

4. Did Ms Howell make minor errors of memory, in her testimony at deposition, on items/issues that have no bearing on whether her thumb was broken during the handcuffing procedure by Hoskinson.
5. Whether the errors of memory by Ms Howell are any more egregious than the errors of memory by Officer Hoskinson.
6. How Ms Howell desired to be transported to the hospital, and at who's expense.

In proving her case and setting forth the relevant issues the Plaintiff has put forth uncontroverted evidence of the following:

1. Ms Howell's thumb was not broken when Mr Sowers was in her presence, at her apartment, up until around 11:00 p.m. (2300 Hr).
2. Ms Howell was not involved in an accident, traffic or otherwise, at any relevant time.
3. When Ms Howell was stopped by Officer Hoskinson she had no injury to her hand.
4. When Ms Howell was asked by Officer Hoskinson if she was injured in any way she denied any injury, and Officer Hoskinson had no reason not to believe her. In fact he most likely did believe her.
5. When Ms Howell told Officer Hoskinson that she had no injuries he accepted her statement as true. He took no action to prove it false.

6. At no time did Ms Howell resist Officer Hoskinson, or do anything other than to submit to his authority.
7. When Officer Hoskinson began the handcuffing procedure Ms Howell immediately felt pain in her thumb.
8. When she felt pain in her hand Ms Howell immediately complained to Officer Hoskinson that she was in pain.
 - a. Ms Howell testified to this at trial;
 - b. At trial and at Deposition Officer Hoskinson denied that Ms Howell complained of pain at the scene of the arrest
 - c. *BUT: the Medic Report for the Run clearly states that Officer Hoskinson told the Medics that Ms Howell had complained of pain at the scene of the arrest.*
9. Officer Hoskinson denies seeing any injury to Ms Howell's hand prior to the time he began to handcuff her, rephrased: Officer Hoskinson saw no injury to Ms Howell's hand prior to beginning the handcuffing procedure.
10. Officer Hoskinson admits that if the handcuffing procedure is properly performed on a person who is not resisting then no injury should occur.
11. The Medics were called to the Ohio University Police Department because Ms Howell had an injury to her hand when she arrived there.

12. Ms Howell already had a visible injury by the time the medics arrived.
13. Ms Howell was taken directly from the police station to the hospital by the Medic squad so she obviously suffered no injury after leaving the police station.
14. The medical records all show that Ms Howell suffered a fracture to her left thumb.
15. Ms Howell incurred medical expenses in excess of \$2,000.00 as a result of her injury.
16. Ms Howell was in a cast for 6 to 8 weeks, and had pain the whole time.
17. Ms Howell still has pain on cold, wet days.

The Defense has put forth no evidence, credible or otherwise, that raises an alternative explanation as to how Ms Howell suffered her injury other than as a result of being handcuffed by Officer Hoskinson.

In fact, officer Hoskinson changed his deposition and trial testimony on direct examination, and admitted to doing so on cross examination, on the issue of how he placed Ms Howell's hands, when he finally realized that his prior testimony was physically and structurally impossible.

The Defense merely denies reality.

What the Defense has done is attempt to use smoke and mirrors to distract the Court from the real issues.

The Defense has done this in a number of ways;

A. The Defense tactics:

The Defense has used minor and factually unfounded claims of intoxication on the part of Ms Howell to attempt to justify the arrest, which justification has nothing to do with whether Ms Howell was injured during the handcuffing procedure. Even if the arrest was justified, which is irrelevant, the injury is not excused or removed from just compensation.

Whether a person is able to perform field sobriety tests during or immediately after a snow and ice storm really has nothing to do with an injury that is the result of the handcuffing procedure, and not the field sobriety tests, or some untoward or intervening event occurring which did not occur during the tests, even taking Hoskinson's records in their best light, as he admitted that no such thing happened.

What clearly shows that this attempted subterfuge is spurious is the clear testimony, *reluctantly given by Officer Hoskinson*, that Ms Howell:

- Did not have trouble getting out of the car;
- Did not need to use the car door for support at any time;
- Did not stagger;
- Did not fall;

- Did not sway;
- Had no trouble standing during the interrogation;
- Had no trouble walking;
- Did not fall against the car;
- Did not bounce off the car;
- Did not have any trouble understanding the Officer's orders and instructions;
- Was able to appropriately respond at all times;
- Was at all times mentally aware and competent.
- No erratic driving signs existed. In fact, Officer Hoskinson admitted that if Plaintiff's headlights had been working he probably would never have stopped the car.

