "a Fucking Idiot." Ultimately, Mr. Wrinn was bound with multiple sets of handcuffs and a towing strap.

Mr. Wrinn was then strapped to a stretcher and Sergeant Johnson reported he asked a medic on the scene to give Wrinn something that would knock him out, because he (Johnson) believed Wrinn was still resisting. Wrinn was injected a sedative and transported to Lima Memorial Hospital where he was treated for severe head injuries. Injuries to the officers involved were minor (e.g., small cut from a handcuff, and a jammed finger to another).

Discussion

I present my discussion as it relates to the facts and circumstances of this case in three sections.

- I. Officers first duties and priorities at an accident scene
- II. Use of Force
- III. Responsible Management and Supervision of Personnel

I. First Duties and Responsibilities at Accident Scenes

An officer has three major responsibilities when responding to a traffic accident. The priorities are:

1. Arrive safely on the scene;
2. Secure and protect the scene, as much as practicable; and
3. Attend to the injured.

Sergeant Johnson did nothing to immediately secure the scene and protect those who were present. Under the circumstances, Johnson's failure to protect the accident scene from the possibility of getting worse by moving traffic and causing further damage and injury to parties involved was reckless and wanton. In deposition, Captain Kevin Teaford

(pages 42-44) of the Ohio State Highway Patrol, identifies securing the scene as the "very first" responsibility of an arriving officer.

In deposition (pages 59-60), Johnson estimated that traffic was passing around the wreckage at approximately 20-25 mph. Deputy Tomasi, Allen County Sheriff's Office expressed concerns for his safety and the safety of other officers as well.

"Because in the back of my head, I'm like, if traffic comes around, these semis, we're all 12 rolling around in the middle of Interstate 75, I'm like, I don't want to be hit by a car." (Deputy Tomasi's deposition, page 55)

In his reports and deposition, Johnson stated that he was concerned about Mr. Wrinn's safety because of the traffic flow at the scene; yet, he admits that he had flares in his cruiser but did not put them out, neither on arrival nor later (deposition, pages 59-60).

Sergeant Johnson could have and should have made a greater effort to secure the scene. He should have immediately notified his dispatch that he was going to need help with traffic and used flares to create a temporary blocking of the roadway - before walking up to the scene of this accident. The very least he could have done was asked others on the scene for help in doing so.

Johnson's omissions in this primary area of responsibility is plainly contrary to the Ohio State Patrol stated mission.

Ohio State Highway Patrol's stated mission:

"An internationally accredited agency whose mission is to protect life and property, promote traffic safety and provide professional public safety services with respect, compassion, and unbiased professionalism."

Johnson demonstrated recklessness and wanton indifference in the third area of his primary responsibilities as well - helping and protecting the injured. Johnson was so insistent, to the point of being fixated, that Mr. Wrinn remain in his wrecked vehicle. An officer concerned about the safety of persons on the scene would not want them to remain in their vehicles if heavy damage existed, traffic was flowing around the wreckage, and the scene had not been secured. Fluids, gas on the roadway, electrical sparks, sharp and protruding vehicle parts inside and outside the interior and exterior of vehicle are very real safety hazards. The possibility of a fire or an explosion is ever present to all on the roadway and those driving by.

Moving people off the driving portion of the roadway, as much as practicable, would have been the responsible thing to do. Johnson made no attempts to do any of this, nor did he even try to persuade Mr. Wrinn to do so, or ask Mr. Wrinn's passengers, or others on the scene, to help him do so.

II. Use of Force

This entire event was set into motion because Sergeant Johnson decided at his very first contact with Wrinn, that Wrinn willfully challenged him, resisted, and continued to willfully resist, Johnson's request that he remain seated in his (Wrinn's) damaged vehicle. Yet, nothing in documents reviewed indicated that Sergeant Johnson gave even a scintilla of thought or consideration that Wrinn might have been seriously injured and was not capable of comprehending his requests; despite the fact that Johnson, just seconds before, thought that Mr. Wrinn was dead.

A. Johnson had been told by a passenger in Wrinn's vehicle that he had concerns for Mr. Wrinn injuries.

Excerpt 1: From Sergeant D. L. Johnson report, September 17, 2005

On Friday, September 16, 2005 at approx. 0154 hours, I arrived at the scene of an injury crash on IS-75 near the SR309 interchange. Upon My arrival I pulled into the left lane just south of the crash scene. I exited my patrol and was immediately met by one of the occupants of the vehicle. As I approached the scene on foot I was able to see a semi tractor trailer stopped partially in both the right/left lanes. I saw what appeared to be green vehicle stopped in the left lane facing south near the center containment wall. While standing just outside the green vehicle, I began to speak to a male who obviously was in the vehicle as his face and head displayed obvious signs of injury. This male advised me he was ok but he was worried about this buddy the driver. At this point he pointed to the green vehicle where I saw another male (suspect) sitting motionless and slumped over in the driver seat of the car. I asked the male was he ok again, and I looked over his physical appearance. As I started walk over to the vehicle to check the condition of the suspect, he had opened the car door and exited the car.

B. Upon first seeing Mr. Wrinn, Johnson testified in deposition that he thought Wrinn was dead.

Q. Okay. And when you looked into the pickup, what did you see?

A. (Johnson) I saw a lifeless male in the pickup.

Q. When you say "lifeless," what do you mean? Can you describe that for me?

A. I thought the individual I saw in the pickup truck was dead.

Deposition of Sergeant Johnson (page 53)

C. A witness (Joseph Daily) close enough to hear Sergeant Johnson and Mr. Wrinn at their first encounter recognized that Mr. Wrinn was "out of it." (Koverman Investigative Report, related his interview with Mr. Joseph Daily, witness, September 16, 2005. Pages 2 and 3).

