

NO. 35815-8-II

**COURT OF APPEALS - DIV II
OF THE STATE OF WASHINGTON**

Patrick Allen,

Appellant

v.

Brian Goerge, ET AL

Respondent

REPLY BRIEF OF APPELLANT

07 JUL 19 AM 9:57
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
BY Patrick Allen
DEPUTY

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I. Nature of the Case

This is a U.S.C. § 1983 action for violation of Civil Rights under the Fourth Amendment for the use of excessive force. Defendants moved for summary judgment with pleading which included qualified immunity. Defendants were awarded summary judgment on the trial court's stated perception of a lack of showing of serious injury. Mr. Allen timely filed a 60(b) motion for Relief From Judgment under (3) newly discovered evidence and (11) any other reason. The hearing on the 60(b) motion was held, but the Mr. Allen was not allowed to present essential oral argument and case law discovered just before the hearing, and the motion was dismissed. Mr. Allen now appeals from that ruling on the basis of abuse of discretion.

II. Restatement of the Issues

1. The trial court erred in entering an order of December 8, 2006, denying the Mr. Allen's motion to for Relief From Summary Judgment entered on Nov. 18, 2005
2. The trial court erred when it repeatedly stopped the Mr. Allen's attempts to present his prepared oral argument and new case law during the December 8, 2006 hearing on Mr. Allen's motion for Relief from Judgment.

III. Review of Issues

1) Mr. Allen's attending doctor for handcuff injury referred Mr. Allen to an EMG specialist for a nerve conduction study after pain and numbness in Mr. Allen's hands and wrists did not subside after 2 years. EMG test was completed prior to summary judgment but contained only raw data and a highly technical description. Subsequent to summary judgment a DHS Doctor incidentally reviewed Mr. Allen's EMG study and discovered that the Mr. Allen's handcuff injury was serious and possibly permanent. Did the court abuse its discretion when it ruled the Mr. Allen's EMG evidence was not newly discovered, and that the Mr. Allen's injury is not significant? (Assignment of Error 1.)

2) Did the court abuse its discretion when it repeatedly stopped the Mr. Allen's efforts to present his prepared oral argument, and thus eliminated Mr. Allen's chance to reveal then recently discovered new case law and how that case law applies to the facts?

(Assignment of Error 2.)

3) Does new and intervening case law, establishing the threshold test for handcuff injury claims at summary judgment, apply and control in this case, and if so, justify remand of this case for a jury trial? (Assignment of Errors 1 and 2.)

IV. RESTATEMENT OF THE FACTS

On June 11, 2003, Mr. Allen, Patrick Allen, was driving near State Route 3 in Poulsbo, Washington, when Defendant, State Patrol Cadet Trooper Brian George stopped Mr. Allen for a minor traffic infraction. Cadet Trooper George eventually arrested Mr.

Allen on suspicion of driving under the influence, handcuffed him, placed him in the back of the patrol car then proceeded to search Mr. Allen's car. [cp 56,57,422] ¹

During the arrest procedure Cadet George improperly synched the cuffs tightly around Mr. Allen's hands rather than applying them loosely about on his wrists. [cp 422] During this time, Mr. Allen was cooperating fully and presented no risk for flight². [cp 57]

Within a few minutes, as a consequence of improper placement and application of the cuffs, Mr. Allen began to feel a burning pain emanating from his hands as the cuffs were cutting into his skin on the back of his hands. [cp 422] The pain in Mr. Allen's hands became extreme as Cadet George searched Mr. Allen's car. [cp 57]

When Cadet George returned to the patrol car some 15 minutes later Mr. Allen protested that his handcuffs were too tight. [cp 66,422] Mr. Allen stated that the cuffs were cutting into the back of his hands and asked Cadet Trooper George to loosen them. [cp 422] Cadet Trooper George replied, "That's as loose as they get" taking no action then or at any other time to check for excessive tightness or proper application of the handcuffs. [cp 66,423,423]

Approximately 25 minutes later Cadet George opened the back door of the patrol car and instructed Mr. Allen to turn sideways to relieve the pressure he then shut the door without examining the cuffs for proper tightness. [cp 67,423] George remained seated the

¹ Defendant claims Trooper George to have been a full Trooper at the time Mr. Allen was arrested. Mr. Allen gave taped testimony at the WSP's Poulso Detachment where he noticed a roster board containing the names and ranks of patrol officers where he noticed George's name under the title "Cadet". The WSP may be hiding an issue with Cadet Trooper George being an unsupervised cadet at that time.

²"Graham provides direction to the kinds of facts and circumstances a court needs to consider when applying the 'test of reasonableness': (1) severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." (Graham v. Conner, 490 U.S. at 396).

patrol car for the next 10 minutes until WSP Sergeant Hitchings arrived on scene.

Leaving the car, George spoke briefly with Sergeant Hitchings after which George returned to the patrol car and proceeded to leave the scene. [cp 423]

As they were leaving the arrest scene, Mr. Allen again pleaded with Cadet George to loosen the cuffs, as they had been on and tight for 45 minutes. Once again Cadet George ignored Mr. Allen's plea for relief. [cp 229, 423]

After a five minute drive to the Poulsbo Police station Mr. Allen was removed from the back of the patrol car and walked into the station. [cp 62,423]

Even though Allen reminded Cadet George about the tight cuffs as he was being walked into station and George had ample opportunity to inspect them, George made no effort adjust the cuffs or inspect them for proper tightness. [cp 62,66,423]

Once in the station, Allen was forced to remain cuffed for 25 additional minutes. [cp 238,423] While seated for DUI processing Allen continued his complaints about the pain from the cuffs without acknowledgment or relief. [cp 66,423]

On June 12th, 2003, the day following his arrest, Mr. Allen was admitted to the emergency room at the Jefferson County Hospital for treatment of injuries to his hands, including swelling, numbness, and lacerations. [cp 424] Mr. Allen's hands and wrists were examined by Dr. Kent Smith, the attending physician, who gave Allen a prescription for pain, swelling and neuritis, then released him. [cp 73-76]

The Dr. Smith indicated in his report that there were lacerations, swelling, neuritis, and contusions to both of Mr. Allen's hands from handcuffs. [cp 76,424]

