

IN THE OHIO SUPREME COURT

20-1157

WILLIAM WILSON
Plaintiff-Appellant
-vs
MUSKINGUM COUNTY
SHERIFF'S DEPT. ET AL.

On appeal from
Muskingum Co.
Court of Appeals, 5th District
Case No. CT2020-0036

NOTICE OF APPEAL OF WILLIAM WILSON

William Wilson #757629
PO BOX 1812
Marion OH 43301

FILED
SEP 25 2020
CLERK OF COURT
SUPREME COURT OF OHIO

Benjamin D. Humphrey
(0093423)
2 Miranova Pl. Suite 700
Columbus OH 43215

RECEIVED
SEP 25 2020
CLERK OF COURT
SUPREME COURT OF OHIO

Appellant, William Wilson, hereby gives notice of appeal to the Ohio Supreme Court from the Muskingum Co. Court of Appeals, 5th Appellate District, Case No. CT2020-0036, August 31, 2020. This case is of great general interest and raises substantial constitutional questions. Respect fully

William P. Wilson
William Wilson, Pro Se

IN THE SUPREME COURT OF OHIO

WILLIAM WILSON
Plaintiff-Appellant

-vs-

MUSKINGUM COUNTY
SHERIFF'S DEPT., ET AL.

: Muskingum County
: Court of Appeals
: Fifth Appellate District
: Case No. CT2020-0036
:

MEMORANDUM IN SUPPORT OF JURISDICTION

William Wilson #757629
Pro Se
Nccel, PO Box 1812
Marion, OH 43301

Benjamin D. Humphrey (0093423)
2 Miranova Place,
Suite 700

Columbus, OH 43215

EXPLANATION OF WHY THIS CASE IS ONE OF GREAT PUBLIC AND GENERAL INTEREST AND INVOLVES SUBSTANTIAL CONSTITUTIONAL QUESTIONS

This case presents the following substantial constitutional questions:

- (1) Can a police officer use a taser-gun on a suspect who is nonaggressive and is not resisting?
- (2) Can a victim of police brutality sue the officer in civil court?
- (3) Can a victim of police brutality demand that criminal charges be filed against the offending officer?

STATEMENT OF THE CASE

In the early morning hours of December 8, 2018, Deputy Wade Kanaval was on patrol in Zanesville, Ohio, when he observed a vehicle ahead of him pull into a driveway. The vehicle stopped halfway down the driveway. Noone exited the vehicle. Deputy Kanaval drove past the driveway, circled around and then drove by the driveway a second time. Deputy Kanaval ran the vehicle's information and was advised that the Frazeyburg Police Department had been notified that the owner of the vehicle had reported that he had lent the vehicle to someone who then refused to return it (Tr. 165) Therefore, Frazeyburg police were requested to stop the vehicle.

Deputy Kanaval followed the car, observed it make a right turn without signalling, and then attempted to make a traffic stop. He activated his cruiser's overhead lights, the car accelerated, and a chase ensued. The vehicle was traveling at speeds up to 70 m.p.h., was driving in the middle of the road, and running through stop signs. The car went through a residential area, eventually stopping in the front yard of a house. Three males exited the car and ran. A

fourth person, a female, remained in the vehicle. The driver fled towards the woods with another occupant of the vehicle.

Deputy Kanaval tasered Wilson, causing him to fall. Deputy Kanaval then drove his knee into the prostrate, appellant's spine. Deputy Kanaval claimed the driver was appellant, Wilson. Upon a search of Wilson's person, a baggie containing 1.38 grams of methamphetamine was found.

Stacy Nutter, the mother of Wilson's girlfriend, testified for the defense saying that she saw the driver exit the car and it was not Wilson. She further testified that she saw Wilson climb into the front seat and then exit the vehicle.