It is reckless and wanton for an officer with Johnson's years of service, rank and experience not to consider the possibility that Mr. Wrinn was seriously injured and unable to comprehend his situation. Only Johnson's insensitive, reckless and wantonly

indifferent behavior for the consequences of his omissions and actions can explain his lack of concern for Mr. Wrinn.

Sergeant Johnson never gave a lawful order to Wrinn to remain in his vehicle, nor did he have probable cause to arrest Mr. Wrinn, nor did he indicate that he had the intention of arresting Mr. Wrinn.

Excerpt 3: Excerpt from Sergeant Johnson's Report, September 17, 2005.

I instructed the suspect I needed him to remain in the vehicle several times as I wanted to make an observation of his injuries and the seriousness of them. He pushed me and started to walk in a northerly direction away from the scene. I grabbed the suspect to prevent him from walking on the interstate as the scene had not been secured yet. The suspect started to swing his arms violently causing me to loose my grip on him. At this point the suspect started to walk back south towards the scene. I could see he was getting angered and physiqued up. This was readily apparent by the way his body tensed as he walked away. I attempted to grab the suspect again. I directed the suspect several times to calm down, have a seat in the car as wanted to assess his injuries. At this point the suspect stopped turned back towards me and grabbed me. I ordered him to let go of me twice and his friends yelled out to him to stop and have a seat in the car. I told the suspect to let me go or I was going to hit him. At this point I struck the suspect several times in the neck and shoulder area with my flashlight in order to get free from his grip. After the third strike the suspect let go and grabbed me around the waist area and pinned me up against the center concrete barrier wall. / /

Johnson stated in his report that he: "instructed the suspect I needed him to remain in his vehicle as I wanted to make an observation of his injuries and the seriousness of them."

Reasonable officers know, or should know from experience and training, to specifically give a clear and unequivocal order and tell a person that he or she must comply with an order or he or she will be arrested. Reasonable officers understand they have the responsibility to ensure that they issue an order, not a request, if they intend to restrain or arrest a person for disobeying a lawful order. Sergeant Johnson failed to properly state an order.

Johnson described Wrinn as pushing him after exiting his (Wrinn's) vehicle. Johnson does not report nor state that Wrinn was argumentative, tried to run away from the scene or committed any other evasive acts, or that Wrinn tried to attack or threaten Sergeant Johnson after Wrinn exited the vehicle. Mr. Wrinn committed none of the typical aggressive or evasive responses that would be expected of someone who would knowingly push a police officer under these circumstances.

Sergeant Johnson reports that when he grabbed Mr. Wrinn's arm after Wrinn walked away, Mr. Wrinn "violently" swung his arm causing Johnson to lose his grip on him and then Wrinn continued to walk away from him.

Sergeant Johnson did not report that he ordered Wrinn to halt or be arrested, or when he lost his grip on Wrinn's arm that Wrinn tried to swing at him, come at him, or commit any

other acts that could reasonably be construed to be acts of intended aggression or violence toward Sergeant Johnson.

A cautious and reasonable officer at this juncture would have immediately notified the Post that backup (OSHP Signal 87 - Need Backup) was needed; and, have asked Mr. Wrinn's passengers to observe Wrinn or to help move Wrinn to a safe location. Johnson would then have had a few moments to attend to the unsecured scene. Instead, Sergeant Johnson recklessly went after Mr. Wrinn. When he caught up with Wrinn, Johnson reports that Wrinn turned around and grabbed a hold of him and pinned him against the barrier separating the north and southbound lanes of Interstate 75.

In his report to Lieutenant Koverman (September 17, 2005) Johnson states that he feared Wrinn could overpower him (page 4). Unfortunately, Koverman does not ask the obvious question of Johnson: What were the grounds for his fear.

Later in his deposition (page 207) Johnson related that at that time he feared for his life because, Wrinn had grabbed him, then pinned against the concrete barrier. Johnson related that Wrinn could have picked him up and threw him into southbound traffic. But four events at that time challenge the truthfulness of Johnson's claim that he had a legitimate fear for his life.

First, Johnson does not report that Wrinn was fighting him or ever attempted to lift him up, that would be required to throw him over the barrier. Johnson only stated that Wrinn grabbed him. Johnson makes no claim that Wrinn ever tried to grab at his service weapon or that Wrinn made threats of bodily harm to Johnson or to anyone else at any time.

Second, Johnson reported that after Wrinn had grabbed him he (Johnson) twice told Wrinn to let go of him or he (Johnson) was going to hit him. This simply is not something officers who fear for their lives do, or would have time to do, when the level of fear necessary for a deadly use of force situation exists.

In real-to-life survival training scenarios, I've put hundreds of officers in situations that would cause a reasonable officer to fear for his or her life. Every one of these officers either instantly froze, or fought me all out. Not one ever warned me that he or she was going to hit me prior to doing so.

Johnson's first physical response to Wrinn's grabbing him was to strike him three times in head, neck, and shoulder areas with his metal Patrol-issued flashlight. Under the circumstances in this case, this was clearly a reckless and wanton act of indifference not only to the consequences for injuries to Mr. Wrinn, but to the standards that govern use of force that have been established for decades in the police profession.

Striking someone in the head with a flashlight (or other blunt instrument) is a deadly use of force. It is perhaps the most universally accepted principle in the police profession as

being excessive force if an imminent and deadly threat to life or serious injury doesn't exist in the mind of a reasonable officer at the time of the occurrence.

