

**Matter of Coppage v County of Saratoga**

2011 NY Slip Op 34272(U)

June 1, 2011

Supreme Court, Saratoga County

Docket Number: 2009-1592

Judge: Stephen A. Ferradino

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT  
STATE OF NEW YORK

COUNTY OF SARATOGA

In the Matter of the Claim of  
DERRELL E. COPPAGE, JR.,

Plaintiff,

- against -

**DECISION and ORDER**  
RJI # 45-1-2009-1391  
Index #2009-1592

COUNTY OF SARATOGA,

Defendant.

APPEARANCES

Brennan & White, LLP  
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STEPHEN A. FERRADINO, J

SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

2011 JUN 13 AM 10:49

FILED

The defendant has requested an order of this court pursuant to CPLR 3212 granting summary judgment in favor of the defendant. The plaintiff has opposed the motion.

The plaintiff claims that he sustained injury to his left wrist during an arrest due to the "position," "placement" and "tension" of the handcuffs that were placed on him. He also alleges the arresting officer "improperly used intentional and excessive force" upon him. The following facts are not in dispute. The plaintiff was involved in a motor vehicle accident. The officer on the scene conducted a breath test. The plaintiff tested positive for alcohol over the legal limit and was arrested on charges of Driving While

Intoxicated, and Endangering the Welfare of a Child. He was arrested, handcuffed and taken into custody at the accident scene. The plaintiff appeared to have sustained injuries to his head and mouth. The officers handcuffed him and transported him to Saratoga Hospital. He refused treatment for the injuries to his head and mouth and was released from the hospital with the officer and taken for arraignment.

The disparities in testimony arise in what transpired after the plaintiff was handcuffed. He claims he was improperly cuffed with his hands in an improper position behind his back. He alleges the cuffs were too tight. He contends he reported this to the officer during the car ride to the hospital and was ignored. His complaints were again voiced and ignored at the hospital by the officer who plaintiff claims indicated he would not do anything with the handcuffs until the plaintiff consented to a blood test. The plaintiff alleges he yelled for help and a doctor and nurse came. The plaintiff claims he told the doctor he could not feel his hands and his thumb was purple. The plaintiff testified that the doctor asked if there was a reason the cuffs couldn't be fixed and then the officer put the cuffs on in front of the plaintiff. The officer does not recall any conversation with hospital staff about placement of the plaintiff's handcuffs. He does not recall any complaints being made by the plaintiff at any time regarding his handcuffs.

The record contains varying accounts of the plaintiff's behavior at the hospital. Additionally the hospital record makes no notation of any complaint regarding his wrists as a result of the handcuffs. Additionally the plaintiff stated in his deposition that he believed the officer made a mistake in the manner he handcuffed him. He did not believe the improper cuffing was intentional. However, he alleges the officer acted

intentionally when he would not correct the situation and ignored his complaints for a period of time sufficient to cause him injury.

“Claims that law enforcement personnel used excessive force in the course of an arrest are analyzed under the Fourth Amendment and its standard of objective reasonableness.” *Ostrander v State*, 289 AD2d 463, 464,[2001], quoting *Passino v State*, 260 AD2d 915, 916[1999]; see *Mazzariello v Town of Cheektowaga*, 305 AD2d 1118, 1119 [2003]. The conduct of the arresting officers is “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Ostrander*, 289 AD2d at 464 quoting *Graham*, 490 U.S. at 396, 109 S.Ct. 1865. The determination of an excessive force claim requires consideration of all of the facts underlying the arrest, including the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers, and whether the suspect was actively resisting arrest. *Koeiman v City of New York*, 36 AD3d 451 [2007].

Here, there are multiple questions of fact regarding the proper placement of plaintiff’s hands prior to affixing the handcuffs. Additionally the time and nature of the plaintiffs complaints regarding the alleged improper placement of the handcuffs is an issue of fact: whether the officer ignored the plaintiff’s requests until a physician directed the cuffs be changed after observing the plaintiff and hearing his complaints of pain and discomfort and, if so, whether he was the victim of excessive and unreasonable force at the hands of the arresting officer. See, *Mazzariello v Cheektowga*, 305 AD2d 1118.

Because issue finding rather than issue determination is the inquiry on a summary judgment motion, ordinarily it is not the court’s function in ruling on such

motions to assess credibility unless untruths are clearly apparent. See, *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441[1968]. It shall be for a jury to conclude whether or not the officer acted reasonably while the plaintiff in his custody. It will be for a jury to decide through a fair interpretation of the evidence, whether it was reasonable for the officer to conclude that the plaintiff's complaints were no different than normally voiced by others who are similarly restrained. In this case the officer testified that he has never had an individual complain regarding the placement of handcuffs or that he was experiencing wrist pain from the handcuffs. The jury will also determine whether the officers followed standard police procedure in the use of handcuffs. See, *Ostrander v State*, 289 AD2d 463,[2001]. If successful the plaintiff must also causally relate his alleged left wrist injury to the alleged excessive force.

Based upon the foregoing the court is constrained to deny the defendant's motion for summary judgment except as to the claim for negligent supervision and training which is dismissed. Any relief not specifically granted is denied. No costs are awarded to any party. The original decision and order shall be forwarded to the plaintiff for filing and entry. The underlying papers will be filed by the court.

Dated: June 1, 2011  
Malta, New York

  
STEPHEN A. FERRADINO, J.S.C.

2011 JUN 13 AM 10:50  
SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

ENTERED

Papers Received and Considered:

Motion for Summary Judgment dated February 9, 2011

Affidavit of Stephen J. Rehfuss, Esq., sworn to February 9, 2011 with attached Exhibits A-L

Memorandum of Law dated February 9, 2011

ENTERED  
Kathleen A. Marchione  
  
Saratoga County Clerk

**Affidavit of William J. White, Esq., sworn to March 22, 2011 with attached Exhibits A-G**

**Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment dated March 22, 2011**

**Reply Memorandum of Law dated March 28, 2011**