

2. Lyndsey Howell was so drunk that she was unable to know that her hand was already broken when Lt Hoskinson began the handcuffing procedure.
3. The Magistrate is not allowed to believe Lyndsey Howell and to not believe Lt Hoskinson.
4. The Attorney General does not approve of the Magistrate's writing style and syntax.

FACTS:

All litigation, and the results thereof, is fact intensive. Any first year law student is aware that there is a plethora of law supporting either side of any case. Law libraries are replete with cases on both sides of every issue likely to be imaginable; the reason that some cases are sustained, some are reversed, and some are distinguished lies in the fact pattern of each of the cases.

Contrary to the claims of the Attorney general the facts of this case are in substantial dispute.

In the instant case Ms Howell testified:

1. She had no injury to her hand at the time she was stopped by Lt Hoskinson T/P p.50, l. 7-11, and that her thumb was not broken when she got out of the car T/P p.50, l 22-24; p 51, l. 1.

2. She did not fall that evening; she was not engaged in any form of altercation that evening, she did not fall in the presence of the officer, and that she did not resist the officer in any way T/P p. 50, l. 12-21 .
3. The first time she felt any pain in her hand was when she was handcuffed T/P p. 51, l. 7-9.
4. When he (Lt Hoskinson) “put my left hand behind my back, I felt like my thumb popped or there was extreme pain in my left thumb” T/P p. 51 l. 17-20.
5. She immediately told Lt Hoskinson about the pain T/P p. 50, l. 21-24.
6. Ms Howell was unable to see what Lt Hoskinson was doing because her hands were behind her back T/P p. 52, l. 5-7.
7. When Ms Howell saw Mr Sowers earlier that evening (before being stopped by Lt Hoskinson), or at any other time prior to being handcuffed, her thumb was not broken T/P p. 63, l. 23-24, T/P p.64 l. 5.
8. Lt Hoskinson grabbed Ms Howell’s thumb, it felt like it popped, her hands were behind her back so she could not see what he did, she was just unable to tell whether it was grabbed or caught on something T/P p. 85, l 13-24.

Medic Ronald Herbert testified:

1. That he was an EMT with Athens County Emergency Medical Services and that he went on an EMT run with his partner Zachary Cyrus to the Ohio University Police Department where they were presented with Ms Howell who claimed that her thumb was injured T/P p. 23, l. 3-9, T/P p. 24, l. 9-12 .
2. Mr Herbert testified that Plaintiff's Exhibit 4 (attached hereto and made a part hereof) was accurate, including the narrative portion T/P p. 23, l. 17-19; T/P p. 24, l. 20-23; various portions of the witnesses' testimony.
3. Exhibit 4 was ultimately admitted into evidence.
4. The relevant narrative portion of Exhibit 4 is: "OFFICER STATED...WHEN HE PUT THE HANDCUFFS ON HER SHE STARTED COMPLAINING OF A THUMB INJURY."

When called as-on-cross-examination Lt Hoskinson testified:

1. That he had been a police officer for about 20 years T/P p. 11, l. 7-9; that he had been given handcuffing training at a number of locations T/P p. 11, l. 20-24; T/P p. 12, l. 1; that he considered himself competent at handcuffing people T/P p. 12, l. 2-4.

2. On pages 12 and 13 Lt Hoskinson refused to give a "yes" or "no" answer to the question: "Do you agree that if proper handcuffing procedure is followed, there is no reason for a person who is not resisting to suffer a broken bone in their hand?" and would only state that it would depend on the circumstances but would not delineate the circumstances.
3. Lt Hoskinson stated that he had no idea how Ms Howell's thumb was broken T/P p. 14, l. 4-6.
4. That when Ms Howell was stopped she did not make any claim of any injury T/P p. 14, l. 16-24, and that he had no reason not to believe her T/P p. 15, l. 1-3.
5. That Ms Howell did not fall in his presence T/P p. 15, l. 4-6; she was not involved in an automobile accident T/P p. 15, l. 7-10; the traffic stop was not the result of an accident T/P p. 15, l. 13-15.
6. Ms Howell did not resist or fight in any way and totally submitted to authority T/P p.16, l.10-16.
7. That after Ms Howell placed her hands behind her back he grabbed her fingers and put on the handcuffs T/P p.18, l. 24 T/P p. 19, l. 1-3.

