FILED
COURT OF CLAIMS
OF OHIO

2011 MAR 22 PM 2:12

ORIGINAL

IN THE COURT OF CLAIMS OF OHIO

Eugene Wrinn, Jr.,	Case No. 2006-05934
Plaintiff,	Judge Alan C. Travis
v.	**PLAINTIFF EUGENE WRINN, JR.'S IMMUNITY HEARING STATEMENT, WITNESS, AND EXHIBIT LIST**
Ohio State Highway Patrol,	
Defendant.	Cary R. Cooper (0013062) Jackqueline M. Boney (0013050) Sarah K. Skow (0081468) COOPER & WALINSKI, L.P.A. 900 Adams Street Toledo, Ohio 43604 Phone: (419) 241-1200 Fax: (419) 242-5675 cooper@cooperwalinski.com boney@cooperwalinski.com skow@cooperwalinski.com *Counsel for Plaintiff*

I. Immunity Hearing Statement.

On March 29, 2011, the Court will conduct an immunity hearing under R.C. 2743.02(F), to determine whether the OSHP's Officers Johnson, Manley, and Koverman acted 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. Eugene Wrinn, Jr. asserts that the OSHP Officers were acting within the scope of their employment, but acted in a wanton or reckless manner towards Wrinn.

COOPER & WALINSKI
A LEGAL PROFESSIONAL
ASSOCIATION
900 ADAMS STREET
TOLEDO, OHIO 43624

ON COMPUTER

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]

II. 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 the northbound lanes of I-75 just north of State Route 309 in Allen County. Wrinn lost control of his vehicle on the wet pavement; the vehicle spun and stalled facing south in the left-hand northbound lane; and was hit by a semi-trailer, which came to rest facing north in the right-hand northbound lane. As a result of the collision, Wrinn was 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 firefight at the scene as appearing to be "out of it", 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. Wrinn walked northward away from Johnson and Johnson grabbed Wrinn from behind. Wrinn swung his arms to pull away from Johnson. Wrinn turned and began to walk southbound and Johnson grabbed Wrinn with both hands near Wrinn's upper biceps. Wrinn grabbed Johnson's arms or jacket-sleeves near Johnson's biceps. In attempting to break loose from Wrinn, Johnson admits that he swung his metal flashlight overhead with a downward arc at least three times, and admits that he "possibly" hit Wrinn in the head with all three swings. Wrinn let go of Johnson and Wrinn may have gone down to one knee, and grabbed onto Johnson's waist. A bystander pulled Wrinn's arms away and Wrinn walked away. Johnson went after Wrinn.

Wrinn is seen on video getting up from one knee, then walking south 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. A video shows Johnson then coming at Wrinn with his taser out, prompting Wrinn to walk further away. Johnson decided to use his taser in this so-called dry-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 Manley ran north past the semi. Nothing further of the encounter with Wrinn is recorded on Johnson's dash camera.

Trooper Manley believed Johnson's signal "88" was an emergency distress call. Trooper Manley ran to the front of the semi, encountered Johnson on Wrinn, immediately jumped on Wrinn and struck him three or four times in the thigh. Manley never identified himself as a police officer or told Wrinn that he was under arrest.

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 including a muscle-tactic at Wrinn's throat; 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, and to keep Wrinn from wandering into traffic. They assert their use of force against 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 recklessly and wantonly 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 that Johnson had a history and 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.

III. Witnesses.

At the March 29, 2011 immunity hearing, Wrinn intends to call 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 Major Kevin Teaford, 30(B)(5) (via deposition);
- Ohio State Highway Patrol Lt. Steven Rine, 30(B)(5) (via deposition);
- Ohio State Highway Patrol Lt. C.L. Kocab;
- Allen County Sherriff's Lt. Thomas Meyers (via deposition);
- Allen County Sherriff's Deputy Robert Tomasi (via deposition);
- Steven Ramsey;
- Travis Fanning;
- Brian Meader (via deposition);
- plaintiff, Eugene Wrinn, Jr.;
- Eugene Wrinn, Sr.; and
- Donald J. Van Meter, PhD. (Expert).

IV. Expert.

At the March 29, 2011 immunity hearing, Wrinn will call Donald J. Van Meter, PhD. to provide his expert opinion on whether Sgt. Daren Johnson's, Trp. Gerald Manley's, and Lt.

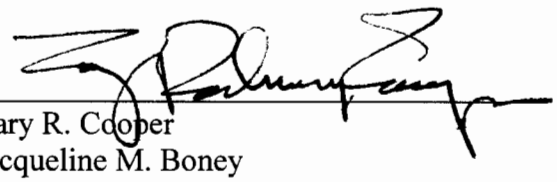
Kenneth Koverman's actions deviated from the standard of a reasonable officer under similar circumstances and were reckless, wanton, or malicious in their encounters with Wrinn. A copy of Dr. Van Meter's report and his current Curriculum Vitae were previously filed with the Court on December 8, 2010. The OSHP has designated Major Kevin Teaford of the OSHP as its expert witness.

V. Exhibits.

Wrinn's preliminary hearing exhibit list is attached. Wrinn reserves the right to supplement his Witness and Exhibit lists.

Dated: March 21, 2011

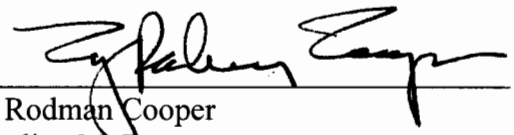
Respectfully submitted,



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 March, 2011 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

COOPER & WALINSKI LPA

A Legal Professional Association

Sarah K. Skow
Attorney at Law
Admitted in Ohio
419.241.1200
419.242.9606 Fax
skow@cooperwalinski.com

900 Adams Street
Toledo, OH 43604

419.241.1200
419.242.5675 Fax
toledo@cooperwalinski.com

Via Overnight Mail

March 21, 2011

FILED
COURT OF CLAIMS
OF OHIO
2011 MAR 22 PM 2:12

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

LB 03/22/11

Sincerely,

Sarah Skow

Sarah K. Skow (dk)

SKS/dk
Enc

cc: James P. Dinsmore, Esq. (via email - w/enc)