On June 16th, 2003, Mr. Allen filed a formal complaint at the WSP Poulsbo detachment against Cadet George. [cp 63,424] The basis of Allen's complaint was

George's use of excessive force while handcuffing Mr. Allen on June 11th, 2003. With WSP Sgt. Troy Tamarez attending, Mr. Allen gave an audio taped statement detailing the nature of his complaint against Cadet George. This deposition was conducted, taped, and transcribed by the WSP. [cp 62-72,424]

Two weeks after his handcuff injury, on June 25, 2003, Dr. John Sack at the Seattle Hand Surgery Group in Seattle examined Mr. Allen. [cp 147,424] Dr. Sack noted in his report that Mr. Allen's hands were still slightly swollen, some bruising, and nerve pain in both hands with limited nerve pain in his elbows. Allen was instructed to return if the symptoms persisted beyond a month or two. [cp 317,424]

V. LAW AND ARGUMENT

NEWLY DISCOVERED EVIDENCE

Mr. Allen further argues the trial court abused its discretion in initially awarding summary judgment to the Defendant as the trial court trivialized his injury and disregarded his testimony and his witness, and the medical testimony from the emergency room physician. Further the trial court provided no written findings of fact or conclusions of law supporting Summary Judgment to the Defendant.

During the hearing on Mr. Allen's 60(b) motion for Relief of Summary Judgment, the Mr. Allen made repeated efforts to present oral arguments containing this new case law, but each time was shut down by the court after just a couple of sentences, thus prejudicing the Mr. Allen in a clear abuse of the courts discretion.

Mr. Allen further argues that during the hearing on Mr. Allen's 60(b) motion for Relief From Summary Judgment that the court stated that it was very familiar with the case, but then later demonstrated that with statements and questions that it was not

sufficiently familiar to make an informed judgment. Even though the Mr. Allen's 60(b) motion was based in part on newly discovered evidence found within the EMG Study, the court was unaware of that the Mr. Allen had an EMG Study performed. Ignorance of Mr. Allen's EMG study clearly demonstrates the court's wholesale lack of knowledge relating to Mr. Allen's 60(b) motion and the case. Mr. Allen argues that ruling on the 60(b) motion without any significant oral presentation from either side is a clear and manifest abuse of discretion.

Standard for Review

Applicable to this matter, Washington State Court Rules CR 60(b) provides that this court may provide relief from summary judgment for; "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:" (relative to this appeal) "(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);" and " (11) Any other reason justifying relief from operation of Judgment:"

Review of a CR 60(b) motion to vacate judgment is performed under the abuse of discretion standard. Abuse of discretion is found when the court's decision is based on untenable grounds. In this case the trial court abused its discretion when it ruled against Mr. Allen's motion for Relief of Summary Judgment.

The defendants continue to imply that Mr. Allen did not use due diligence in obtaining additional medical opinions during the 18 month time period that he continued to see Dr. Sack. Mr. Allen had no reason to loose faith in Dr. Sack as the defendant seeks

to produce a question as to Mr. Allen's diligence whereas any reasonable person would not lose faith in such a medical expert; there is no lack of diligence in this regard.

The defendant also continues to suggest through the deposition of Dr. Sack that the injuries were minor, yet they also imply that somehow Mr. Allen injured himself over the two-year period between the brutal handcuffing and the first EMG test.

Although Dr. Sack maintains a reputable name in his industry, it is not beyond anyone's imagination that an aging physician may not favor admittance of failure to properly diagnose a previous injury or look for the wrong type of injury as to maintain that reputation. That may be why Mr. Allen was never presented any analysis from Dr. Sack relating to the June 22, 2005 EMG test. Although Dr. Sack appears to be reviewing the EMG data for the first time during the deposition, he does not examine the test data from the median nerve, which was most extensively damaged of the nerves. Dr. Sack also continued to look for "carpel tunnel" injuries, as well as ignoring the fact that Mr. Allen was handcuffed over the tops of his hands, not over his wrists as Dr. Sack describes his opinion of which nerves should have been damaged during an inappropriate handcuffing.

Through the time of summary judgment, Mr. Allen had been repeatedly told by his hand specialist Dr. Sack that his handcuff injury was minor and should go away with time. [Cp 319] Clearly Mr. Allen was excusably ignorant of the facts that lay buried in the highly technical EMG study that was commissioned by Dr. Sack in June of 2005.

The question before this court is whether due diligence would have discovered the injury to Mr. Allen was permanent in nature, the basis of the November 18th, 2005 Haberly decision, and just when such a determination of Allen's permanent injury was in

fact discovered. Mr. Allen diligently did everything that he was instructed to do by his doctor. He had sought out a hand specialist shortly after his hand cuffing injury and had followed all treatment and testing procedures as directed by his doctor. It is not reasonable to expect a patient to abandon his treating physician without good cause.

The defendant implies that Mr. Allen “subsequently found a physician who would render an expert opinion to support his claim”. Nothing could be farther from the truth in that by DSHS requirement near the end of September 2005, Mr. Allen provided the Olympia DSHS office with his first EMG study of June 2005 along with other medical records. After transferring his case in December of 2005 to the DSHS office in Bremerton after Mr. Allen relocated back to Poulsbo, that DSHS office contacted Mr. Allen and DIRECTED him to Dr. Lynn Staker [cp 278] to make a determination regarding his inability to use his hands, the degree to which the condition remained, and how that would affect Mr. Allen’s ability to gain employment. [cp 331]

During Mr. Allen’s visit to Dr. Staker on December 27th of 2005, [cp 336] an examination, along with Mr. Allen’s first EMG data from June 22, 2005 being brought into Dr. Staker’s office at the request of DSHS, determined that Allen’s handcuff injuries were serious and possibly permanent. The results of that visit were that Dr. Staker notified DSHS of his diagnosis and recommended Mr. Allen repeat the EMG and nerve conduction study to determine if his nerve injuries were permanent. [cp 331]

Standing as a layman, and not as a medical expert, Mr. Allen could not have known prior to summary judgment that his injuries from handcuffing could be deemed permanent until Dr. Staker consulted him and directed him, on December 27, 2005, to get a second EMG and nerve conduction study as part of a DSHS directive. Mr. Allen clearly

had no opportunity to know what the DSHS doctor, Dr. Staker, would determine when he would review the June 22, 2005 EMG study. The defendant continues to suggest that lack of diligence by Mr. Allen is cause for judgment in their favor. This could only be true if Mr. Allen was a medical expert or had some medical training to somehow “distrust” an expert in the field of hand injury, and that it was Mr. Allen’s “responsibility” to have “distrust” in medical expert’s opinions, in which any reasonable person would not be expected to have that same responsibility.