8. Then Lt Hoskinson testified that the first time Ms Howell complained of pain in her hand was at the police station and that he never told anyone else anything different T/P p. 19, l. 4-13.
9. *This testimony is in direct contravention of the statement made by him to the EMT personnel in Exhibit 4.*
10. Plaintiff then offered an exhibit showing disciplinary proceedings against Lt Hoskinson for being untruthful but the Court disallowed the exhibit, and the questioning, so the exhibit was proffered and is part of the record but not part of the Magistrates' Decision.

When called on Direct Examination by the Attorney General Lt Hoskinson testified:

11. That Ms Howell did not resist, fight or struggle T/P p.114, l. 9-13.
12. At T/P p. 115, l. 18-20 Lt Hoskinson testified that Ms Howell complained of pain in her hand for the first time. *This testimony is inconsistent with the contents of Exhibit 4 concerning what he told EMT Cyrus.*
13. Lt Hoskinson admitted that Ms Howell's car was not weaving, was not moving in a jerky manner, and was not straddling lanes; that he probably would not have stopped the car at all if the lights had been on T/P p. 125, l. 5-17.

14. Lt Hoskinson admitted that no matter how good a person is at handcuffing things can go wrong T/P p. 132, l. 119-122.
15. After a number of objections Lt Hoskinson finally admitted that in his personal experience virtually every time a person is injured during an arrest the person has either resisted the arrest or tried to impede the arrest in some form T/P p. 134, l. 11-21; and that Ms Howell did none of that T/P p.134, l. 22-24.
16. Again, reluctantly, Lt Hoskinson admitted that:
 - a. Ms Howell got out of the car without problems;
 - b. Ms Howell did not fall down;
 - c. Ms Howell did not need to support herself;
 - d. Ms Howell did not hand on to the door of the car for support;
 - e. Ms Howell walked without falling;
 - f. Ms Howell did not stagger;
 - g. Ms Howell did not wobble;
 - h. Ms Howell did not fall against the car;
 - i. Ms Howell stood without falling;
 - j. Ms Howell stood without bouncing off the car;
 - k. Ms Howell stood without wobbling or weaving back and forth;

- l. Ms Howell was able to understand instructions;
- m. Ms Howell gave germane and logical responses to questions.
- n. T/P p. 137, l. 10 - T/P p. 139, l.5.

ARGUMENT:

Contrary to the claims of the Attorney General the Magistrate clearly understood the issues and requirements before her, and she clearly stated them in her Decision in the final paragraph of Page 3 of the Decision with the case citations to support her rendition thereof . Then, again contrary to the claims of the Attorney General the Magistrate clearly stated the requisite duty and the necessity of breach in order for a Plaintiff to prevail in the balance of the paragraph continuing on Page 3 and concluding on Page 4 of the Decision, also with supporting case citations. At all times the Magistrate understood the issues, the law, and the requirements necessary for a just verdict. Next, the Magistrate made a number of findings of fact linking all of the above together.

While the Magistrate recited a multitude of facts in the order that made sense to her and has not followed the rendition of Counsel herein, she mentioned most of them at one point or another.

The Attorney general, on the other hand, in his Objections manages to misquote and misinterpret a portion of one page to support his unfounded claims.

The Magistrate clearly understood from the testimony of Lt Hoskinson that in the case of a person with 20 plus years of experience and several training sessions on handcuffing, that if proper handcuffing procedures were followed there was no reason for a person who was not resisting, or obstructing in any way, to be injured during the handcuffing procedure.