These are the real signs of intoxication that all police use to show intoxication when they are present, use in evidence at trial in impairment issues, and Ms Howell exhibited NONE of them. (This may be why the Municipal Prosecutor was not enthusiastic about taking the OVI case to trial, and why the University Justice Board exonerated Ms Howell.)

A person who exhibits none of these clearly recognizable signs of intoxication is not intoxicated and the attempt to mislead the Court from consideration of the proximate cause of the injury before the Court, to an unproven and irrelevant issue

of intoxication, is an obvious attempt to cause the court to focus on an irrelevant non-issue instead of the basis for the case.

B: The Defense claims:

In its discovery responses, such responses which are totally unsupported by any evidence credible or otherwise, the Defense has made factually unfounded claims that Ms Howell caused her own injuries; or that she accepted being injured due to her own conduct; or that she contributed to her own injuries; or any of the other frivolous responses made by the Defense which are not founded in any factual basis of any kind.

C: The Defense evidence:

The Defense has attempted to rely upon the claims of Officer Hoskinson that since he handcuffed hundreds of people in the past without breaking anything he did not break anything this time. This is clearly a specious argument. It is also not supported by any evidence of any kind.

D: Reality:

What we have in this case, irrespective of the smoke and mirrors are:

1. An arrest made by Officer Hoskinson without any erratic driving signs, or any of the other normal and ordinary signs of intoxication/impairment commonly used in OVI cases once Ms Howell is out of the car consisting of the 13 or so items listed above. There

is some self-serving testimony given by Officer Hoskinson, which is unsupported by a cruiser video, and is in direct contravention of the listed (and admitted) lack of physical signs of intoxication and/or impairment.

2. Medical records from two separate medical facilities showing an injury.
3. Clear evidence Denying any injury prior to the encounter by both Mr Sowers and Ms Howell.
4. Clear evidence denying any resistance or altercation during the encounter as verified by both Ms Howell and Officer Hoskinson.
5. Clear evidence denying any falls or other mishaps at the time of the traffic stop or during the encounter as verified by both Ms Howell and Officer Hoskinson.
6. Clear evidence of an injury after the encounter (a.k.a. handcuffing) is terminated.
7. A clear statement by Ms Howell that the injury occurred during the encounter and no contradicting evidence.
8. No alternative explanation offered by the Defense to explain the cause for the injury other than the encounter and the handcuffing.

The Defense has made a number of allegations, by inference and innuendo, that no matter what did happen it was not what the Plaintiff claimed happened.

However, the inference and innuendo is not supported by any evidence.

Two occurrences have arisen that clearly indicate that the State has been relying on something other than a forthright defense in its attempt to prevail in this case:

First: Is the fact that the State ran an illegal criminal background check on Ms Howell, solely for the purpose of this case. The BCII is a division of the Office of the Ohio Attorney General and Mr Comony had complete access to all records in that facility. At trial Officer Hoskinson denied running the background check conducted after Ms Howell turned 21 years of age and after the traffic case was completely resolved, and after this case was filed. Criminal background checks are only legal and proper for the purposes of criminal prosecutions and subsequent to the time that this case was filed no criminal prosecutions were pending against Ms Howell.

Second: Is the scenario with the deposition of Ms Howell. There is no way to way to know for sure why the Court Reporter never gave Plaintiff's Counsel notice that the State had ordered Ms Howell's deposition and why the Court Reporter chose not to collect the money she would have gotten for the transcript. However, we now know that Mr Conomy ordered the original in an "expedited" manner for which he paid an extra charge. Then, he sits on the original for some number of weeks, and only files the deposition in the afternoon of the Friday before

the trial is to start on Monday, and mails a Notice of Filing to the office of Plaintiff's Attorney which Notice Mr Conomy has every reason to believe will not arrive at counsel's office until after the trial has started. Such conduct has no reasonable purpose other than to make Plaintiff's Counsel look foolish when he raised the issue of the failure to file the deposition prior to the use thereof at trial. This is nothing but subterfuge designed to embarrass another attorney and has nothing to do with an appropriate and legitimate defense. It does show that Mr Conomy uses subterfuge when he has no legitimate factual defenses.