ABUSE OF DISCRETION IN TRIAL COURT

Standard of Review

Appellate review of a motion for Summary Judgment is De Novo.

“Consequently, upon the presentation of newly discovered evidence or case law, the trial court may exercise its discretion to reconsider issues previously raised in a summary judgment motion.” *State v. Scott, 92 Wn.2d 209, 212, 595 P.2d 549 (1979).*

In *Grimes v. Lakeside Industries 78 Wash.App. 554, 897 P.2d 431 Wash.App.Div. 2, 1995. Jul 11, 1995*, it state’s ““Substantial evidence” is evidence of sufficient quantity to persuade fair-minded, rational person of truth of declared premis.”

There remain significant material facts that are in dispute in this case, and at the time of summary Judgment. Any reasonable jury would draw inferences from the outstanding factual disputes in this matter, which would lead to a judgment for the Mr. Allen. There is clear dispute in the record relating to; when, where, and how many times the Mr. Allen requested relief from excessively tight handcuffs.

Mr. Allen continues to argue that the trial court abused its discretion in initially awarding summary judgment to the Defendant as the trial court trivialized his injury and disregarded his testimony and his witness, Mr. Oldford, as well as the medical testimony from the emergency room physician. Further the trial court provided no written findings of fact or conclusions of law supporting Summary Judgment to the Defendant.

NEW CASE LAW CONTROLLING

Standard of Review

Appellate court has authority to review Under CR 60(b) (11). The court may relieve Mr. Allen from summary judgment “for any other reason justifying relief”

Patrick v. Vrablic, 2005 U.S. Dist. LEXIS 30275 (E.D.Mich. Nov. 16, 2005), 2005 WL 3088346 (E.D.Mich.) was brought to summary judgment parallel in time with the instant matter, *Allen v. George*. However, in *Patrick v. Vrablic* the U.S. District court establishes a new standard, or threshold, of injury and circumstance beyond which an excessive force handcuff injury claim would survive Summary Judgment “In order to reach a jury on this claim the Mr. Patrick must allege some physical injury from the handcuffing, and must show that officers ignored Mr. Patrick’s complaints that the handcuffs were too tight” 417 F.3d at 575. It is clear that in the instant case Mr. Allen meets or exceeds those standards with or without the newly discovered evidence, and should thus be granted relief accordingly. These are the two “tests” that make *Patrick v. Vrablic* a case to be referenced for case law review whether it is/is not precedent setting.

In *Patrick v. Vrablic* the standard for injury relating to handcuffing is that the injury simply must be demonstrated, and not necessarily be “serious”. It has always been the Mr. Allen’s position that his injury was at least “significant” as compared to “minor injury” assessment put forth in summary judgment by the Haberly Court. Further, similar issues of material fact relating to proper handcuffing, complaints of excessively tight cuffs and pain, and length of detention in cuffs, were considered to be significant questions of fact to be left for the jury, which were not in *Allen v. George*.

Although the *Patrick v. Vrablic* decision occurred 2 days earlier on November 16, 2005, it was not published in time for summary judgment in *Allen v. George*. Later, during the hearing on Mr. Allen’s 60(b) motion for Relief of Summary Judgment, the Mr. Allen made repeated efforts to present oral arguments containing *Patrick v. Vrablic* as new and intervening case law each time Judge Spearman shut down his oral presentation after just a couple of sentences, [rp 2 line 17, p3 line 19, p 4 line 7,p5 line 1,p 6 line 3] yet allowing the defense time to make their oral argument, without interruption, thus prejudicing the Mr. Allen in a abuse of the courts discretion.

Mr. Allen can use the two tests significant in findings of *Patrick v. Vrablic* in that; “(1) Allege that he complained to the officers that the handcuffs were too tight (or that there is evidence to infer that the officers should have known that the handcuffs were too tight); and (2) as a result of being left in handcuffs that were applied too tightly, he incurs injury to his wrists”. Both *Patrick v. Vrablic* and *Allen v. George* have met the above standard. Therefore, to the extent that Defendant's motion for summary judgment is predicated upon his claim that Mr. Allen's excessive force claim fails as a matter of law

and fact, and that Mr. Allen's motion for Relief of Summary Judgment should have been granted, and yet may be granted under CR 60(b) (11).

Mr. Allen will also respond to two allegations although seemingly petty, it sheds light on the prosecution of this case by the defendant's counsel in trying to "muddy the waters" in this case.

1) The use of the title "Cadet" when referring to Mr. George: Mr. Allen was at the WSP's Poulsbo detachment office one week after the handcuffing incident whereas Mr. Allen gave taped testimony and filed a formal complaint against Trooper George. While seated and waiting for the testimony to begin, Mr. Allen viewed a roster board in what appeared to be the officer break room whereas sections on a felt board were listed for cadets, sergeants, etc., was hanging from the wall and under "cadets" was the last name of George. Mr. Allen took that away with him as meaning that Mr. George was a cadet trooper at that time. Perhaps there is another legal issue being deflected by counsel concerning having cadets unsupervised on patrol.

2) The defendant's counsel seeks to discourage Mr. Allen's use "non-cited" case law via Federal Appeals Court rules on (page 15, footnote 7) "Citation to the unpublished federal district court decision of November 15, 2005, contravenes Fed. R. App., Rule 32.1 (allowing only citation as authority to unpublished opinions or orders issued on or after January 1, 2007), and the spirit of the RAP 10.4(h) ("A party may not cite as authority an unpublished opinion of the Court of Appeals.>"). Whereas, RAP 10.4(h) actually states:

"(h) Unpublished Opinions. A party may not cite as an authority an unpublished opinion of the Court of Appeals. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports."