Even in highly aggressive and assaultive behavior situations officers avoid striking with blunt instruments in the neck and shoulder areas because of the dangers of a miss, or a glancing blow in the head and throat areas.

Excerpt 4: Excerpt from Sergeant Johnson's Report, September 17, 2005.

Q. Describe the exact position you and the suspect you were in when you struck Gene Wrinn Jr. with your flashlight on 09/16/2005, were you face to face, behind him etc?

A. We were off set from each other but face to face. I was standing near the wall facing south and he was standing

Near the wall facing the north. It was at this point the suspect grabbed me and I ordered him to let me go, When the suspect initially grabbed me with both hands up around my shoulders. After striking him, he released his grip and re-engaged me this time grabbing me around the mid section with both hands again, and actually pinned me against the concrete wall.

Q. How many times did you strike him with your flashlight?

A. My best recollection is 3 times

Q. Was this all at one time or at different times?

A. All at one time

Nothing in documents reviewed suggest at the time Sergeant Johnson even considered less than dangerous and deadly force against Mr. Wrinn. If as Johnson reports that he had time to twice tell Mr. Wrinn to let loose of him, and his arms were free enough to strike Wrinn with a flashlight, he had time to try at least three common and effective break away techniques; before, resorting his deadly use of force.

- A. Knee strikes to the groin (Johnson reported that he and Wrinn were face-to-face at the time)
- B. Hair grab and control-hold
- C. Eye gouges

The third and fourth reasons for questioning whether Johnson had the level of fear justified to use deadly force centers on Johnson's reckless behavior and wanton disregard for the safety of himself and others after he is freed from Wrinn and Wrinn continues to walk away.

Johnson did not call for backup. Instead, he removes the probe from his Taser and tries to take Wrinn down using the "Stun" mode.

Excerpt 5: Excerpt from Sergeant Johnson's Report, September 17, 2005.

A bystander assisted me at this point by grabbing the suspect and pulling him away from me. The suspect attempted to walk away. As the suspect walked away (towards the south) I deployed my Taser. I removed the cartridge and attempted to stun him on the back of his leg. The suspect fell to the ground but he was able to regain his composure and manage to get to his feet. At this I was near my cruiser I opened the door and broadcasted a "signal 88". The suspect took off walking again to the north. I followed behind the suspect and attempted to take him down with a kick to the back of his legs. The suspect fell to the ground at this point. I then engage the suspect on the ground at which point he was able to get to his knee. I struck him several times with my hands and knees all the while giving verbal command stop resisting trying to keep him from getting to his feet again.

The probe option on a Taser weapon was specifically designed for officer and suspect safety reasons. It allows officers to employ the weapon at a distance of up to 15-20 feet without having to come into direct physical contact with a combative or threatening suspect. The probe option also increases the officer's ability to keep an uninterrupted contact between the Taser and the suspect, thus keeping the suspect controlled and disabled for handcuffing.

When asked in deposition (page, 205) would it not have been safer for him and others around if he would have used the probe instead of removing it and trying to stun Wrinn. Johnson replies:

A. "In another setting, in another situation."

When asked why in another setting, Johnson replied:

A. If there was more of an assaulting type of situation going on, then yes. In other words, yeah, it could have possibly - - been justified in using the Taser from the prong position, yes.

His responses to the question simply makes no sense in light of someone who claims to have been in fear for his life.

After stunning Wrinn with his Taser unit, Johnson reported that Wrinn fell to his knee, but was able to get back up and continued walking away. It is at this time that Johnson moved to his cruiser and called out a Signal 88 (i.e., Officer in Distress). Recklessly, Johnson did not wait for backup to arrive before going after Wrinn again. Johnson states that he pursued Wrinn and kicked him in the back of his leg knocking him down on the ground, and then proceeded to knee strike and hit Wrinn while trying to handcuff him. (As noted above, however, Steve Ramsey testified that when Wrinn returned northward, he sat down in front of the semi and remained seated for 20-30 seconds (p. 4 above)).

In response to Johnson's Distress call, Trooper G. Manley of the Ohio State Highway Patrol arrived on the scene in time to observe Sergeant Johnson and Wrinn struggling on the pavement of I.S. 75 north of the two semis. Trooper Manley also testified that by this

time, traffic was blocked by stopped semi-trucks, and he sprinted by two stopped semis before finding Johnson and Wrinn. (Manley Deposition, pp. 50-51). Manley joined Johnson in an attempt to keep Wrinn on the pavement and put handcuffs on him. During the struggle, Manley reported he struck Wrinn several times in the thigh with his flashlight.

It is reasonable to assume that had Johnson appropriately employed the Taser, called for backup, and waited for backup before re-engaging Wrinn, all subsequent force used on Wrinn by officers of the Ohio State Highway Patrol, Lima Police Department, and Allen County Sheriff's Office would have been significantly reduced, or would not have been needed at all. And if force is not needed, it is unnecessary force because unnecessary force is disproportional and unreasonable force. Sergeant Johnson's decisions not to use the Taser's probe option and to not call and wait for back up was reckless and displayed a wanton indifference to his own safety, and the safety of Wrinn.

When Sergeant Johnson did call for assistance, he chose to call out a Signal 88 (Officer in Distress). He could have called a Signal 5 (Rush), Signal 41 (Immediately), or a Signal 87 (Need backup). Trooper Manley says that it is also common to use a Signal 20 (Meet Me) (Manley Depo. at pp. 47-48). Calling out an "Officer in Distress" (in this case, a Signal 88) is the most serious call for help that an officer can make. According to Trooper Manley, who had only heard an Signal 88 once before, an 88 means "life or death." (Manley Depo. at pp. 47-48). To an officer, it is the equivalent to the second coming of Christ.

