

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

CASE NO.

12-0162

Defendant -Appellant,

On Appeal from the Cuyahoga County
Court of Appeals, Eighth Appellate
District

-vs-

Court of Appeals Case No. 96452

IRAN DOSS

Plaintiff-Appellee.

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT STATE OF OHIO

John F. Manley (0039714)
Assistant Prosecuting Attorney
Justice Center - Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
Attorney for Appellant

Paul Mancino, Jr.
75 Public Square
Suite 1016
Cleveland, Ohio 44113-2098
Attorney for Appellee

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TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE IS OF GREAT PUBLIC INTEREST 3

STATEMENT OF THE CASE AND FACTS.....4

**ARGUMENT IN SUPPORT OF PROPOSITIONS OF
LAW.....9**

Propositions of Law:

I. A trial court adjudicating a contested claim of innocence may not grant summary judgment in favor of a former inmate based solely on an appeals court finding that a criminal conviction was not supported by sufficient evidence.

II. Under R.C. 2743.48 an inmate must prove actual innocence by a preponderance of the evidence, which is a separate and distinct legal standard than whether the evidence in a criminal case is sufficient to convict a person beyond a reasonable doubt.

CONCLUSION.....14

SERVICE.....15

Appendix

Trial court journal entry

Iran Doss v. State of Ohio 2011-Ohio-96452

EXPLANATION OF WHY THIS IS A CASE OF GENERAL OR GREAT PUBLIC PURPOSE

The Eighth District Court of Appeals has extended and misapplied the Wrongful Imprisonment Statute in a way that will cause County Prosecutor's throughout Ohio to recoil whenever a criminal conviction is vacated on appeal. Criminal prosecutions should not have to be undertaken with such a direct concern for the coffers of the Ohio Court of Claims in the event of a subsequent acquittal. The net effect of the Eighth District Court of Appeals decision is to place improper emphasis on the fact that a conviction was vacated and not enough emphasis on the underlying facts of the case. If allowed to stand this decision would have the effect placing a great and unintended financial burden on the Ohio Court of Claims. Clearly this is not what the Ohio General Assembly had intended when it created the Court of Claims as a venue to address the claims of the truly wrongfully incarcerated.

In a 2-1 decision the Eighth District Court of Appeals failed to properly give effect to Ohio's Wrongful Imprisonment Statute when it upheld a trial court's decision to grant summary judgment in a contested claim of innocence based upon an appellate court's decision that the criminal conviction was not supported by sufficient evidence. Specifically, the appeals court found that the same evidence which a jury had previously relied upon to return a guilty verdict in a rape case actually proved the Appellee's innocence. The appellate court, without any additional evidence offered by Appellee Doss during his wrongful imprisonment case, relied exclusively and entirely upon the record developed during the criminal trial. It appeared to have

disregarded the victim and eyewitness testimony which demonstrated clearly that the victim was not capable of consenting to any sexual act during the relevant time period despite Appellee's claim to the contrary.

In this case the Eighth District Court of Appeals gave the court's earlier vacation of the underlying criminal conviction near preclusive effect in the subsequent wrongful imprisonment proceeding under R.C. 2743.48. Ultimately this case involves the issue of what discretion an appellate court has in its review of evidence submitted in a wrongful imprisonment matter.

STATEMENT OF THE CASE AND FACTS

On April 22, 2005, Appellee Doss was indicted by a Cuyahoga County Grand Jury for two counts of rape and one count of kidnapping. A Cuyahoga County jury subsequently found him guilty of one count of rape and one count of kidnapping. Doss appealed and the Eighth District Court of Appeals initially affirmed the conviction. He then filed a Motion For Reconsideration. The court then reversed itself and in a 2-1 decision vacated Appellee's convictions finding that the state failed in its burden to prove that the rape victim was substantially impaired and that the defendant knew or should have known of the substantial impairment.

Appellee then filed a Complaint For Declaratory Judgment naming the State of Ohio as Defendant in CV-08-665993, in which he sought the opportunity to receive compensation in the Ohio Court of Claims as a wrongfully imprisoned individual under R.C. 2305.02 and R.C. 2743.48. The Trial Court later issued a journal entry in which it granted Appellee's Motion for Summary Judgment, holding erroneously that the Court of Appeal's decision to vacate Appellee's conviction could only be interpreted to mean that he was either innocent of the

charges upon which he was convicted or that no crime was committed by him.