This is another example of misrepresenting the law, as it is clear that in the quote for RAP 10.4(h) above, the prohibition of “non-cited” case law only implies itself upon Washington State Appeals Court citations, not all Appeals Courts throughout the United States. Arguably, there are also currently suggested changes by the Washington State Bar Association to rule 10.4(h) as cited from Washington Courts internet-home-page under “Court Rules” that would also put into question the “spirit of the law” when addressing the use of unpublished (Washington Appeals Court) citation issues as described below;

**Suggested Amendment to General Rules (GR) - New Rule 14.1
concerning Citation to Unpublished Opinions
Submitted by the Board of Governors of the Washington State Bar
Association**

Purpose: This suggested new General Rule would, in all Washington Courts, (1) maintain the existing prohibition on citation to unpublished opinions of the Washington Court of Appeals (see RAP 10.4(h)); (2) **allow citation to unpublished opinions issued by any court from a jurisdiction other than Washington State, but only if citation to that opinion is permitted under the law of the jurisdiction of the issuing court; and (3) require the party citing an unpublished opinion to file and serve a copy of it.**

Concurrent suggested amendments to RAP 10.4(h), CR 10, RALJ 7.3(c), and CRLJ 10 will implement the new rule by referring parties in all cases to GR 14.1 as the sole rule governing citation to unpublished decisions.

This amendment is intended to resolve confusion at two fundamental levels. First, although RAP 10.4(h) clearly prohibits citation of unpublished opinions of the Court of Appeals, there is no similar prohibition for unpublished opinions issued by a court from a jurisdiction other than Washington State.¹ In the absence of a clear rule, the Divisions of the Court of Appeals have taken differing approaches to the issue of whether parties may cite non-Washington unpublished decisions.

The defendant claims that *Patrick v. Vrablic* was not precedent setting law, nor allowable as citable case law. Here Rule 32.1.0. Citation of Unpublished Dispositions states: "Law review or other articles unpublished at the time a brief or memorandum is filed may not be cited therein, except with permission of the court." It also states:

(a) Disposition of this court. An unpublished judicial opinion, order, judgment or other written disposition of this court may be cited regardless of the date of issuance. The court will consider such dispositions for their persuasive value but not as binding precedent. A party must note in its brief or other filing that the disposition is unpublished. The term "unpublished" as used in this subsection and Local Rule 36.0(c) refers to a disposition that has not been selected for publication in the West Federal Reporter series, e.g., F., F.2d, and F.3d.

(b) Dispositions of other courts. The citation of dispositions of other courts is governed by Fed. R. App. P. 32.1 and the local rules of the issuing court. Notwithstanding the above, unpublished or non-precedential dispositions of other courts may always be cited to establish a fact about the case before the court (for example, its procedural history) or when the binding or preclusive effect of the opinion, rather than its quality as precedent, is relevant to support a claim of res judicata, collateral estoppel, law of the case, double jeopardy, abuse of the writ, or other similar doctrine.

It's clear that the defendant's counsel knows that case law not cited in the West Federal Reporter can be submitted as stated above. This is a pattern the defense is using to cloud issues with misquotes, as well as the pattern in which questions were asked in the form of statements during depositions of both Dr. Kent Smith and Dr. John Sack to support their pursuit of minimizing the damage, caused by Mr. George to Mr. Allen, as minimal.

The defendant also implies several times that Mr. Allen's nerve injuries were somehow either related to alcoholism (pg. 187), obtained by some other injury scenario, or brought on as normal physical ailments by himself. They also imply that the length of time between the handcuffing and the first EMG study somehow leaves doubt as to how these injuries occurred when the deposition of Dr. Smith specifically states that these injuries are "I have no doubt that the injuries that he suffered came from the handcuffs." (pg. 187) Although Dr. Smith is in a position to make visual findings based on experience within the emergency room practice, he clearly lacks the information needed to support answering the question put forth to him by the defendant's counsel as to how

long or quickly any nerve injuries should take to heal, not being in a position as Dr. Carl, in that she is a specialist in EMG testing of such injuries. The whole reason behind EMG studies is precisely because nerve injuries are internal and cannot possibly be determined by a brief visit to the emergency room or a Dr.'s visual observations only.

In chronological timeframes from the night of the arrest, to the first and second EMG studies, it is clear that no other medical facts or hospital visits, nor doctor's reports identifying any injuries to Mr. Allen's nerves in his hands that could have occurred, other than that of his attending physician, Dr. Sack, and subsequent DSHS physician and "discoverer" of the newly discovered evidence of possible permanent injury, Dr. Staker, along with Dr. Carl's EMG studies and medical findings. The defendant tries to imply that there is unknown "causation" of Mr. Allen's injuries even in light of the chronological events after June 11, 2005, with three office visits to a hand specialist, followed by the first of two EMG studies showing that damaged nerves "healed improperly", then by a follow-up EMG study six months later showing permanent injury.

The defendant boldly states that "Allen's 'New Evidence' Would Probably Not Change The Result If A New Trial Were Granted And is Merely Cumulative" is a desperate attempt which not only admits that this evidence can be "newly discovered" but is a final attempt to try and keep this case from going before a jury on chance that this court might somehow rule this "newly discovered evidence" as cumulative when it is clearly not.

Now defendant states that "(B. Allen's Motion To Vacate Was Properly Denied)" and states; "because Allen presented no newly discovered evidence". Yet, in their "Law

and Argument (B)(5) they argue that the evidence is merely cumulative and would not change the outcome of a new trial. This is bilateral and dubious argument that cannot meet the standards of being acceptably rational in a reasonable persons mind.

CONCLUSION

By the time the cuffs were finally removed from Mr. Allen at the Poulsbo Police station, Mr. Allen had suffered approximately one hour and 20 minutes in handcuffs without any relief from the pain and swelling caused by WSP Cadet Brian George improperly applying them. Due to the injuries caused by excessive force and prolonged handcuffing at the hands of Brian George, Mr. Allen has suffered permanent nerve injuries to his hands and is presently only able to type, write, or perform other repetitive tasks for a matter of minutes before his hands cramp up, develop nerve pain, and spasms.

From the time of his hand cuff injury and through the present day Mr. Allen is frequently suffers from nerve pain and is unable to use his hands any extended period of time. Quite clearly, Mr. Allen's handcuff injury has made him unemployable in his principal field of occupation, Information Technologies. Mr. Allen has been recently classified as "permanently disabled" because of his handcuff injury by DVR, DSHS, and now the Social Security Administration (SSA).