The Magistrate stated that the credibility of Ms Howell as to being injured during the handcuffing procedure was substantiated. The Magistrate also found that the "smoke" (Counsel's term) raised by the Attorney General with respect to Ms Howell's credibility is unfounded and/or irrelevant. Certainly the complete failure of Lt Hoskinson to prove any, much less substantially all, of the generally recognized indicia of intoxication/impairment commonly used by Prosecutors in OVI cases supports the findings of the Magistrate, gives credibility to Ms Howell, and denies credibility to the claims of the Attorney General that Ms Howell was so intoxicated as to be unaware that her thumb was broken until she was in the police station some 15 to 30 minutes later.

The volume of salient facts elicited by Plaintiff's Counsel decrying intoxication/impairment shows that the claim of the Attorney General that Ms Howell was too drunk to know that she was already injured when she came into contact with Lt Hoskinson is without merit and that the Magistrate saw the truth for what it is/was.

The Magistrate made a number of findings in her Decision with respect to the lack of credibility on the part of Lt Hoskinson and his testimony. Such are not recited here as the Court can see them when it reviews the Decision as part of these proceedings. For example there is the colloquy between Lt Hoskinson and Plaintiff's counsel at T/P p. 121, l. 1 - T/P p. 122, l. 2, where Lt is forced to admit that his testimony on Direct Examination at the Trial was at variance with his testimony both As-on-Cross-Examination on the morning of Trial and in his Deposition: *in effect he had changed his testimony during the course of the proceedings, in front of the Magistrate, and it was no accident as his Deposition testimony was the same as his As-on-Cross-Examination an hour or so prior.*

This occurred, and was important to Lt Hoskinson, because he was present at all times in the Courtroom as the Defendant's Representative and he became aware that Plaintiff's Counsel was making a large point of the fact that Lt Hoskinson's prior testimony that he had Ms Howell place her hands behind her back in a "praying manner" (fingers pointing up) was in fact physically impossible and that his testimony on that point was inaccurate so he changed his version of that portion of the incident to explain away the inaccuracy, hoping no one would notice. Wrong!

The Magistrate found Lt Hoskinson non-credible without reference to Exhibit 6, which she did not admit, which consists of a disciplinary proceeding against Lt (then SGT) Hoskinson for untruthfulness within the Department. If the Magistrate had considered such an Exhibit she would have had even more justification. The Ruling disallowing the Exhibit and the cross-examination with respect to the untruthfulness was a large benefit to the Defense.

The Magistrate found Ms Howell to be completely credible on all relevant issues, found Lt Hoskinson not to be credible, found a duty to be owed to Ms Howell, and found that if Lt Hoskinson had properly performed the duty for which he claimed such expertise in a proper manner, Plaintiff would not have been injured.

The complaint that the Magistrate did not consider the drunk driving arrest as affecting Ms Howell's credibility is also unfounded as the OVI case is irrelevant as to whether or not Hoskinson broke her thumb. Even if Ms Howell had been convicted Hoskinson is not excused for injuring her. Again, the Attorney General raises non-issues for improper justifications unfounded in law and fact. Even a lawful arrest does not excuse brutality or negligence and the law thereon is massive.

We need to consider what the forgoing facts show us in the light of reason and logic:

1. We have is a situation where Ms Howell clearly claimed she was not injured prior to being arrested, and a total lack of any evidence that she was untruthful on that issue and/or any evidence that Lt Hoskinson had any reason to believe that she was injured but lying to him when he inquired as to that exact issue. Lyndsey denied any existing injury and Lt Hoskinson admits that he had no reason not to believe her denials.
2. Next, we have a claim by Ms Howell that while her hands were behind her back she felt something "pop" and had immediate pain, about which she made an immediate complaint.
3. Then, Lt Hoskinson claims that Ms Howell never complained until she was "on-station" at the police department BUT we have an EMT run report (Exhibit 4) that states that Lt Hoskinson advised the Medics that Ms Howell started complaining when he put the handcuffs on her, which is totally consistent with Ms Howells claim and contrary to Lt Hoskinson's denial, and comes from an independent unbiased source.
4. All relevant witnesses agree that nothing happened at the scene, in the cruiser, or at the police department to otherwise account for the injury.
5. All of the Attorney Generals fantasies as to Ms Howell being so drunk she did not know she was injured until he Medics arrived are completely

obliterated by the admissions of Lt Hoskinson that Ms Howell exhibited **none** of the normal and ordinary signs of intoxication/impairment (13 were used in this case) commonly used by the police in OVI cases. These include but are not limited to the fact that Ms Howell was able to carry on logical, coherent, topic related conversations with not only Lt Hoskinson but both of the Medics on all issues.