PROCEDURAL HISTORY

On December 13, 2018, Wilson was indicted on one count of 'Failure to Comply (risk of harm),' a third degree felony, O.R.C. 2921.33(B), and one count of 'obstructing official Business,' a second degree misdemeanor, O.R.C. 2921.31(A). (Case No. CR20180739)

On January 23, 2019, after lab results confirmed that the substance removed from Wilson's pocket was meth, Wilson was indicted on one count of 'Possession of Drugs,' a fifth degree felony, O.R.C. 2925.11(A) (Case No. CR20190044)

On April 20, 2020, Wilson filed in the Muskingum County Court of Common Pleas a complaint against Deputy Sheriff Wade Kanaval and Sheriff Matt Lutz of the Muskingum County Sheriff's Department for unjustified use of excessive force, police brutality, cruel and unusual punishment and intentional infliction of emotional distress, Case No. CH20200144.

Defendants filed a "Motion to Dismiss" that was granted by the Muskingum County Court of Common Pleas on June 22nd, 2020.

Wilson appealed the dismissal to the Court of Appeals for Muskingum County, Ohio, Fifth Appellate District, which issued a judgment on August 31, 2020 dismissing Wilson's appeal, stating that Wilson failed to comply with O.R.C. 2969.25 which requires an inmate to file an affidavit of prior civil actions within the last five years, writing "[t]he affidavit filed in April did not list several cases filed in this Court. In other words, the affidavit was an incomplete list of cases Appellant has pursued over the last five years." (Case No. CT20200036, Judgment Entry, Page 2.)

ARGUMENTS IN SUPPORT

- (1) Can a police officer legally use a taser on a subject who is not resisting and non-aggressive?

Over the past several months, police in the United States have brutalized unarmed men and women in Minneapolis, MN, Louisville, Ky, Kenosha, WI, Portland, Or, and a host of other cities. Most of these incidents ended in the death of the suspect and were followed by large protests, marches, and acts of civil disobedience. There are many who worry that this could lead to widespread racial violence, civil unrest, and even civil war.

The instant case is particularly timely as it involves accusations of police brutality by a plaintiff who was not resisting and was non-aggressive. Maskingum County Deputy Sheriff Wade Kanaval fired his taser-gun at plaintiff William Wilson, dropping Wilson to the ground. Deputy Kanaval then drove his knee into Wilson's spine, causing injury and suffering. All of this was unnecessary. Wilson was non-aggressive as you can clearly see from Deputy Kanaval's arrest report.

The Ohio Supreme Court should accept jurisdiction in this case because it will allow the Court to clarify and affirm where the state of Ohio stands on these urgent issues that are tearing this country apart. When is the use of a taser justified? When is it unjustified? The time is now for the Ohio Supreme Court to step in and set clear precedents.

(2) Can a victim of police brutality sue the police officer for damages in civil court?

Plaintiff-Appellant filed a complaint against Deputy Sheriff Wade Kanaval in the Muskingum County Court of Common Pleas on April 20, 2020 alleging unjustified use of excessive force, police brutality, cruel and unusual punishment, and intentional infliction of emotional distress.

Defendants³ filed a "Motion to Dismiss" that was granted by the Muskingum County Court on June 22, 2020. Appellant appealed the dismissal to the Court of Appeals for Muskingum County, Ohio, fifth Appellate District, which issued a judgment dismissing the appeal, stating that appellant had failed to comply with O.R.C. 2969.25, which requires that an inmate file an affidavit of all prior civil actions within the last five years, writing "Et The affidavit filed in April did not list several cases filed in this Court. In other words, the affidavit was an incomplete list of cases Appellant has pursued over the last five years." (Case No. CP20200036, Judgment Entry, Pg. 2)

The Appellate Court does not state specifically which civil actions were omitted from the affidavit, stating, somewhat vaguely, that "several" were. In fact,

Plaintiff's affidavit was complete, listing every civil filing. A photocopy of the affidavit is included below in Appendix . It includes every civil filing from the last five years.