A review of the underlying facts of the criminal trial reveals that the victim was twenty-three (23) years old on the night she was alleged to have been raped by Appellee Doss and lived in Ravenna, Ohio along with four other medical students. On December 31, 2004, plans were made to go to Club Moda and celebrate the New Year. Some ten (10) other medical students were also invited. The victim was picked up at around 9:00 p.m. The other participants were picked up and driven to the Hampton Inn in downtown Cleveland.

Two rooms had been reserved at the Hampton Inn and were being used by the persons who were going to Club Moda. The victim stated she did not consume any alcohol or other substance before arriving at the Hampton Inn. However, once she arrived at the hotel, she drank a few glasses of wine and a couple of beers between 9:30 and 11:00 p.m. before leaving for Club Moda. The victim stated that while she was buzzed from drinking alcohol by the time she left the hotel, she was not slurring her speech.

After leaving at Club Moda, the victim danced with her friends and milled about. While at the club, she only consumed two (2) shots of Jagermeister with a friend, and a complimentary one (1) to two (2) ounce glass of champagne with a strawberry in it. The first of the two rounds of shots was poured by a female bartender above the bar while the second round of shots was poured by a male bartender below the bar.

After the New Year was rung in, she went into the hallway to call friends who were out of town at about 12:10 a.m. Then she went back out to the dance floor, which is the last thing she remembered. Something like a black curtain came over the victim and she did not remember anything from that point forward. The next thing she remembered was waking up in the center of a bed with a woman she did not know standing over her holding a bandage and pointing at her

left knee. She had no memory as to how she got there and believed that these had a black out comparing her feeling that morning to when she had once woken from a surgery in which she was under anesthesia.

When the victim woke up, the only piece of clothing she still had on from the night before was her bra, as she was now in pajama pants and a t-shirt and her underwear was missing. She noticed her legs were bruised and that she had a scraped knee.

After she left the bathroom, the victim told the woman that she wanted to go home and was asked if she wanted to wash up first, but she declined. She then saw an unknown black man sitting on the couch watching television that she had never seen before. The victim would later identify Appellee Doss in the courtroom as this man.

The victim testified that she wanted to go back to her home in Ravenna, but when she did not know how to get there Appellee Doss became agitated. The victim was then taken to Doss's car in a parking lot. Once in the car, Doss drove, while the victim was seated in the back seat behind the woman in the passenger front seat. During the car ride, she felt nauseous, disoriented, and confused. The woman claimed that they took the victim home as good Samaritans and that a man named Tyson said to take her home before a missing person report was filed. At this point in her testimony, the victim said that she never gave Doss permission to take her home and that she had planned to go back to the Hampton Inn that night. She later testified that she was scared to ask why she was in different clothing, because of waking up in a strange place covered in bruises with people she did not know and also because of Doss "acting agitated and irritated" that she did not know how to get home.

During the forty-five (45) minute drive home, Doss did not speak to her. When the victim asked about who Tyson was, the woman said that he was a bouncer at Moda that they found her

with and that they thought he was a “shady character.” Then the woman handed the victim her purse and cell phone back, which she had not seen prior to getting into the vehicle. All of her money (\$80) from the night before was missing. After she answered some personal questions they arrived at her driveway. When she got out of the car, she ran into her house, locked the doors, cried herself to sleep, and vomited a lot. Based on her pain and the condition the victim was in, she feared that she was raped, so she then called her best friend Sarah to come and get her. The victim’s pain was so bad when she urinated that she cried; this pain would last for several days. Sarah did, in fact, pick her up and took her to the emergency room at Robinson Memorial Hospital.

The police arrived at the emergency room and later returned to the victim’s house to take a statement and some photographs. While at her house, the police collected evidence such as the sheets she slept in and the clothing that she received from the woman and what she was wearing the next day. She testified that the woman wrote her name “Eileen” and her phone number on a napkin and gave it to her. At a later point in the investigation, the Bedford Police contacted the victim and showed her two BMV photographs. One was of the Appellee and the other was of Eileen Wiles. The victim also testified to being allergic to the same kind of latex that a condom would be made out of.

The victim testified that she never consented to any sexual activity with Doss and that she later learned that the semen on her underwear was from Tyson Simpkins. She was never completely sure of what happened to her, though, because of her memory loss of that night from midnight to 8:00 a.m. Because of this memory loss from that night, she believed that she was not in a state of mind to consent.