6. Also, we have the fact that if the handcuffing is properly performed by an experienced officer on a person who is not resisting or interfering no injury should occur.
7. There is no question that Ms Howell was in the complete control of Lt Hoskinson, no one else was present, Ms Howell did not resist or obstruct, and nothing other than the handcuffing occurred, and Hoskinson admitted all of this.
8. Throughout his testimony Lt Hoskinson stated that if anything unusual occurred he would have put it in his report and there is nothing in his report (or the Medic run report) about Ms Howell being incoherent, babbling, or inappropriate.
9. The only alternative explanation that the Attorney General has offered is that since Ms Howell's hands were behind her back, and she could not

see Lt Hoskinson break her thumb, and Lt Hoskinson denies causing the injury, it did not happen, Ms Howell has not proved it, all despite the X-rays and other medical records that the thumb was in fact broken.

CONCLUSION:

The Decision of the Magistrate is not wrong simply because the Attorney General does not like it.

The Attorney General is/was unable to cite specific facts in the transcript to show that the Magistrate lost her way and/or failed/refused to consider solid evidence that he presented in justification of or support of his position.

The Plaintiff, on the other hand, produced multiple facts, from independent witnesses, and admissions from Lt Hoskinson, that she was not intoxicated/impaired to such an extent as to not know of a prior injury; that she immediately complained of injury during the handcuffing procedure; that she did nothing to cause the handcuffing procedure to go wrong, particularly with an officer of 20 years experience and "well broken-in" handcuffs.

Finally, the Defense produced no evidence of any alternative explanation for the fact that Ms Howell's thumb was in fact broken.

The Magistrate had nothing other than the Plaintiffs version of the incident to consider, yet the Attorney General demands that she find in his favor based upon an

unsupported denial of reality, totally absent any alternative explanation for the documented injury.

The Magistrate had just cause to believe Ms Howell's substantially uncontroverted version of how her injury occurred

The Magistrate had just cause to not believe Lt Hoskinson's testimony.

The Magistrate had just cause to not buy into the Attorney General's unfounded denials.

The Magistrate had just cause to not be misled by the Attorney General's smoke and mirrors attempts to divert her from the truth.

The Decision of the Magistrate should be the Order of the Court.

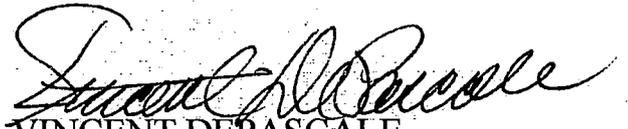
RESPECTFULLY SUBMITTED,



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 24th day of July, 2014, by regular U.S. Mail.


VINCENT DEPASCALE
ATTORNEY FOR LYNDSEY HOWEL

Athens County



EMS

Athens County Emergency Medical Services

36 North Plains Rd
THE PLAINS, OH 45780
740-797-9560

AMBULANCE RECORD

9187406 (zcyrus2)
Page 1 of 3

Trip Information

Dispatch ID# 5012000406	Date 01-21-2012	Station 53	Responding Unit 5302
Dispatched As Intoxication	Found To Be Intoxication	Patient Disposition Treated, Transported by EMS	

Department Directive

Dispatched 01:41	Enroute 01:41	Amb On Loc 01:46	Pt Contact 01:47	Depart Loc 01:57	Arrive Hosp 02:04	In Service 02:10
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Pickup

S-Scene of Accident / Acute Ev
88 University Ter
ATHENS, OH 45701

Destination

OBleness Memorial Hospital
55 Hospital Dr
ATHENS, OH 45701

Response To Scene Map Page:	911 Response (Scene)	Response From Scene Miles Transported:	No Lights & Sirens 1.30
County ATHENS		County ATHENS	Closest Facility 1
		Destination Reason	
		Number of Patients Transported	

