

IN THE COURT OF CLAIMS OF OHIO 2014 APR 21 PM 3:12

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**ORIGINAL**

**DEFENDANT'S POST-TRIAL BRIEF**

On January 21, 2012, Plaintiff Lyndsey Howell was arrested by Lt. Eric Hoskinson, of the Ohio University Police Department, on suspicion of driving under the influence of alcohol. During her arrest and detention, she complained of pain in her hand. It was later discovered that her thumb was fractured. She blames Lt. Hoskinson for the injury, but he did not apply force to her thumb or any other part of her body during the arrest. She was compliant when he applied the handcuffs to her and he never grabbed, pulled or bent her thumb in any manner—and certainly not with force that was sufficient to cause a fracture. She simply has not met her burden of proof to show that Lt. Hoskinson caused her injury, and therefore judgment must be entered for the University.

As Ms. Howell noted in one of her previous filings, this case turns largely on the question of credibility—and Ms. Howell's credibility in this case is certainly in question. She has told at least four different stories about that evening, each version depending on what is more to her advantage at the time. She told Lt. Hoskinson that she had just one drink around 12:30 that evening. She stated in her deposition that she had a single drink around four or five o'clock that evening, and that her boyfriend Andrew Sowers was there when she did. She told this Court in her testimony on the stand that Mr. Sowers was *not* present when she had a drink around the

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same time. But she told the Judicial Court at Ohio University that she had *nothing to drink at all* that evening, when it was a question of keeping herself out of trouble.

Contrary to Ms. Howell's ever-changing version of the events, Lt. Hoskinson testified credibly that Ms. Howell displayed several objective signs of being intoxicated at the time of their interaction. She was driving on a winter night with her headlights out, smelled of alcohol, had glazed eyes, and appeared obviously intoxicated. She failed three judicially-accepted roadside sobriety tests before she refused to proceed and refused to provide a breath-test. Lt. Hoskinson has all of the requisite training and years of experience in law enforcement, including training in safe handcuffing procedures and in sobriety tests. His story never varied, unlike hers. And unlike her, he had no reason to change his story to fit different needs.

This case also turns on the burden of proof. It is not the University's burden in this case to show how Ms. Howell's thumb came to be fractured. Rather, it is her burden to prove by a preponderance of the evidence that Lt. Hoskinson is responsible for the injury. She simply did not provide that evidence. For instance, she cannot say whether he grabbed her thumb, or hit it on something, or it "caught" on something—she cannot pinpoint what it is he allegedly did wrong in the process of applying handcuffs to her. There was no use of force and no struggle during her arrest. Lt. Hoskinson credibly testified that he never made contact with Ms. Howell's thumb during the arrest and cuffing—and she could not say whether he did or not. She simply could not tell this Court how it is she claims he injured her.

She does claim that she was not injured prior to their interaction, but even there her testimony is in doubt. As the EMT who testified at trial stated, individuals are often unaware of the existence of a fracture, particularly a small, non-dislocated fracture of the type in question here. Furthermore, her state of intoxication—and she was most certainly more intoxicated than any of her multiple stories would admit—makes it even more likely both that she could have

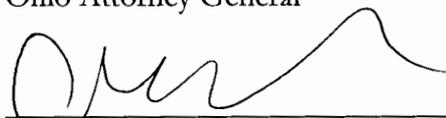
injured herself earlier and not have been aware of it until later. As Lt. Hoskinson testified, she was not terribly steady on her feet. She failed the one-leg-stand test and the walk-and-turn test during the traffic stop, in addition to failing the horizontal gaze nystagmus test.

Because the burden of proof is on Ms. Howell in this case, the University is not obligated to explain her injury. And the University cannot explain her injury, because the University does not know how it occurred. The problem for Ms. Howell in this case is that she cannot explain it either. Even if all of her testimony were to be believed, she still cannot say how it is Lt. Hoskinson injured her or—and this is for lack of expert testimony—what police technique he violated in doing so. But that is beside the point because her testimony simply cannot be believed.

Because the plaintiff in this case has not met her burden of proof to show by a preponderance of the evidence that the defendant caused her injury, judgment must be entered for the defendant.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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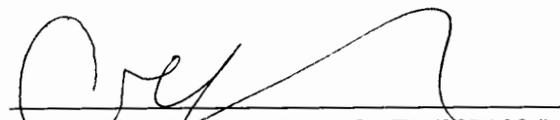
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## CERTIFICATE OF SERVICE

On April 21, 2014, a copy of this document was served via regular mail on the following:

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