Officers within hearing distance will jump jurisdictions and state borders to respond to it. When they arrive on the scene, someone other than the officer making the call is likely to be distressed. Clearly, Sergeant Johnson created his own safety concerns by continuing to engage with Mr. Wrinn. Reporting that he was in distress again demonstrated his complete lack of regard, wanton indifference and reckless actions in the manner in which he handled this entire situation.

Within a few moments of Johnson's Distress call, Officers Dunham and Hile of the Lima Police Department and Deputy B. Tomasi and Lieutenant Myers of the Allen County Sheriff's Office arrived on the scene.

Upon seeing Sergeant Johnson and Trooper Manley struggling on the roadway with Mr. Wrinn, Deputy Tomasi, Officers Hile and Dunham would reasonably assume that these troopers were in serious trouble and needed physical assistance.

Deputy Tomasi sprayed Wrinn with chemical mace. Dunham and Hile attempted to help the troopers secure Wrinn. Officer Hile repeatedly kned Wrinn (at least 12 times), then used his foot to pin Wrinn's head and neck on the pavement and called Wrinn a "motherfucker." Officer Dunlap called Wrinn a "Fucking Idiot."

Officers Dunham and Hile's willful and wanton name calling was totally unprofessional and inflammatory. Under the circumstances of this case, and the number of other officers

on the scene, Officer Hile's twelve knee strikes to Wrinn and then twice using his foot to step on Wrinn's head and neck pinning it to the pavement demonstrated his reckless behavior and showed wanton indifference to the safety of Mr. Wrinn.

Excerpt 6: From Lima Police Department Internal Interview with Officer Hile, April 5.

At this time I reviewed the video tape with officer Hile beginning at the point where you could hear the knee strikes being delivered. Officer Hile verified that it was his voice in the video recording (the video portion did not show the strikes). After the knee strikes a voice could be heard making the statement "You got it now mother fucker". Again officer Hile said that he was the one making the statement.

I allowed the tape to continue to the point where Officer Hile is seen on the video getting up off the ground and then placing his foot on Eugene Jr.'s head/neck area. It then appears that Officer Hile releases the pressure and then replaces his foot on Eugene Jr.'s head. Officer Hile did acknowledge that it was him on the video. I then turned the video off and questioned his tactics.

I advised that on his written report he wrote that he delivered several knee strikes but there was clearly more than that (12). Officer Hile said that he was not sure how many knee strikes he

delivered so he wrote in "several" but now, after viewing the tape, knows it was more. He did not want to put a number on it because he simply could not remember, but he did not know it was twelve. He thought it was four or five.

I then asked him about the statement. Officer Hile said that after he said it he knew it was wrong. After the incident was over and he had returned to the L.P.D., Sgt. Stevenson, who was at the scene and heard the comment called him into the office and verbally counseled him for the inappropriate use of language.

I asked what was the purpose for the statement, why did he say it. Officer Hile said that after struggling with Eugene Jr. and all the verbal commands and officer presence, all of which had failed, he was extremely tired and then he delivered the knee strikes. After that he felt that Eugene Jr. had to understand now that he was under arrest, there was no way that he couldn't. Out of his frustration he made the comment, "you got it now motherfuckers" meaning that he had to understand at this point that he was under arrest.

I then asked him what he was doing when he had his foot on Eugene Jr.'s head and why. Officer Hile advised that he was physically tired, and tired of having all the blood on him and Eugene Jr. still spitting blood on him. He wanted to get out. However when he stood up Eugene Jr. was still resisting and kept raising his head up and down. Officer Hile used his foot on Eugene Jr.'s neck area to hold it down then felt that was not a good position to be in so he repositioned his foot on top of the head area holding light pressure in an attempt to keep the head down. He was then advised by one of the Sergeants, either Sgt. Bev Leary or Sgt. Stevenson to remove his foot from Eugene Jr.'s head and he did.

Johnson's reckless and wanton conduct triggered Hile's unreasonable actions. Johnson should have been in charge of the scene, but he failed to control it, prolonging Wrinn's suffering.

Summary

From his earliest contact with Eugene Wrinn, Jr., Sergeant Johnson recklessly and wantonly ignored signs that Wrinn was not intentionally disregarding his request for him to remain in his vehicle, but was suffering from injuries resulting from the accident and was unable to comprehend events. Furthermore, Sergeant Johnson demonstrated a complete reckless and wanton disregard for the mission of the Ohio Highway Patrol (promoting safety at the accident scene) and standards that govern police use of force. Johnson resorted to using deadly force as a first option when he had the time and several opportunities to use lesser means.

Officers from the Ohio State Highway Patrol, Lima Police Department, and Allen County Sheriff's Office responded to Sergeant Johnson's Signal 88 (Officer in Distress) when the only distress occurring was his reckless and wanton indifference to the excessive force he continued to use on Mr. Wrinn. As a result, support officers entered into a confusing, out-of-control, and volatile situation and Wrinn was subjected to what amounted to nothing less than a potentially fatal beating (i.e., sprayed with chemical mace, struck with flashlights or batons, repeatedly tased, punched, kicked multiple times, and verbally abused).

III. Lieutenant Koverman's Supervision of Sergeant Daren Johnson

I have been asked to provide an opinion with respect to the following question:

1. Did Ohio State Highway Patrol Lieutenant K. Koverman, the direct supervisor of Sergeant Daren Johnson, at times before Sergeant Johnson's encounter with Mr. Eugene Wrinn, Jr., act with reckless or wanton indifference to the probable injurious consequences to others by failing to properly supervise Sergeant Daren Johnson.