Patient Information

Patient Name Howell, Lyndsey		Gender Female	Ethnicity Unknown
Patient Residence 2829 Polk Hollow Rd CHILLICOTHE OH 45601		Date of Birth 04-28-1991 (20 YO)	DL
Phone (H) 740-775-7592	Phone (W)		SSN *****6055

Patient Information

Allergies	NKDA
Medications	None
History	None
Chief Complaint	INJURED FINGER; Onset of event occurred 70 minutes Prior to Calling EMS.

Cardiac

Cardiac Arrest No	Etiology	Resuscitation Attempt
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Initial Patient Assessment

LOC AAOx3	BP 138/74	SpO2 0% RA	ETCO2
Breath Sounds Upper Left: Clear Right: Clear	Breath Sounds Lower Left: Clear Right: Clear	Resp Rate 18	Pulses Left: Radial Right: Radial
Pulse Rate 10	Pupils Left: PERRL Right: PERRL	Capillary Refill Instant	
Skin Color Normal	Skin Moisture Dry	Skin Temp Warm	Skin Appearance
Blood Glucose	Mental Status Normal	Neurological Status Normal	

Glasgow Coma Score

GCS Total 15	Eye Opening	Verbal Response	Motor Response	RTS 12
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Cyrus, Zachary (EMT-B)
Crew #1

Herbert, Ronald (EMT-P)
Crew #2

PLAINTIFF'S EXHIBIT 4

Patient Name: Howell, Lyndsey | Incident Date: 01-21-2012



EMS

Athens County Emergency Medical Services

 36 North Plains Rd
 THE PLAINS, OH 45780
 740-797-9560

AMBULANCE RECORD

 9187406 (zcyrus2)
 Page 2 of 3

Systemic Information - Assessment

Head/Face	Normal
Neck	Normal
Heart	Normal
Abdomen Left Upper	Normal
Abdomen Left Lower	Normal
Abdomen Right Upper	Normal
Abdomen Right Lower	Normal
GU Assessment	Normal
Back Cervical	Normal
Back Thoracic	Normal
Back Lumbar/Sacral	Normal
Extremities-Right Upper	Normal
Extremities-Right Lower	Normal
Extremities-Left Upper	Normal
Extremities-Left Lower	Normal

Sequence Chart

Date	Time	Event	By	Description
01-21-2012	01:41	Dispatched		
01-21-2012	01:41	Enroute		
01-21-2012	01:46	On Location		
01-21-2012	01:47	Patient Contact		
01-21-2012	01:57	Departed Location		
01-21-2012	02:04	Arrived Destination		
01-21-2012	02:10	In Service		

Patient Assessment at Destination

LOC	BP	SpO2	ETCO2
Breath Sounds Upper Left: Right:	Breath Sounds Lower Left: Right:		Resp Rate: Pulses Left: Right:
Pulse Rate	Pupils Left: Right:	Capillary Refill	
Skin Color	Skin Moisture	Skin Temp	Skin Appearance
Blood Glucose	Mental Status	Neurological Status	

Narrative

CALLED TO OUPD FOR THUMB INJURY. UPON ARRIVAL FOUND PT SETTING IN BOOKING ROOM HANDCUFFED TO CHAIR. OFFICER STATED SHE WAS UNDER ARREST FOR DUI, WHEN HE PUT THE HANDCUFFS ON HER SHE STARTED COMPLAINING OF A THUMB INJURY. UPON ARRIVAL TO STATION SHE CONTINUED TO COMPLAIN OF HER THUMB HURTING. PT RIGHT THUMB DID HAVE SOME SWELLING, NO BRUISING. PT WAS ABLE TO MOVE THE THUMB AND OTHER FINGERS. PT WANTED A FRIEND TO COME PICK HER UP AND TAKE HER TO THE HOSPITAL, BUT REFUSED TO SIGN THE EMS REFUSAL FOR TREATMENT FORM. OUPD RELEASED THE PT INTO ACEMS CUSTODY, ASSISTED PT TO SQUAD, PLACED PT ON BENCH SEAT. VITALS OBT ENROUTE AS LISTED IN REPORT. NO CHANGES IN STATUS, CALLED OMH ER FOR REPORT, ADVISED TO TAKE PT THROUGH TRIAGE. UPON ARRIVAL SENT PT TO WAITING TO WAIT TO BE SEEN, ADVICE STAFF PT WAS IN THE WAITING ROOM.