By failing to consider plaintiff's civil action against Deputy Kanawal by making a bogus claim about plaintiff's affidavit, the Muskingum County Court has effectively denied appellant his First Amendment right to redress his grievance in court, and his Fifth Amendment right to due process of law.

All of appellant's assertions are backed up with documentation. The fact that appellant was non-aggressive and not resisting is shown clearly in Deputy Kanawal's arrest report. (see Appendix) That appellant suffered physical and emotional trauma shown clearly in the "Patient Medical Summary," (see Appendix)

(3) Can a victim of police brutality press criminal charges against the officer?

Deputy Wade Kanaval of Muskingum County Sheriff's Department used excessive, unjustified force to intentionally, willfully, knowingly and maliciously cause bodily injuries, pain, suffering, and mental anguish against plaintiff despite the fact that plaintiff was non-aggressive at the time of arrest.

This was essentially an assault by Deputy Kanaval against this plaintiff. Plaintiff would like to bring criminal charges against Deputy Kanaval but has thus far been unable to get Muskingum County to press charges.

CONCLUSION

For the reasons discussed above, this case involves matters of great general and public interest. This case also involves substantial constitutional questions. Appellant requests that the Supreme Court of Ohio accept jurisdiction in this case so that these important and urgent issues will be reviewed on the merits.

Respectfully submitted,

~~William B. Wilson~~
William Wilson, Pro Se

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing "Memorandum in Support of Jurisdiction" was sent by US Mail this 23rd day of September, 2020 to Benjamin D. Humphrey (0093423) 2 Miranova Place, Suite 700 Columbus, OH 43215

~~William B. Wilson~~
William Wilson

Exhibit

AFFIDAVIT OF PRIOR CIVIL FILINGS

FILED
COMMON PLEAS COURT
MARION COUNTY, OHIO

2020 APR 20 PM 12:51

STATE OF OHIO

SS:

COUNTY OF MARION

Now comes the affiant, WILLIAM ROBERT WILSON, Plaintiff in the foregoing civil action, and hereby verifies in accordance with R.C. §2969.25 (A), "a description of each civil action(s) or appeal(s) of a civil action that he has filed within the last five (5) years in any state or federal court." Having been duly sworn and cautioned as to the penalties for perjury, Affiant avers the following:

- 1) Case Name: WILSON, WILLIAM ROBERT VS GANNETT CLOTH
 Case Number: CV-219-0054 Court: NOBLE COUNTY
 Nature of Action: SLANDER DEFAMATION OF CHARACTER
 Outcome: DISMISSED AND APPEALED
- 2) Case Name: WILSON, WILLIAM VS MUSKINGUM CO. SHERIFF'S DEPT
 Case Number: CV 219-0064 Court: STARTED NOBLE COUNTY - TRANSFERRED TO MUSKINGUM COUNTY
 Nature of Action: CIVIL - POLICE BRUTALITY - Negligence
 Outcome: DISMISSED AND APPEALED
- 3) Case Name: WILLIAM R WILSON VS SHRYVER ET-AL COMP DWG, MATTHEW DAIR
 Case Number: 20EW-001060 Court: FRANKLIN COUNTY
 Nature of Action: BREACH OF CONTRACT
 Outcome: PENDING
- 4) Case Name: _____
 Case Number: _____ Court: _____
 Nature of Action: _____
 Outcome: _____

Exhibit

AFFIDAVIT OF PRIOR CIVIL FILINGS

Page 2 of 2

5) Case Name: _____
Case Number: _____ Court: _____
Nature of Action: _____
Outcome: _____

And further Affiant says not.

WILLIAM R WILSON

William R. Wilson

Affiant

NOTARY PUBLIC

Personally appeared before me, a Notary Public for the State of Ohio, County of Marion,

William R. Wilson, who signed this **Affidavit Of Prior Civil Filings**

in my presence and affirmed upon his oath that this is his free act and deed.