Summary

Lieutenant Koverman had a duty to properly supervise Sergeant Johnson. Koverman admitted in deposition that he knew Johnson had anger management issues, that Johnson didn't like being told what to do, and that Johnson had been involved in three incidents prior to his encounter with the plaintiff (Mr. Wrinn) where Johnson acted out his angry impulses.

Yet, Lieutenant Koverman took no affirmative action to require that Johnson be evaluated for fitness-for-duty, nor place him in a performance improvement plan under direct and controlled supervision, nor make any recommendation to higher authorities to have Johnson terminated for his repeated acts of unprofessional, illegal, reckless and wantonly indifferent conduct and behavior.

Lieutenant Koverman's indifference to the proper supervision of Sergeant Johnson amounts to reckless and wanton indifference to Sergeant Johnson's behavior and for the protection and safety of citizens with whom Johnson came into contact.

Discussion

Lieutenant K. Koverman was the commander of the Patrol post where Sergeant Johnson was assigned before Sergeant Johnson's involvement with the plaintiff in this case, Mr. Eugene Wrinn, Jr.

As the Post Commander, Koverman was responsible for the day-to-day operations of the post, all sworn and civilian personnel and equipment assigned to the post. Persons promoted to and who accept this position do so knowing that they have assumed a great deal of responsibility for the operations of the post and proper supervision of all personnel assigned.

Post commanders are equivalent in stature to a chief of police of a major city or sheriff of a county. In my leadership training classes, I often refer to these job holders as *citizens' first line of protection*.

Sergeant Johnson's Disciplinary History

Sergeant Johnson had a troubling disciplinary history prior to his encounter with Mr. Wrinn. Lieutenant Koverman knew of that history.

Within a two year period of time before Sergeant Johnson's encounter with Mr. Wrinn, Johnson was found in violation of the Patrol's rules and regulations on three separate occasions, and shortly before the Wrinn encounter Koverman received an anonymous letter containing allegations about Johnson that Koverman considered serious.

1. On January 25, 2004 Sergeant Johnson arrested a drunk driver – Mr. Joseph Meeks, Jr. Mr. Meeks alleged that Johnson had used excessive force and offensive language during his arrest. Within the same 24 hours, Johnson (while on post) was involved in a hostile exchange with Sergeant Cosgrove in front of other officers and the post dispatcher. (Koverman's deposition, page 83, L19 thru page 85).

In deposition when Koverman was asked whether he ever sat down with Sergeant Johnson to find out what was going on with him, Koverman replied that he did not (Koverman's deposition, page 84, L13-17). Koverman later expressed it was his belief that once Johnson had been disciplined the issue was resolved (see line of questions and response in Koverman's deposition, page 85, L13-22).

In relation to these two incidences, the following events occurred:

On March 9, 2004, Doctor Glen F. Strobel, Practice of Clinical Psychology, Inc, Lima, Ohio wrote a letter to the Ohio State Highway Patrol that Sergeant Johnson attended an employee assistance program evaluation on March 1, 2004. Dr. Strobel did not recommend that Johnson needed to return for future visits.

On March 14, 2004, Sergeant Johnson sent an Inter-office Communication to Lieutenant R. Lumkins (Ohio Highway Patrol Administration Section) that he had been advised of the Patrol's Employee Assistance Program and that he (Johnson) had enrolled himself in a EAP program. Johnson requested the information be made known to the Department of Human Resources in his behalf pending disciplinary action for the two incidences occurring in January, 2004.

The final disposition was that Johnson received a three day suspension (issued by Patrol Headquarters) with two days held in abeyance for a period of for two years.

2. May 28, 2004 (less than four months following his suspension) Johnson provoked an intoxicated prisoner by challenging him to a fight. When the prisoner reacted, Sergeant Johnson used a Taser to stun him.

Even though Sergeant Johnson was still under a two-year discipline abeyance agreement, Johnson received a written reprimand for Conduct Unbecoming and assigned to attend two training courses scheduled for later in the year. The courses were:

- a. Dealing With Difficult People (2.5 hours)
- b. Creating a Culture of Trust (2.5 hours)

On February 15, 2005, Johnson reported to Lieutenant Koverman that he found the course "Dealing with Difficult People" helpful. (see Ohio State Highway Patrol Inter-office Communication from Sergeant Johnson to Lieutenant K.J. Koverman, dated February 18, 2005).

No action was taken to enforce the active discipline abeyance agreement. In deposition, Lieutenant Koverman stated that in May, 2004 he had no knowledge that Johnson was under a discipline abeyance agreement for two years (see Koverman's deposition, page 88, L23 thru page 89, L23).

3. On June 9, 2005, Johnson was reprimanded for inefficiency under OSP Rule 4501:2-6-02(B)(5) for inappropriately offering a Trooper the option of taking personal leave when the Trooper failed to report for duty in lieu of an administrative investigation. Sergeant Johnson also failed to advise the Post Commander of the incident. This breach of policy may seem small to some, and perhaps in isolation may not be a significant violation. But in Sergeant Johnson's case, it is significant – it is part of his obvious pattern of conduct to disregard rules that he chooses not to follow.
4. In Mid-August 2005, Lieutenant Koverman received an anonymous letter signed "The Concerned Citizen," which reads as follows:

To Whom It May Concern:

I wanted to inform you that you have a trooper doing things while on duty besides protecting the public. His ethics are very poor. Sgt. Darren Johnson while on duty talks on his personal phone for hours. How is your officer concentrating on his job when he's on his phone dealing with his personal life? He also has had sex several times while in uniform on duty. He calls in with false whereabouts. He also takes breaks when he chooses to and lies about how long he takes. He is in trouble personally and professionally. He has threaten this girl not to talk to the post and has even asked to lie for him if you found out his wrongdoings. He is unsafe to be on patrol. You are to protect people. How do you do that when you have troopers not doing their jobs? Talk to Sgt. Johnson and he will lie. If you want the truth talk to Jeni Mangrick 937-498-1459. She might talk if Sgt. Johnson doesn't get to her first. Sgt. Johnson uses his badge to control and harass people. It is ok for him to speed and drink and drive because cops let him go but if it was a citizen they would get busted. What kind of post do you run? We are unsafe with Sgt. Johnson on duty.