Mr. Allen has demonstrated that the trial court abused its discretion when it issued an order awarding summary judgment when significant issue of fact remained unsettled and the court disregarded the Mr. Allen's testimony and evidence.

Mr. Allen has further demonstrated that the trial court clearly abused its discretion when it issued an order dismissing Mr. Allen's 60(b) motion for relief from judgment

when the trial court demonstrated that it was not sufficiently aware of the facts and argument submitted in briefs to rule, and severely restricted Mr. Allen's attempts to make his oral presentation which included recently discovered and intervening case law.

Trial court has abused its discretion and newly discovered evidence and intervening case law presented by the Mr. Allen demonstrates that the court should re-open judgment in this matter on the basis of rule 60(b), relieving the Mr. Allen from summary judgment previously ordered for the Defendant, and remand this case for jury trial.

In reinforcing the matter of error's by Kitsap County Superior Court in Allen v. George:

- No. 1 Judge Spearman was arbitrary, and capricious in his judgment that the appellant had not shown due diligence as the court appeared to be more concerned with clearing it's case load rather than whether justice would be served.
- No. 2 Judge Spearman showed prejudice, and biased toward a pro-se appellant, and clearly displayed abuse of discretion in denying factual findings about how discovery of "newly discovered evidence" came about after the original hearing of November 16, 2005.
- No. 3 In awarding Summary Judgment in the original hearing, Judge Haberly's decision was based on antiquated "case of law" in her judgment. A new opinion of the 6th Circuit Court of Appeals which has bearing on this matter was yet to be published just prior to the Haberly decision, and was not known or available for use as case law until after the original hearing.

It is also clear, that these facts and disputes must be sorted through by a jury, to determine if Mr. Allen's Fourth-Amendment rights were indeed violated.

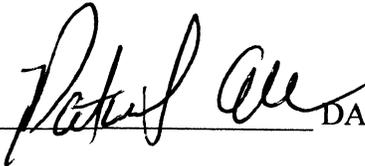
Mr. Allen is aware of current issues with excess tort and frivolous litigation, but he also asks the court to ensure that the aforementioned and legal processes not get in it's

own way in ensuring that these do not become obstacles to the legal systems own success in providing justice.

Mr. Allen prays that the justice(s) will see through the nebula distributed by the defense counsel of implied suggestions, misstatements, deposition questions posed as statements to be agreed upon, benefiting their pursuit to cast doubt, and the abuse of the court system by the defendant's counsel to cloud the truth; that justice does not get served by not allowing this matter it's true due process of a trial by jury.

For all of the reasons stated above, Mr. Allen prays that this Court will grant relief from summary judgment, so as to provide Mr. Allen satisfaction of a jury trial.

Respectfully Submitted,

 DATED July 19th, 2007

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APPENDIX 'A'

Not Reported in F.Supp.2d, 2005 WL 3088346 (E.D.Mich.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
E.D. Michigan, Southern Division.

Larry PATRICK, Plaintiff,

v.

Stephen VRABLIC, Defendant.

No. 04-CV-73270-DT.

Nov. 16, 2005.

William F. Piper, Piper, Willoughby, Portage, MI, for Plaintiff.

Felepe H. Hall, Mark V. Schoen, Office of Attorney General, Lansing, MI, for Defendant.

OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

ROSEN, J.

I. INTRODUCTION

*1 Plaintiff Larry Patrick has brought this Section 1983 excessive force action against Michigan State Trooper Stephen Vrablic alleging that, when Trooper Vrablic placed him under arrest, he handcuffed him too tightly and that, as a result, he sustained severe nerve damage in his right wrist. This matter is presently before the Court on Defendant Vrablic's Motion for Summary Judgment. Plaintiff has responded to Defendant's Motion. For the reasons stated by the Court on the record on November 14, 2005, as more fully developed below, Defendant's Motion will be denied.

II. PERTINENT FACTS

On June 7, 2003, at approximately 12:30 p.m., Michigan State Police Trooper Stephen Vrablic was working construction zone enforcement on I-94, east of the I-96 interchange, when he was flagged down by a motorist who indicated to him that she had observed a male assaulting a female in another vehicle she had passed while driving on the freeway. As the motorist was relaying this information, she observed the vehicle drive by and indicated this to Trooper Vrablic. Trooper Vrablic immediately pulled out into traffic and eventually was able to pull along side the vehicle. From this vantage point, Trooper Vrablic was able to see that the female passenger had a disheveled look about her; her hair was messed up, her shirt appeared to be torn, she appeared to have been crying and her face was red.

Trooper Vrablic followed the vehicle for approximately five miles, while he waited for other units to respond to assist him. Eventually, he activated his lights and, after other units arrived, he initiated a stop on I-96 in the area of Southfield and Joy Road. The vehicle pulled over and Trooper Vrablic approached the driver's side and asked the driver to step out of the vehicle. The driver, Plaintiff Larry Patrick, complied with the request.

After exiting the vehicle, Mr. Patrick was directed to move the rear of the vehicle where he was patted down and then handcuffed and placed in the rear of Trooper Vrablic's patrol car. Vrablic testified that because of Mr. Patrick's size (6'2" and 310 lbs.), he interlocked two sets of handcuffs and handcuffed Patrick with the interlocked cuffs. According to Plaintiff, once he was placed in the patrol car, Trooper Vrablic questioned him about his altercations with his then girlfriend, Anita Martin, and Plaintiff answered those questions. He was also given a preliminary breathalyzer test after which Trooper Vrablic informed Patrick that he was under arrest for OUIL and assault. According to Trooper Vrablic, the entire encounter with Mr. Patrick on the freeway until the time he was placed in the patrol car was 5 to 6 minutes. [FN1]

FN1. Plaintiff Patrick testified that it seemed more like 10-15 minutes to him.

According to Patrick, after he was placed in the patrol car, he complained to Trooper Vrablic that "these handcuffs are killing me," to which Vrablic responded that they would be at the station sooner

or later. (According to Vrablic, Patrick never complained about the handcuffs being a problem.)

*2 Trooper Vrablic then proceeded to take Mr. Patrick to the Detroit Police Department's Sixth Precinct. According to Plaintiff, it took 20 to 30 minutes to get to the station. Patrick testified that when they got to the precinct, he asked Trooper Vrablic to remove the handcuffs but was told that the handcuffs would be removed after Vrablic's paperwork was done.