One of the other medical students testified that she saw the victim leaving with a man and a

woman and that she could not stand on her own and looked confused, disoriented and out of it. A bartender also testified that the victim was slumping and unaware, and that she asked the victim if Appellee Doss, who said he would take her home, was a friend, and she answered no. When the victim's friend called the victim the next morning, she told her that she woke up next to two people she did not know and that they gave her a ride home. During this phone conversation, the victim seemed confused and groggy.

The victim was seen by an emergency room physician who noted the presence of several contusions and abrasions, and observed that the genital exam was painful for her. She tested negative for the presence of two of the more common date rape drugs, but because there are many other date rape drugs, no conclusion could be made as to whether a drug was used. The doctor testified that a person who is in a state where she does not know what she is doing nor can recall it, would have a reduced ability to communicate and consent.

A detective later testified that the victim was able to identify Appellee Doss from photographs from the Bureau of Motor Vehicles (BMV), and that when he went to obtain Doss' statement he just "blurted out" that he had sex with the victim. Doss acknowledged that the victim seemed intoxicated and also admitted that both the bar tender and the bouncer told him that the victim was intoxicated. He then admitted that he loaded the victim into his car, and admitted that she was stumbling.

Another detective testified that he responded to Robinson Memorial Hospital and met with the victim and noticed that she appeared ill and stressed. He interviewed the victim at her home and took a written statement from her. While at her home, he collected the clothing she had from the crime and the bed sheets she slept in. He also took photographs of the victim to show her injuries.

At the conclusion of the state's case, various exhibits were admitted, the Appellee's motion for acquittal was overruled, and the jury thereafter returned a guilty verdict for both rape and kidnapping. At the sentencing hearing on April 25, 2006, Doss was given a sentence of four (4) years for each count to be served concurrently. Doss was also fined \$1,000.00 for each count and ordered to pay restitution of \$1,034.94 for victim's medical expenses and \$80.00 missing cash from the victim.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Appellant's Propositions of Law

I. A trial court adjudicating a contested claim of innocence may not grant summary judgment in favor of a former inmate based solely on an appeals court finding that a criminal conviction was not supported by sufficient evidence.

II. Under R.C. 2743.48 an inmate must prove actual innocence by a preponderance of the evidence, which is a separate and distinct legal standard than whether the evidence in a criminal case is sufficient to convict a person beyond a reasonable doubt.

The vacating of Doss's prior convictions for rape and kidnapping based upon sufficiency of the evidence does not ipso facto translate into a finding that he was a "wrongfully imprisoned" person as defined by Ohio Revised Code §2743.48. The criminal trial and the civil statutory proceeding each have their own legal framework requiring separate inquiry by the court. In this matter, the trial court specifically held that the appellate decision to vacate Appellee's rape conviction could only mean that he was either innocent or that no crime occurred or both (See journal entry attached hereto as Exhibit A). Lost in that erroneous conclusion are the disparate legal standards which should have been brought to bear in this matter but were not.

Doss's motion for summary judgment offered no testimony or evidence that was

suggestive of any claim of actual innocence. Additionally, the witnesses at the criminal trial, as indicated in the trial transcript which was transferred back to the trial court for its consideration prior to its ruling on the summary judgment, offered sworn testimony which runs contrary to Appellee's claim of actual innocence. This testimony also runs contrary to Appellee's Doss's burden of proving that actual innocence by a preponderance of the evidence.

Appellee Doss failed to support his claim that he is a "wrongfully imprisoned" person pursuant to O.R.C. §2305.02 and §2743.48. He did not produce evidence refuting the testimony of the various witnesses who testified at trial. He did not offer testimony or evidence that would have allowed the trial court to find that he proved his innocence by a preponderance of the evidence as was his duty to present. He simply pointed to the vacated conviction and the trial court appeared to say that that was enough to obtain entry to the Ohio Court of Claims.

As the Fourth District Court of Appeals noted in *Ratcliff v. State of Ohio* (1994), 94 Ohio App.3d 179, 181;

"We note that the fact that an appellate court's reversal of a criminal conviction does not require a court to find that the claimant was not engaging in criminal conduct at the time in question. Evidence insufficient to prove guilt beyond a reasonable doubt does not necessarily prove innocence by a preponderance of the evidence. If the legislature had intended all persons whose convictions are reversed based upon sufficiency of the evidence to receive compensation for wrongful imprisonment, the legislature would have written R.C. 2743.48 in such a manner."