Plaintiff's counsel believes that the Defense will raise a claim that Ms Howell had a broken thumb prior to being stopped by Officer Hoskinson and was so intoxicated that she was unaware she was injured. Again, this argument is specious for the following reasons:

- No erratic driving signs of any kind or type existed while the Howell car was being observed.
- None of the normal and ordinary signs of intoxication were in existence at any time during the encounter on the street.
- There was no altercation or resistance.
- At all times Ms Howell was clear-headed, articulate, able to understand instructions, and able to hold/conduct an appropriate conversation.
- At the police station Ms Howell was able to deal appropriately with the Medic Squad.

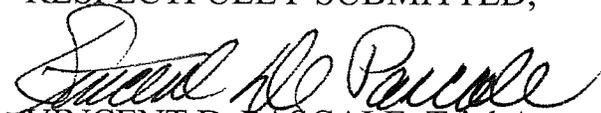
- The Medic Run Report clearly shows that Officer Hoskinson told the Medics that Ms Howell started complaining at the scene.
- The only reasonable, much less rational, explanation for the fact both supported by the evidence and affirmed by Officer Hoskinson, that Ms Howell denied injury prior to the Field Sobriety Tests and that she complained of injury immediately after being handcuffed:
 - A. Is NOT that Ms Howell was blind drunk despite having absolutely no driving signs, or physical signs of intoxication, immediately prior to being arrested and was sufficiently sober 5 to 10 minutes later to clearly understand her injuries.
 - B. But IS that Ms Howell was at all times clear headed, sober, and free from injury so as to be able to drive properly, was at all times able to remember everything that happened (as she so testified without difficulty) and was at all times able to hold proper conversation with the Medic Squad personnel.

In Conclusion, Ms Howell has put forth evidence that clearly proves:

1. She was uninjured prior to her contact with Officer Hoskinson;
2. She suffered no falls, vehicle accident, or other calamity while in the presence, observation or custody of Officer Hoskinson;

3. She did not resist arrest or engage in any form of altercation with Officer Hoskinson;
4. She had a medically verified injury to her hand, in the nature of a broken thumb, after she was handcuffed;
5. She incurred medical bills and expenses, she incurred a bill for the Medic Squad run (just as she expected and the reason why she wanted free transport to the hospital), she has incurred costs of litigation; she has endured pain and suffering both for the time the injury took to heal and in cold and damp weather since;
6. There is no other reasonable explanation for her injury other than the fact that something went wrong while she was being handcuffed.
7. Under the provisions of Ohio Revised Code §2743.02 the State and Parties are held to the same standards as anyone else in any other Court.

RESPECTFULLY SUBMITTED,


VINCENT DePASCALE, Trial Attorney
786 NORTHWEST BOULEVARD
GRANDVIEW HEIGHTS, OH 43212
(614) 298-8200 S.C. # 0013227
ATTORNEY FOR LYNDSEY HOWELL

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 22nd day of April, 2014, by regular U.S. Mail.


VINCENT DEPASCALE
ATTORNEY FOR LYNDSEY HOWEL

Revolution XR/d
XR LEFT HAND(3+)
Hand
Zoom = 0.6
DFOV: 15.19 X 19.77 cm

OBleness Memorial Hospital
HOWELL^LYNDSEY
147976
Acc: 0100487715
21-JAN-2012 03:00
DOB: 28-APR-1991



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MS

Image:1/1
Ref:0.0
55.00000 kv
163 mA

W/L: 16378 /8189
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Revolution XR/d
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Hand
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DFOV: 22.87 X 28.49 cm

OBleness Memorial Hospital
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DOB: 28-APR-1991

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Revolution XR/d
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DFOV: 18.61 X 24.80 cm

OBleness Memorial Hospital
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Image:1 / 1
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Revolution XR/d
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DFOV: 18.61 X 24.73 cm

OBleness Memorial Hospital
HOWELL^LYNDSEY
147976
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Image: 1/1
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