Vrablic testified that the handcuffs were taken off once they arrived in the booking room of the 6th Precinct. At that time, Patrick's personal property was also removed from his pockets, and his shoelaces were removed from his shoes. Patrick was then administered a DataMaster breath test after which Trooper Vrablic's contact with Mr. Patrick was ended.

According to Plaintiff, after the handcuffs were finally removed, he noticed that his right wrist was bleeding where the cuffs had cut into his skin. Mr. Patrick was subsequently taken to Detroit Receiving Hospital by members of the Detroit Police Department, after indicating to them that he needed medicine for various conditions that afflicted him (apparently none of which were related to his arrest). Although Patrick indicates that he requested treatment for his wrist when he was taken to DRH, there is no mention in the DRH records of any such request or treatment.

The following day, one of Mr. Patrick's daughters picked him up from the police station. One of his other daughters, Wakishi Benson, saw him the next day. She testified that she was concerned about the cuts and swelling on her father's hand that she noticed. Although Ms. Benson has a medical background (she is a dentist), she did not treat or advise her father that he seek medical treatment. Instead, she testified that she gave him some money for a hotel and for transportation back to his home in Battle Creek.

Two or three weeks after he was arrested, Mr. Patrick still had numbness and swelling, as well as burning and tingling sensations in his right wrist. One of Mr. Patrick's friends, Pat Ragan, testified that she recommended at that time that Mr. Patrick see a doctor about his wrist. [FN2]

FN2. Ms. Ragan took pictures of the scar on Mr. Patrick's wrist at that time. These pictures, along with Ms. Ragan's affidavit, have been submitted to the Court.

Mr. Patrick finally went to see his doctor, Dr. Allison Thomas, on June 23, 2003. She diagnosed paresthesia and numbness in Mr. Patrick's right wrist. She then referred him to another physician for an electromyograph. That test, the results of which were reported back to Dr. Thomas, suggested that Mr. Patrick had neuropathy and nerve damage in his right wrist.

Mr. Patrick thereafter filed this lawsuit alleging in his Complaint (1) a Section 1983/Fourth Amendment excessive force claim and (2) a state law gross negligence claim predicated upon the injuries he allegedly sustained as a result of being handcuffed too tightly by Trooper Vrablic. Discovery has now closed and Defendant Vrablic has moved for entry of summary judgment in his favor on Plaintiff's federal claim arguing (1) that because Defendant's actions were reasonable in light of the circumstances, Plaintiff's Fourth Amendment excessive force claim fails as a matter of law and fact, and (2) alternatively, Plaintiff's claims are barred by qualified immunity. [FN3]

FN3. Although Defendant speaks of Plaintiff's "claims " [plural] being barred by qualified immunity, qualified immunity applies only with respect to constitutional claims. Indeed, Plaintiff's discussion of qualified immunity at pp. 7-8 of his brief demonstrates this limitation on the applicability of the doctrine. Defendant did not address Plaintiff's state common law gross negligence claim at all in his summary judgment motion or brief. Therefore, the Court will treat Defendant's motion as one seeking summary judgment only with respect to Plaintiff's federal claim.

III. DISCUSSION

A. STANDARDS APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

*3 Summary judgment is proper " if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." ' Fed.R.Civ.P. 56

(c).

Three 1986 Supreme Court cases--*Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); and *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)--ushered in a "new era" in the standards of review for a summary judgment motion. These cases, in the aggregate, lowered the movant's burden on a summary judgment motion. [FN4] According to the *Celotex* Court,

FN4. "Taken together the three cases signal to the lower courts that summary judgment can be relied upon more so than in the past to weed out frivolous lawsuits and avoid wasteful trials." 10A C. Wright, A. Miller, M. Kane, *Federal Practice & Procedure*, § 2727, at 35 (1996 Supp.).

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof. *Celotex*, 477 U.S. at 322.

After reviewing the above trilogy, the Sixth Circuit established a series of principles to be applied to motions for summary judgment. They are summarized as follows:

* The movant must meet the initial burden of showing "the absence of a genuine issue of material fact" as to an essential element of the non-movant's case. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case.

* The respondent cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must "present affirmative evidence in order to defeat a properly supported motion for summary judgment."

* The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.

* The trial court has more discretion than in the "old era" in evaluating the respondent's evidence. The respondent must "do more than simply show that there is some metaphysical doubt as to the material facts." Further, "[w]here the record taken as a whole could not lead a rational trier of fact to find" for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent's claim is plausible. *Betkerur v. Aultman Hospital Association*, 78 F.3d 1079, 1087 (6th Cir.1996). See also, *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir.1989). The Court will apply these standards in deciding Defendant's Motion for Summary Judgment in this case.

B. ISSUES OF FACT PRECLUDE SUMMARY JUDGMENT ON PLAINTIFF'S EXCESSIVE FORCE CLAIM

Claims regarding police officers' use of excessive force in the context of an arrest or other seizure are governed by the Fourth Amendment. See *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). In *Graham v. Connor*, the Supreme Court established a number of guidelines to be followed by lower courts in evaluating claims alleging excessive force in the course of an arrest or detention. First, because these questions involve seizures, the Fourth Amendment "reasonableness" test is the appropriate standard by which such claims are to be judged. 109 S.Ct. at 1871. The Court continued:

*4 Determining whether the force used to effect a particular seizure is "unreasonable" under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.... Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. 109 S.Ct. at 1871-72 (citations omitted). The Court added:

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving-- about the amount of force that is necessary in a particular situation.

109 S.Ct. at 1872. *See also* *Walton v. City of Southfield*, 995 F.2d 1331, 1342 (6th Cir.1993); *Leber v. Smith*, 773 F.2d 101, 105 (6th Cir.1985) ("The issue we must address, then, is whether [the police officer's] actions were reasonable under the Fourth Amendment [c]onsidering [all] the factual circumstances surrounding the incident in question), *cert. denied*, 475 U.S. 1084, 106 S.Ct. 1466, 89 L.Ed.2d 722 (1986); *Damron v. Pfannes*, 785 F.Supp. 644, 647 (E.D.Mich.1992).