 Cyrus, Zachary (EMT-B)
 Crew #1

 Herbert, Ronald (EMT-P)
 Crew #2

Patient Name: Howell, Lyndsey | Incident Date: 01-21-2012

Athens County



EMS

Athens County Emergency Medical Services

1105 Schrock Road Suite 610
Columbus, OH 43229

**Account #
9187406**

Itemized Statement

Patient
Howell, Lyndsey
2829 Polk Hollow Rd
CHILLICOTHE OH 45601

Trip
Date of Service: 01-21-2012
Dispatch ID Number: 5012000406
Pickup: 88 University Ter
Destination: O'Brien Memorial Hospital

Itemized Charges

Description	Unit Cost	Units	Amount
BLS Emergency Base Rate	495.00	1	495.00
BLS Emergency Mileage	9.00	1.3	11.70

Account Detail

Transaction	Scan #	Post Date	Amount
Payment to EMS - Check / Money Order	p61004888741	06-07-2012	106.70
Payment to EMS - Check / Money Order	p51004855303	06-25-2012	100.00
Payment to EMS - Check / Money Order	p51004965847	07-12-2012	100.00
Payment to EMS - Check / Money Order	p21005001264	07-31-2012	100.00
Payment to EMS - Check / Money Order	p91005003149	08-17-2012	50.00
Payment to EMS - Check / Money Order	p11004855521	09-17-2012	50.00

Account Summary

Total Charges \$506.70	Total Payments \$506.70	Assign/Adjust \$0.00	Balance Due \$0.00
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Attorney and Counselor at Law

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24 JULY 2014

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No Fax & No E-Mail

CLERK
COURT OF CLAIMS OF OHIO
THE OHIO JUDICIAL CENTER
65 SOUTH FRONT STREET, THIRD FLOOR
COLUMBUS OH 43215

Re: Howell v Ohio University Police
Department
2013-00001

Dear Clerk:

Enclosed is the original and a copy of the Plaintiff's Memorandum Contra Defendant's Objections to the Magistrates Decision.

Please file the original and return a time stamped copy to me in the enclosed
SASE. *jac*

Thanx.

Vincent DePascale

FILED
COURT OF CLAIMS
OF OHIO
2014 JUL 28 AM 10:37

Vincent DePascale

Attorney and Counselor at Law

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24 JULY 2014

HON. HOLLY SHAVER, MAGISTRATE
COURT OF CLAIMS OF OHIO
THE OHIO JUDICIAL CENTER
65 SOUTH FRONT STREET, THIRD FLOOR
COLUMBUS OH 43215

Re: Howell v Ohio University Police
Department
2013-00001

Magistrate Shaver:

Enclosed is a Courtesy copy of the Plaintiff's Memorandum Contra Defendant's Objections to the Magistrates Decision.

Vincent DePascale

FILED
COURT OF CLAIMS
OF OHIO
2014 JUL 28 AM 10:38

Vincent DePascale

Attorney and Counselor at Law

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24 JULY 2014

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HON. PATRICK McGRATH
THE OHIO JUDICIAL CENTER
65 SOUTH FRONT STREET, THIRD FLOOR
COLUMBUS OH 43215

Re: Howell v Ohio University Police
Department
2013-00001

Dear Judge McGrath:

Enclosed is a Courtesy copy of the Plaintiff's Memorandum Contra Defendant's Objections to the Magistrates Decision.

Vincent DePascale

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2014 JUL 28 AM 10:38