THE CONCERNED CITIZEN

Although Lieutenant Koverman said he thought the letter contained serious accusations and forwarded it to the OSHP District Officer, he neither talked to Johnson about it nor made any inquiry. If he had followed up, he would have easily discovered verification for these serious statements. For example, on August 29, 2005 (two weeks before Johnson's encounter with Wrinn), Sergeant Brewster interviewed Jennifer Mengerink (the woman with whom Sergeant Johnson had an affinitive relationship) who made several statements concerning Sergeant

Johnson's demeanor and mental state at that time. In that interview, Ms. Mengerink related to the Patrol's Sergeant C.L. Brewster the following:

1. She would like Sergeant Johnson to admit his wrongdoings (i.e., lying and asking her to lie for him during a Patrol investigation)
2. Sergeant Johnson had a lot of personal issues going on in his life.
3. She told Johnson he needed to seek counseling, to which he said he sees a counselor once a month.
4. Sergeant Johnson was looking for a person who gave her (Mengerink) a black eye and had threatened to shoot him.
5. Sergeant Johnson was a basket case ever since she told him that Patrol Sergeant Brewster wanted to talk to him.
6. Sergeant Johnson told Mengerink that he could just disappear forever.

There is no indication in the investigative reports or the depositions that Lieutenant Koverman or the Patrol responded in any reasonable manner to assess the merits of Ms. Mengerink's allegations concerning Sergeant Johnson's state of mind.

Lieutenant Koverman's Awareness of Sergeant Johnson's Disciplinary History

In deposition, Lieutenant Koverman admitted the following:

1. That he knew it was important to watch officers for signs of trouble (ref. p32, L25 – p26,L3).
2. That he knew Sergeant Johnson had issues with aggressive behavior (see Koverman's deposition, page 37, L24 thru page 38, L1).
3. That he believed Johnson did not like being confronted with, told how to do his job (p48, L1).
4. That he did not recommend any outside assistance for Sergeant Johnson (p68, L12-16).
5. That he knew Sergeant Johnson had provoked a physical altercation with an arrestee on May 28, 2004. (ref. p91, L12-P92 L8).
6. That he received the "Concerned-Citizen's letter," that he thought it was serious enough to forward to District Command but he made no further inquiry into the serious charges.

Lieutenant Koverman had full knowledge of Johnson's repeated transgressions, each of which was a clear indicator that Sergeant Johnson was a "problem-employee", with problems. Only reckless and wanton indifference can explain Koverman's abject failure to properly supervise Sergeant Johnson, prior to Sergeant Johnson's encounter with the plaintiff - Mr. Eugene Wrinn on September 16, 2005.

Lieutenant Koverman was Sergeant Johnson's direct supervisor; yet, he made no affirmative effort to ensure Johnson's fitness for duty. Koverman should have, and could have:

1. Ordered, or requested approval for ordering, Sergeant Johnson to submit to a psychological fitness-for-duty evaluation by a qualified expert.
2. Made a concerted effort to become aware that Sergeant Johnson was under a two-day suspension abeyance at the time Johnson was committing new offenses.
3. After Johnson's Taser incident on May 10, 2004, insisted on enforcement of the discipline suspension abeyance, and moved for Johnson's termination for current offenses.

Short of termination, Lieutenant Koverman should have placed Sergeant Johnson in nothing less than a one-year performance improvement plan (enforced with a Last-Chance Agreement), had Johnson's supervisory authority reduced, and placed him under close watch and intensive supervision.

Lieutenant Koverman failed in his duty to make it clear to Sergeant Johnson either to shape up or he (Lieutenant Koverman) will do everything within his authority to remove Johnson from his position.

Lieutenant Koverman's performance in regards to Wrinn:

1. During his investigation of the incident, Koverman was told by Trooper Manley that there was blood all around when he (Manley) arrived on the scene to assist Sergeant Johnson (ref. p120, L21-24). However, Koverman does not report whether he, or anyone else, checked for blood in Mr. Wrinn's vehicle. Failing to check and report findings was a serious investigative error. It created a reasonable doubt whether Mr. Wrinn's head injuries were caused by the accident, by Sergeant Johnson striking him in the head with a metal flashlight, or in the melee resulting from Sergeant Johnson's reckless mishandling of the situation.

Photographs taken later of Mr. Wrinn's wrecked vehicle clearly show no visible blood on the seat or windshield where Mr. Wrinn's head would have been as driver of the vehicle.

2. Koverman admitted that he thought that the injuries to Wrinn's head were the result of being struck with a flashlight (p136, L1-3). Additionally, in his interview and subsequent investigation of this incident, Sergeant Johnson made no mention that he (Johnson) had a fear for his life or the life of another that would justify striking Wrinn in the head, or head area, with a flashlight.

This should have prompted Lieutenant Koverman to question Sergeant Johnson's reasons for using deadly force. Koverman did not pursue that line of questioning.