Finally, as the *Graham* Court explained, the state of mind of the officers at the time of arrest has no bearing on the reasonableness of their actions at the time of the arrest:

Whatever the empirical correlations between "malicious and sadistic" behavior and objective unreasonableness may be, the fact remains that the "malicious and sadistic" factor puts in issue the subjective motivations of the individual officers, which our prior cases make clear has no bearing on whether a particular seizure is "unreasonable" under the Fourth Amendment.

109 S.Ct. at 1872. *See also*, *Branham v. City of Dearborn Heights*, 830 F.Supp. 399, 401 (E.D.Mich.1993).

While the foregoing standards make clear that, depending on the circumstances, some limited force may be reasonable, the record evidence of this case establishes that there exists a genuine issue of material fact regarding the degree of force used by Trooper Vrablic with regard to the arrest and handcuffing of Plaintiff Patrick.

Relying exclusively on this Court's 1995 decision in *Nemeckay v. Rule*, 894 F.Supp. 310 (E.D.Mich.1995), Defendant Vrablic argues that Plaintiff's excessive force claim predicated upon his having been handcuffed too tightly fails as a matter of law. In *Nemeckay*, the plaintiff was arrested for driving under the influence of alcohol at an excessive speed. After performing poorly on a series of sobriety tests, he was arrested, handcuffed and placed in the back of the defendant's police cruiser. After the handcuffs were placed on Nemeckay, he remained in the cruiser approximately ten minutes before leaving the scene. He was then transported to a local police station, a trip which took an additional 15 minutes.

*5 In his complaint, Nemeckay alleged that while he was in the cruiser, he repeatedly told the police officers that his handcuffs were too tight, were hurting his wrists, and were causing him injury. The defendant police officer, however, testified that she did not recall plaintiff complain that the handcuffs were too tight. Nemeckay claimed that he sustained permanent injury to his wrist as a result of the police officer's failure to loosen the handcuffs. The only support offered by plaintiff for his allegations, however, was his own deposition testimony. (At a medical examination conducted during the course of discovery, Nemeckay reported continued occasional weakness and numbness to the thumb area of his right hand. The examining physician, however, found "no objective evidence of any abnormality in the man's right hand, right wrist or right forearm." 894 F.Supp. 310 n. 1.)

Noting the absence of objective evidence of excessive force, the Court found that the defendant's failure to remove the handcuffs under the circumstances presented in the case did not rise to the level of conduct prohibited by the Fourth Amendment. The Court explained:

Something more than negligence or the mere failure to heed a prisoner's complaints must be shown. If every case in which a person taken into custody with handcuffs were to give rise to a question of constitutional dimension requiring factual inquiry, literally every such case would require submission to the fact-finder.

Id. at 315.

In relying on the quoted-excerpt, however, Plaintiff here ignores that in *Nemeckay* the Court emphasized that "[t]he reasonableness of a particular use of force depends on the 'facts and circumstances of each particular case.'" *Id.*

Here, Plaintiff has proffered more than merely his own testimony of having repeatedly complained to Trooper Vrablic that his handcuffs were too tight as evidence of the use of excessive force. He also has presented evidence of having sustained physical injury. Both Plaintiff's daughter and his friend, Pat Ragan, testified that the swelling and scars on his wrist were still visible two to three weeks after his arrest, and photographs taken by Ms. Ragan bear this out. Further, his doctor testified that Mr. Patrick was still suffering from paresthesia and numbness in his right wrist nearly a month later and an electromyograph showed that he suffered from neuropathy and nerve damage which the doctor opined was the result of being handcuffed too tightly at the time of his arrest in early June. This is far more evidence of excessive force than the mere testimony of the plaintiff of having complained about the handcuffs being too tight which was found insufficient in *Nemeckay* to sustain a Section 1983 claim.

Defendant also entirely ignores the body of Sixth Circuit precedent that has developed in this area since the time of this Court's *Nemeckay* decision. *See e.g.*, *Martin v. Heideman*, 106 F.3d 1308 (6th

Cir.1997); *Kostrzewa v. City of Troy*, 247 F.3d 633 (6th Cir.2001); *Neague v. Cynkar*, 258 F.3d 504 (6th Cir.2001); *Burchett v. Kiefer*, 310 F.3d 937 (6th Cir.2002); *Lyons v. City of Xenia*, 417 F.3d 565 (6th Cir.2005); **see also** *Meadows v. Thomas*, 117 Fed. Appx. 397 (6th Cir.2004); *Grooms v. Dockter*, 1996 WL 26917 (6th Cir.1996) (unpublished opinion; text available on WESTLAW). These post-1995 appellate court decisions further establish that summary judgment in this case would be inappropriate.

***6** For example, in *Martin v. Heideman*, the Court of Appeals reversed the district court's directed verdict in favor of the defendant police officer on the plaintiff's claim that the officer had handcuffed him too tightly. The appellate court found that an issue of fact existed as to whether the officer used excessive force under the circumstances where the plaintiff presented evidence in the form of his own testimony that, after he was handcuffed, he complained to the officer several times over the course of a 35-minute period-- 20 minutes in the police cruiser and 15 minutes in a holding cell at the police station--that the handcuffs placed on him were too tight and that his hands were becoming numb and were swelling. The plaintiff also presented the deposition testimony of his family physician about the emergency room records on the day after his arrest which showed that the plaintiff complained of a sore wrist and contusions on his right arm, and the deposition testimony of an orthopedic surgeon who had diagnosed the plaintiff as having nerve entrapment neuropathy.

The Sixth Circuit also reversed the district court's grant of summary judgment for failure to state a claim in favor of the defendant police officers in *Kostrzewa v. City of Troy*. In that case the plaintiff pointed to his repeated complaints to the officers that the handcuffs placed on him were too tight and were causing him pain and evidence that when he was taken to the hospital for treatment after being booked, his wrists were extremely swollen, red and painful for which the doctor recommended that his wrists be elevated and that ice be applied to reduce swelling. Based upon the foregoing, the appellate court determined that "there is no question that [the plaintiff] has stated a legally sufficient claim for which relief can be granted." 247 F.3d at 641.

