



Kenneth Worner arrived on the scene. Trooper Shirkey asked Trooper Worner to issue a citation to plaintiff for not wearing a seatbelt. When Trooper Worner tried to issue the citation, plaintiff refused to state his name or produce any identification. After asking him several times for identification, Trooper Worner issued plaintiff two citations, one for not wearing his seatbelt and the other for obstructing official business, both misdemeanors. Plaintiff's name was written as "John Doe" on the citations and he was arrested and taken into custody. Plaintiff was released the following day after he identified himself.

{¶4} At the criminal trial, Lukens was found guilty of DUI and a marked lanes violation; plaintiff was acquitted of both the seatbelt and obstructing official business charges.

{¶5} Plaintiff alleges a claim of malicious prosecution against defendant. "The elements for a cause of action in malicious prosecution are (1) malice in instituting or continuing the prosecution, (2) lack of probable cause, and (3) termination of the prosecution in favor of the defendant." *Mikes v. Kent State Univ.* (Mar. 8, 1990), Franklin App. No. 89AP-749.

{¶6} This court has previously determined that Trooper Worner did not act with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiff.<sup>1</sup> Therefore, plaintiff has failed to prove that Trooper Worner acted maliciously when he arrested plaintiff.

{¶7} Plaintiff alleges that defendant did not have probable cause to arrest him. Probable cause is defined as a "reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged." *Huber v. O'Neill* (1981), 66 Ohio St.2d 28, 30.

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<sup>1</sup>See entry dated August 15, 2001.

{¶8} Plaintiff testified that he removed his seatbelt after being pulled over. Trooper Shirkey testified that based upon his observations, he did not believe that either occupant had removed their seatbelts once the van was pulled over. Upon review, the court concludes that Trooper Shirkey's testimony regarding the seatbelt is more credible than plaintiff's testimony. Therefore, the court finds that defendant had probable cause to issue a citation to plaintiff for failure to wear a seatbelt pursuant to R.C. 4513.263.

{¶9} Testimony at trial, including plaintiff's own testimony, also established that plaintiff refused to identify himself to law enforcement officials when asked to do so.

{¶10} R.C. 2935.26 states, in relevant part:

{¶11} "(A) Notwithstanding any other provision of the Revised Code, when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation, unless one of the following applies:

{¶12} "\*\*\*\*

{¶13} "(2) The offender cannot or will not offer satisfactory evidence of his identity.

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{¶14} The court finds that defendant had probable cause to arrest plaintiff pursuant to R.C. 2935.26(A)(2) inasmuch as Trooper Shirkey observed that plaintiff was not wearing his seatbelt. In addition, plaintiff did not offer satisfactory evidence of his identity while Trooper Worner was in the process of issuing him a citation. For the foregoing reasons, plaintiff's claim for malicious prosecution must fail.

{¶15} False imprisonment is the unlawful restraint by one person of the physical liberty of another. It defines a legal status known in law as an unlawful detention or illegal deprivation of a person's liberty by unlawfully arresting or detaining him, either with or without process. 45 Ohio Jurisprudence, Third Edition (2003), False Imprisonment and Malicious Prosecution, Section 1(A)1. For false imprisonment to exist, the plaintiff must have been confined intentionally without lawful privilege against the plaintiff's consent and

within a limited area for any appreciable amount of time, however short. *Id.* Because this court has found that plaintiff was lawfully arrested pursuant to R.C. 2935.26(A)(2), plaintiff has failed to prove that Troopers Shirkey and Worner were without lawful privilege to detain him; thus, his claim of false imprisonment must also fail.

{¶16} Plaintiff's complaint also lists claims based upon violations of Section 1983, Title 42, U.S.Code.

{¶17} Section 1983, Title 42, U.S.Code states:

{¶18} "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, \*\*\*."

{¶19} Under Section 1983, liability is imposed upon a "person" who deprives a citizen of constitutional rights. The United States Supreme Court has determined that a state is not a "person" for purposes of Section 1983, Title 42, U.S.Code. *Will v. Michigan Dept. of State Police* (1989), 491 U.S. 58, 71. Therefore, violations of Section 1983, Title 42, U.S.Code are not cognizable in this court. *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

{¶20} Plaintiff further claims that defendant's policies violated his constitutional rights. It has been consistently held that this court is without jurisdiction to consider claims for relief premised upon alleged violations of either the Ohio or United States Constitutions. See, e.g., *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620; *White v. Chillicothe Correctional Inst.* (Dec. 29, 1992), Franklin App. No. 92AP-1230; *White v. Dept. of Rehab. & Corr.* (Dec. 22, 1992), Franklin App. No. 92AP-1229.

{¶21} For the foregoing reasons, the court finds that plaintiff has failed to prove any of his claims by a preponderance of evidence and accordingly, judgment is recommended in favor of defendant.

{¶22} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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HOLLY TRUE SHAVER  
Magistrate

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