And finally, it should be noted that Lieutenant Koverman totally ignored the Ohio Department of Public Safety's Policy DPS-505.05 respecting workplace violence prevention, which not only applies to violence on state property, but also to all threats or acts of violence by State employees at any location (DPS-505.05 at III, A, 2, and B).

Koverman turned a blind eye to the obvious warning signs or risk factors Sergeant Johnson had exhibited over a period of time (see *id.* at III, D), but Koverman failed to take any steps for immediate or timely intervention as required by the Policy (*id.* at III, E). Moreover, Koverman should have pursued a fitness-for-duty evaluation. Sergeant Johnson was like a "ticking time-bomb." And given all the facts and circumstances, Koverman's failure to act was reckless and wanton in that a reasonable officer would believe that his failure to act created an unreasonable risk of physical harm to others.

Sincerely,

Donald J. Van Meter, Ph.D.
Van Meter and Associates, Inc.

Appendix A – Vita D. J. Van Meter, Ph.D.

Van Meter & Associates, Inc.

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S U M M A R Y O F Q U A L I F I C A T I O N S

Van Meter & Associates, Inc. 1982- Present

Columbus, Ohio

Founder of Van Meter & Associates, Incorporated. Trainer, consultant and expert witness in law-enforcement-related operations to include use of force, emergency response driving, policy development, performance evaluations, and labor relations.

E D U C A T I O N

Ohio State University 1979 - 1995

Columbus, Ohio

Bachelor of Science - (Behavioral Science) the College of Arts and Science.

Master of Labor and Human Resource - (Human Resources Management) the College of Business.

Doctor of Philosophy – (Organizational Training and Development) the College of Education.

Northwestern University 1973 - 1974

Evanston, Illinois

Diploma - (Traffic Institute)

Lorain Community College 1967 - 1975

Elyria, Ohio

Associate of Science - (Police Science)

P R O F E S S I O N A L E X P E R I E N C E

Ohio State Highway Patrol 1963-1979

Cadet Dispatcher - Elyria Post 1963-1964

Trooper - Cambridge Post 1964- 1966

Duties of a road patrol officer

Assistant Post Commander: Marion Post

Duties of a road patrol officer, supervision of a squad of officers and assisted in the administrative operations of the patrol post

Lieutenant: Patrol Training Academy, Columbus, Ohio (1974-1979)

Instructed cadets in defensive tactics, emergency response driving, physical conditioning, officer safety, suspect apprehension and arrests, traffic accident investigation.

Pacific Gas & Electric 1981 - 1982
San Francisco, California

Served as a Training Specialist with major responsibilities for developing a management training section for General Construction (5,500 employees). Courses developed and taught included First-Line Supervision and Sexual Harassment.

General Telephone 1982 - 1983

Mansfield, Ohio

The telephony industry was undergoing deregulation. The company's goal was to convert their training center into a profit center by creating training programs for other industries. Major responsibilities were to develop and manage training programs for the law enforcement community. Primary courses developed and taught focused on police use-of-force tactics and misdemeanor and felony stops and apprehensions.

Donald J. Van Meter and Associates, Inc. 1983-Present

Founder: My responsibilities are the research and development of company training programs. Included are the instruction of courses and hiring and developing associate instructors - as needed.

For approximately 10-12 years I traveled the country teaching officer - suspect encounters, arrest and officer survival programs in addition to supervision and leadership training.

I currently provide consulting services related to organizational development, instruct courses in management's rights, police discipline

I have written complete operational policies and procedure manuals for over 30 law enforcement agencies, nationwide.

I've developed the Zero-based Performance Evaluation System and the Discipline Penalty Assessment Programs for police service agencies.

I've provided expert testimony on police use of force in federal court and discipline and termination in labor arbitration cases.

P U B L I C A T I O N S

Books:

"Evaluating Dysfunctional Police Performance" *Charles Thomas Publishing*, 2001.
On-the-job performance evaluations: An empirical analysis of "Just Cause" corollaries as predictors of Title VII Employment discrimination case outcomes." *Dissertation Abstracts*, May 1995.

Journal Articles:

"What Right Do Agencies Have to a Mission?" *Law and Order* May 1992.

"Your Agency's Driving Force: Mission and its Value." *Law and Order*, August 1991.

"Questions for Change: Shifting from a 'What is' to a 'What if' Management." *Law and Order*, February 1991.

"Task-Based Performance Evaluations." *Performance and Instruction*, July 1990.

"Designing a Task-Based Personnel Evaluation System." *Performance Technology 1990: Selected Proceedings of the 28th NSPI Conference*, 1990.

Programs and Operational Manuals:

Discipline Penalty Assessment Program - 2009

Performance Improvement Program 2009

Uniform Standards of Conduct for Law Enforcement Agencies. 1990, 2000, 2007.

Job Description Manual. 1991.

Police Use of Force Policy Manual. 1991, 2000.

Pursuits & Emergency Response Policy Manual. 1991, 2000

PARTIAL LISTING OF TRAINING COURSES DEVELOPED

Absenteeism: The Problem, the Issues, the Solution
 Civil Liability and the Use of Force: The Balancing Act
 Due Process and Just Cause: Employer/Employee Rights
 Employee Discipline and Termination
 Front-line Effective Police Supervision Skills
 Major Crime Scene Reconstruction and Management
 Proactive Management to Prevent Sexual Harassment
 Quota-Free Productivity Standards
 Re-empowerment of Management
 Performance Improvement Planning
 Street Talk and Tactics (Misdemeanor and Felony Stops)
 Survival From Four to Midnight (Misdemeanor and Felony Stops)

CURRENT PROFESSIONAL MEMBERSHIPS

Member, International Personnel Management Association

ADDITIONAL PROFESSIONAL ACHIEVEMENTS

Certified law enforcement trainer-development instructor

Certified physical fitness specialist

AWARDS RECEIVED

Recipient, Pacesetters award from the Ohio State University College of Business

Wrinn v. The Ohio State Highway Patrol, et al.