By contrast, in *Neague v. Cynkar*, the Court of Appeals reversed the district court's denial of the defendant's motion for summary judgment in a handcuffing/excessive force case because of the absence of evidence of physical injury to the plaintiff due to his being handcuffed by the police. The court explained:

Plaintiffs do not allege physical injury from the handcuffing, which lasted at most thirty-three minutes; the police loosened the cuffs when Jonathan so requested. In fact, Carol Neague agreed in her deposition that she was "not claiming any physical injury as a result of the handcuffing."

This court's opinion in *Kain v. Nesbitt*, 156 F.3d 669 (6th Cir.1998), supports our view that the handcuffing of a person in the course of an otherwise lawful arrest falls as a matter of law, to state a claim for excessive force. * * *

... We now make explicit what this court in *Kain* implied: when there is no allegation of physical injury, the handcuffing of an individual incident to a lawful arrest is insufficient as a matter of law to state a claim of excessive force under the Fourth Amendment.

***7** 258 F.3d at 508. *See also*, *Burchett v. Kiefer*, *supra* ("Our precedents allow the plaintiff to get to a jury upon a showing that officers handcuffed the plaintiff excessively and unnecessarily tightly and ignored the plaintiff's pleas that the handcuffs were too tight." 310 F.3d at 944-45); *Lyons v. City of Xenia*, *supra* ("Not all allegations of tight handcuffing, however, amount to excessive force. In order to reach a jury on this claim the plaintiff must allege some physical injury from the handcuffing, and must show that officers ignored plaintiff's complaints that the handcuffs were too tight." 417 F.3d at 575 (citations omitted).)

Summarizing the law extrapolated from the foregoing precedents, in *Meadows v. Thomas*, the court stated that, for a plaintiff to establish a viable Fourth Amendment claim for excessively forceful handcuffing, he must:

(1) allege that he complained to the officers that the handcuffs were too tight (or that there is evidence to infer that the officers should have known that the handcuffs were too tight); and (2) as a result of being left in handcuffs that were applied too tightly, he incurs injury to his wrists.

17 Fed. Appx. at 405.

Plaintiff in this case has met this standard. Therefore, to the extent that Defendant's motion for summary judgment is predicated upon his claim that Plaintiff's excessive force claim fails as a matter of law and fact, the motion for summary judgment is denied.

C. FACTUAL ISSUES ALSO PRECLUDE SUMMARY JUDGMENT ON QUALIFIED IMMUNITY GROUNDS

Under the doctrine of qualified immunity, a police officer will not be held liable on a plaintiff's claim for civil damages under Section 1983 so long as his conduct does not violate clearly established statutory

or constitutional rights of which a reasonable officer in the defendants' position would have known. See *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); *Kostrzewa v. City of Troy, supra*, 247 F.3d at 641. The Sixth Circuit has held that the right to be free from excessive force, including "excessively forceful handcuffing," is a clearly established right. See, *Martin v. Heideman, supra*, 106 F.3d at 1313; *Kostrzewa v. City of Troy, supra*; *Walton v. City of Southfield*, 995 F.2d 1331, 1342 (6th Cir.1993).

As explained by the *Kostrzewa* court,

When making a qualified immunity analysis, it is important to remember that the defendant is, in essence, saying: "If the plaintiff's version is credited, what I did, judged *today, arguendo* would be wrongful, but at the time I acted, no reasonable officer would have known he was acting wrongfully." As this circuit has analyzed the qualified immunity issue in excessive force cases, the question of whether the reasonable officer would have known his conduct violated clearly established constitutional rights can be answered by the initial inquiry of whether the officer's use of force was objectively reasonable. It is clear from this circuit's analyses in various excessive force decisions that, having concluded that the right to be free from excessive force is clearly established, whether we grant qualified immunity in a particular case depends upon whether the officer did, in fact, use excessive force. (*i.e.*, force that was not objectively reasonable). To put it another way, if there is a genuine issue of fact as to whether an officer's use of force was objectively reasonable, then there naturally is a genuine issue of fact with respect to whether a reasonable officer would have known such conduct was wrongful.

*8 247 F.3d at 641-42 (citations omitted). See also *Martin v. Heideman, supra* (where a genuine issue of fact exists as to whether the defendant police officer used excessive force in handcuffing the plaintiff, it is error to grant the officer qualified immunity. 106 F.3d at 1313).

As in *Martin* and *Kostrzewa*, in this case a genuine issue of fact exists as to whether Defendant Vrablic's handcuffing of Plaintiff amounts to excessive force. This same factual issue precludes summary judgment on qualified immunity grounds.

CONCLUSION

For all of the reasons stated above in this Opinion and Order,
IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is DENIED.

SAULSBERRY, J.

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 16, 2005, by electronic and/or ordinary mail.

E.D.Mich., 2005.

Patrick v. Vrablic

Not Reported in F.Supp.2d, 2005 WL 3088346 (E.D.Mich.)

Motions, Pleadings and Filings (Back to top)

- 2006 WL 1767829 (Verdict, Agreement and Settlement) Verdict Form (Apr. 28, 2006) Original Image of this Document (PDF)
- 2004 WL 2193732 (Trial Pleading) Complaint (Aug. 23, 2004) Original Image of this Document with Appendix (PDF)
- 2:04cv73270 (Docket) (Aug. 23, 2004)
- 2004 WL 3608919 (Expert Report and Affidavit) Affidavit of Dr. Allison Thomas. M.D. (2004) Original Image of this Document (PDF)

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

PATRICK ALLEN,
Plaintiff/Appellant,

vs.

BRIAN GEORGE, et al.,
Defendants/Appellees.

NO. 35815-8-II

CERTIFICATE OF MAILING

COURT OF APPEALS
DIVISION II
07 JUL 19 AM 10:20
STATE OF WASHINGTON
BY DEPUTY

I Patrick Allen, declare under penalty of perjury of the laws of the State of Washington that I am a citizen of the United States of America, over the age of 21 years, and competent to be a witness herein.

That on the 19th day of July, 2007, I deposited in the United States Mail, First Class, postage prepaid, copies of the following documents:

APPELLANT'S REPLY BRIEF.

Addressed to:

Kenneth Orcutt
Attorney General of Washington
Torts Division
629 Woodland Square Loop SE
P.O. Box 40126
Olympia, WA 98504-0126

DATED at Poulsbo, Washington, this 19th day of July, 2007.


Patrick Allen