DONNA EVANS
NOTARY PUBLIC - STATE OF OHIO
Recorded in Crawford County
My commission expires Feb. 12, 2024

Donna Evans
Notary Public

My commission expires: 2-12-24

EXHIBIT

ARREST REPORT

(EXHIBIT #)

Date: 12-8-18 Case #: 18-0521-
 Last Name: Wilson First: William Middle: R
 Jr./Sr./etc: _____ DOB: 5-15-69 SSN: 7200 Race: W Sex: M
 Address: Homeless
 Home Phone: _____ Cell/Other Phone: NO Phone

(ABOVE INFORMATION MUST BE COMPLETED, INCLUDING ARRESTEE REFUSED BY JAIL)

Warrantless Arrest Warrant Arrest Commitment (check all that apply)

Charge: Failure to Comply ORC# 2921.331 Fel/Mis F13
 Charge: Obstructing official business ORC# 2921.31 Fel/Mis F15
 Charge: Possession of Drugs ORC# 2925.11 Fel/Mis F15
 Court: _____ Appearance Date: _____

MIRANDIZED: Yes No

CONDITION OF RELEASE: Summons After Arrest Hold for Court
 Citation Issued Bond Type: _____ (Property/Cash/OR)

INMATE CONDITION PRIOR TO ARRIVAL:
 Intoxicated Passed Out Non-Aggressive Aggressive
 Force Used During Arrest - Type: Taser - 535 (Chemical Agent/Taser/Other - explain)
 Visible Injuries (describe): -UNK-
 Medical Condition (describe): -UNK-
 Suicide Risk (Officer's observation) Treatment Received?
 Examined by Medical/Mental Health Personnel (list): Genesis Hospital

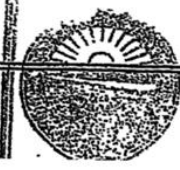
"RIGHT OF REFUSAL"

If arrestee requires medical or mental health attention due to circumstances that occurred prior to being brought to Muskingum County Jail, arrestee will be refused until such treatment is obtained.

ARRESTING OFFICER: Dep Wade Kanaval 535 AGENCY: MC10
 TRANSPORT OFFICER: Dep Mehl 537 AGENCY: MC10
 ACCEPTING OFFICER: _____ DATE: _____ TIME: _____
 (If arrestee refused write "REFUSED", supervisor's initials, date and time)

TAZED BYE WADE KANAVAI
 11 = MUSKINGUM COUNTY
 CLEARLY MARKED MIRANDIZED ASO

"NOW AGGRESSIVE WHY TASED"



FORM EDS-29
EFF. 03/05/16

Patient Summary

NYSID No: B232256 B&C No: A757629

WILSON, WILLIAM R

11271 STATE ROUTE 762, CORRECTIONAL RECEPTION CENTER, ORIENT, OH 43146

DOB: 05/15/1969 Age: 50 Y Sex: male

Home: 614-877-2441

Work:

Cell:

Email:

Primary Insurance:
PCP:

EXHIBIT 

Allergies : N.K.D.A

Medicaid Card provided:
Pt. being transported to outside court agency

AIDS/STD prevention education printed and provided:
Yes

Other significant health information/education printed and provided:
No

Patient signed acknowledgement of understanding:
Yes

Patient Medical Summary

Medical History

Active Problem List			
Code	Name	Specify	Notes
997.91	Hypertension		
CL11	Cardiac / Hypertension	Clinical Status- Stable, Degree of Control-Good F/U 90 days	
493.90	Asthma, unspecified, unspecified status		
CL17	Asthma	Degree of Control-Poor F/U 30 days	
309.81	Post-traumatic stress disorder	← PTSD	
304.40	Amphetamine-type substance use disorder, Severe		
304.30	Cannabis use disorder, Moderate		
CL17	Asthma	Clinical Status- Stable, Degree of Control-Good F/U 90 days	
Past Medical History			
HTN			
Chronic low back pain disc ←			
Aschler's			