Date: December 4, 2010

Partial List of Expert Witnessing and Consulting Services Provided

DATE	NAME	WORK TYPE
2010	Harrison Greene (Attorney)	Expert Witness (Use of Force)
2009	Raleigh Police Department, Raleigh, NC	Developed a police performance evaluation system
2009	Lewis County Sheriff's Office, Chehalis, WA	Developed a Performance-based Management Program
2008	Timothy J. Boone (Attorney), Columbus, OH	Expert Witness (Use of Force)
2005	Brian Zimmerman (Attorney), Canton, OH	Expert Witness (Pursuit Behavior)
2005	Steubenville Police Department, OH	Expert Witness (Excessive Force and Wrongful Termination Suit)
2004	Macedonia Police Department, OH	Policy and Procedures Manual
2004	Aurora Police Department, OH	Policy and Procedures Manual
2004	Cleveland Clinic Police Department, OH	Policy and Procedures Manual
2003	John LaValle (Attorney), Athens, OH	Expert Witness (Use of Force)
2003	Micheal Moore (Attorney), Columbus, OH	Expert Witness (Unlawful Arrest)
2003	Bedford Heights Police Department, OH	Policy and Procedures Manual
2002	Monroe County Sheriff's Department, OH	Policy and Procedures Manual
2002	Gahanna Police Department, OH	Policy and Procedures Manual
2002	Plainfield Police Department, IL	Performance Evaluation System
2002	Steubenville Police Department, OH	Performance Evaluation System (U.S. Department of Justice Consent Decree)
2002	Ravenna Fire Department, OH	Policy and Procedures Manual
2001	Perrysburg Police Department, OH	Policy and Procedures Manual
2001	Sebring Police Department, OH	Policy and Procedures Manual
2000	Lebanon Police Department, NH	Termination Case Review
2000	Chesterland Police Department, OH	Termination Case Review
2000	Downes, Jonathan (Attorney) Columbus, OH	Expert Witness (Arbitration)
1999	Whitfield County Sheriff's Department, GA	Policy and Procedures Operational Manual
1999	Chesterland Fire and Rescue, Inc, OH	Policy and Procedures Operational Manual
1999	Circleville City Council, OH	Police Department Management Audit
1999	Mingo Junction, OH	Police/Fire Department Contract Negotiations
1999	Downes, Jonathan (Attorney), Columbus, OH	Expert Witness (Contract Mediation)
1999	Perry Township Police Department, OH	Operations Manual
1999	Kanawha County Sheriff's Department, Charleston, WVA	Policy and Procedures Operational Manual
1998	Boston Duck Tours, MA	Performance Evaluation System
1998	Ft. Wayne Police Department, IN	Productivity Evaluation System
1998	Ohio Buckeye Sheriff's Association, Columbus, OH	Keynote Speaker
1998	Denver Chiefs of Police, CO	Keynote Speaker

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1998	Mingo Junction Police Department, OH	Policy and Procedures Operational Manual
1997	Douglas County Sheriff's Department, Leavenworth, KS	Performance Evaluation System
1996	Riley County Police Department, KS	Job Analysis
1996	Shanomish County Sheriff's Department, WA	Commander Training
1995	Licking County Sheriff's Department, Newark, OH	Performance Evaluation System
1995	Lancaster Police Department, OH	Developed their Standards of Conduct
1995	Bonnellville County Sheriff's Department, Idaho Falls, ID	Performance Evaluation System
1994	Hudson Police Department, OH	Job Analysis
1994	Akron University Police Department, OH	Performance Evaluation System
1994	Columbus Police Department, OH	Commander Training
1994	Columbus Police Department, OH	Supervisory Training
1994	Shelby Township Police Department, OH	Termination Case Review
1992	Ottawa Police Department, KS	Performance Evaluation System

I, Donald J. Van Meter, attest that all information set forth herein is true and correct to the best of my knowledge.

Signed: Donald J. Van Meter Ph.D. Date: December 5, 2010

State of Ohio
County of Franklin

Before me a Notary Public in and for said County personally appeared Donald J. Van Meter, who acknowledged the signing of the foregoing statement and that such signing is his free act and deed.

In testimony Whereof, I have hereunto set my hand and affixed my official seal this _____ day of _____ 20 _____

Notary Public

County, Ohio

My Commission Expires _____

Cary Rodman Cooper
Attorney at Law
Licensed in Ohio & Michigan
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419.720.3406 Direct Fax
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December 8, 2010

Via Overnight Mail

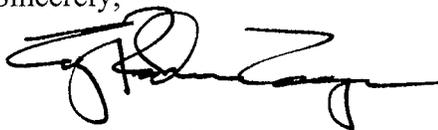
Miles C. Durfey, Clerk
COURT OF CLAIMS OF OHIO
The Ohio Judicial Center
65 S. Front Street, 3rd Floor
Columbus, Ohio 43215

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 three copies of Plaintiff Eugene Wrinn, Jr.'s Immunity Hearing Statement, Witness, and Exhibit List in the above-referenced matter. Please file same with the Court and return at least one file-stamped copy to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter.

Sincerely,



Cary Rodman Cooper

CRC/wjn
Enclosure

cc: James P. Dinsmore, Esq. w/encl. (by overnight mail)