Given the nature and scope of the inculpatory testimony at trial, it remains apparent that Appellee Doss has done nothing to prove his innocence, and thus he is not the type of aggrieved defendant whom the Ohio Legislature intended to benefit when it

passed the wrongful imprisonment statute.

A. Ohio Revised Code §2305.02 and §2743.48:

R.C. 2305.02 and 2743.48 create a cause of action in Ohio for wrongful imprisonment.

In *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 72, the Supreme Court of Ohio summarized the process created by these statutes as follows:

“The Ohio Revised Code provides a two-step process whereby a person claiming wrongful imprisonment may sue the state of Ohio for damages incurred due to the alleged wrongful imprisonment. *Walden v. State* (1989), 47 Ohio St.3d 47, 49 * * *. The first action, in the common pleas court under R.C. 2305.02, seeks a preliminary factual determination of wrongful imprisonment; the second action, in the Court of Claims under R.C. 2743.48, provides for damages.

Prior to filing suit in the Court of Claims for damages, a petitioner must establish the following: (1) that petitioner was convicted of a felony; (2) the petitioner was sentenced for that conviction; (3) the conviction was vacated, dismissed, or reversed; (4) no further prosecution was attempted or allowed for that conviction or any act associated with that conviction; and (5) the offense of which the petitioner was found guilty was not committed by the petitioner or was not committed at all. R.C. 2305.02, R.C. 2743.48(A). However, a previous finding of *not guilty* is not sufficient to establish *innocence*. The petitioner seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is merely a judicial finding that the state did not prove its case beyond a reasonable doubt. *Ellis v. State* (1992), 64 Ohio St.3d 391, 393 * * *. The petitioner carries the burden of proof in affirmatively establishing his or her *innocence* under R.C. 2743.48(A)(5).

If the common pleas court makes such a finding, then the petitioner may file a civil suit for money damages against the state. R.C. 2743.48(B) and (D). The claim must be commenced in the Court of Claims within two years of the common pleas court's determination that the petitioner had been wrongfully incarcerated. R.C. 2743.48(H).”

Moreover, we note that the purpose of the wrongful imprisonment statutes is to compensate individuals who are truly innocent of the crimes of which they have been convicted. *Chandler v. State* (1994), 95 Ohio App.3d 142, 147-148, 641 N.E.2d 1382. We do not believe that they were intended to be used as a means to prevent future prosecution should additional evidence of the crime be discovered.

Ohio Revised Code §2743.48 provides:

(A) As used in this section, a 'wrongfully imprisoned individual' means an individual who satisfies each of the following:

(1) He was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

(2) He was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which he was found guilty was an aggravated felony or felony.

(3) He was sentenced to an indefinite or definite term of imprisonment in a state penal or reformatory institution for the offense of which he was found guilty.

(4) The individual's conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought or will be brought by any prosecuting attorney, city director of law, village solicitor, or the chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

(5) Subsequent to his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas that the offense of which he was found guilty, including all lesser included offenses, **either committed by him or was not committed by any person.**" (emphasis added).

Gover v. State (1993), 67 Ohio St.3d 93.

The General Assembly "intended that the Courts [sic] . . . actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability." *Gover, supra; Walden v. State* (1989), 47 Ohio St.3d 47, 52, 54. Claimants seeking compensation for wrongful imprisonment must prove they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged. *Gover, supra*. A judgment of acquittal does not have a preclusive effect in a proceeding to determine wrongful imprisonment. *Walden, supra*, syllabus at ¶2. Rather, "an individual seeking such compensation bears the burden of affirmatively proving his innocence by a preponderance of the evidence. *State v. Moore* (Fourth District 2006), 165 Ohio App.3d 538; citing *Jones v. Suster, supra*; see also *Walden, supra*.

“Because a judgment of acquittal is not to be given controlling effect in a proceeding under R.C. 2305.02 and 2743.48(A), “the very same transcript of a criminal proceeding which results in a conviction and which is subsequently overturned on the weight or sufficiency of the evidence may nonetheless be insufficient to support a claimant’s innocence by a preponderance of the evidence.” *Moore*, supra at 543 citing *Chandler v. State* (Eighth District 1994), 95 Ohio App.3d 142, 149, emphasis added; see also *State v. Harman*, (Seventh District, 1999) 132 Ohio App.3d 348; *Ratliff v. State*, (Fourth District 1994) 94 Ohio App.3d 179; *Brown v. State* (Sixth District 2006) 2006 WL 751364. Here, the Appellee has failed to produce any evidence supporting his claim of innocence.