Signed on 7/1/2019 11:20:44 AM

Patient: WILLIAM WILSON

MRN: A757629

External ID: B232256

ID: 1871379337

DOB: 05/15/1969

Sex: Male

Patient Location: Noble Correctional Institution

~~EXHIBIT~~

EXHIBIT

MED - Medical Needs Permit

(~~EXHIBIT~~ #8)

Name: WILLIAM WILSON

Date Issued: 07/01/2019

Number: B232256

Expiration date: 07/01/2020

Item is: - State issued

- Patient owned

- Sent from home

Issued Items: - Eyeglasses

- Hearing Aid (s)

- Knee Sleeve / Immobilizer

- Elbow Sleeve

- Ankle Sleeve

- Abdominal binder ←

- Arm / Shoulder Immobilizer

- Elastic bandage

- Cane

- Crutches

- Wheelchair

- Other

Describe other:

I am responsible for the above item received from the medical department. I will not damage or allow the item to be damaged by another person. I will return all items except for eyeglasses to the medical department on or before the expiration date listed above. I understand that a conduct report will be written and I will be responsible for the replacement cost of the item if it is not returned on or before the expiration date listed above or it is returned damaged or broken. Prices are based at a minimum. If product has to be replaced the cost will be assessed at the time of replacement.

I understand that I may have to pay to have eyeglasses, specialty braces, or shoes replaced if the item is lost, stolen, or broken once I have received them from the medical department. I understand that if I received an item from home, ODRC is not responsible for the maintenance of that item.

CC: patient

WILLIAM WILSON

7/1/2019

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

WILLIAM WILSON

Plaintiff - Appellant

-vs-

MUSKINGUM COUNTY SHERIFF'S
DEPT, ET AL.

Defendants-Appellees

Case No. CT2020-0036

JUDGMENT ENTRY

27/1037-
1039

FILED
FIFTH DISTRICT COURT of APPEALS
AUG 31 2020
MUSKINGUM COUNTY, OHIO
Wendy L. Sowers, CLERK

This matter came before the Court upon Appellees' Motion to Dismiss, Appellant's Response, and Appellees' Reply to the motion. Appellees' aver Appellant's appeal must be dismissed due to Appellant's failure to comply with R.C. 2969.25 which requires an inmate to file an affidavit of prior civil actions within the last five years. The affidavit must also include a brief description of each action.

Revised Code Section 2969.25(A) provides,

(A) *At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:*

- (1) A brief description of the nature of the civil action or appeal;

MUSKINGUM COUNTY, CASE NO. CT2020-0036

2

(2) The case name, case number, and the court in which the civil action or appeal was brought;

(3) The name of each party to the civil action or appeal;

(4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

R.C. 2969.25(A) (emphasis added).

In his response, Appellant argues he did file an affidavit on April 20, 2020. This appeal was not filed until July 13, 2020. Appellant did not file a new and updated affidavit at the time of the commencement of the appeal as required under R.C. 2969.25. Nor did he file an updated affidavit after being alerted to the missing affidavit. To date, Appellant has not filed the required affidavit in this appeal.

Further, even assuming arguendo that the April affidavit could apply to the separate appeal, the affidavit filed in April did not list several cases filed in this Court. In other words, the affidavit was an incomplete list of cases Appellant has pursued over the last five years.

The Supreme Court has held, "The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to

MUSKINGUM COUNTY, CASE NO. CT2020-0036

3

dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5; *State ex rel. Hawk v. Athens Cty.*, 106 Ohio St.3d 183, 2005-Ohio-4383, 833 N.E.2d 296, ¶ 5.

For these reasons, we find this matter should be dismissed. The motion to dismiss is granted.

MOTION GRANTED.

APPEAL DISMISSED.

COSTS TO APPELLANT.

IT IS SO ORDERED.

Earl E. Wiest

William B. Hoffman

W. Scott G.