Contrary to the decision of the Eighth District Court of Appeals, a review of the transcript reveals ample evidence that Appellee’s victim was in no condition to consent to sexual intercourse as he claimed she did. The bartender testified that she saw the victim and that Doss was near her for an extended period of time as she was slipping into and out of consciousness. She testified that the victim told her that she did not know Doss and had never seen him before. She testified that by this time the victim was slumping and not aware. Doss then offered to take the victim home. The bartender thought this was weird, so she asked the victim if Doss was a friend, to which she answered that he was not.

The victim testified that a shot of Jagermeister had been prepared for her below the bar by a male bartender, and that she then she went back out to the dance floor. It was shortly after midnight. This was the last thing she remembered. Something like a black curtain came over her. She did not remember anything from that point forward. The next thing she remembered was waking up in the center of a bed with pajama pants on and no underwear. Doss was seated on a nearby couch watching television. She had no memory as to how she got there and believed

that she had a black out, comparing her feeling that morning to when she had once woke from a surgery in which she was under anesthesia. Her legs were bruised, she had a scraped knee. She had no memory of that night. She had never seen Doss before in her life. She testified she never consented to sex with him.

Contrary to the decision of the Eighth District Court of Appeal, the criminal trial testimony establishes that Appellee Doss was with the victim, had sex with her, and that she was not in a condition to consent at the time of the sex act. Accordingly, the State asks this Court to accept its first proposition of law, reverse the appellate court in this matter, and find that:

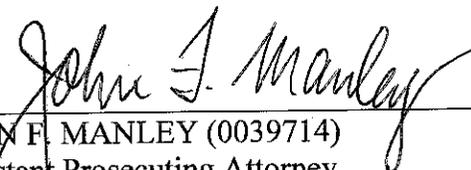
A trial court adjudicating a contested claim of innocence may not grant summary judgment in favor of a former inmate based solely on an appeals court finding that a criminal conviction was not supported by sufficient evidence.

Under R.C. 2743.48 an inmate must prove actual innocence by a preponderance of the evidence, which is a separate and distinct legal standard than whether the evidence in a criminal case is sufficient to convict a person beyond a reasonable doubt.

CONCLUSION

For the above reasons, Appellant requests this Court accept jurisdiction, reverse the appellate court decision, and rectify the appellate court's improper expansion of the Wrongful Imprisonment Statute.

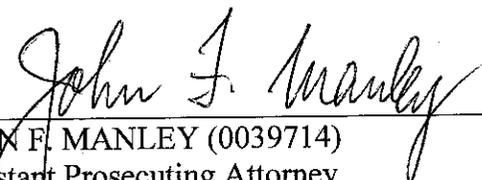
Respectfully submitted,
WILLIAM D. MASON, CUYAHOGA
COUNTY PROSECUTING ATTORNEY

By 
JOHN F. MANLEY (0039714)
Assistant Prosecuting Attorney
Attorney for Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support has been sent by Ordinary U. S. Mail pre-paid postage on this 27th day of January, 2012 to:

Paul Mancino, Jr.
75 Public Square
Suite 1016
Cleveland, Ohio 44113-2098
Attorney for Appellee

By 
JOHN F. MANLEY (0039714)
Assistant Prosecuting Attorney
Attorney for Appellant



66924481

IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

EDP

IRAN DOSS
Plaintiff

Case No: CV-08-665993

Judge: JOSE A VILLANUEVA

F

STATE OF OHIO
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

DEFENDANT STATE OF OHIO'S 05/08/2009 MOTION FOR SUMMARY JUDGMENT IS MOOT FOR THE FOLLOWING REASONS: DEFENDANT MOVED FOR SUMMARY JUDGMENT CLAIMING RES JUDICATA BARRED PLAINTIFF IRAN DOSS'S CLAIM. THE ALLEGED VICTIM IN THE RELATED CRIMINAL MATTER (CR-465093-B) OBTAINED DEFAULT JUDGMENT AGAINST PLAINTIFF DOSS IN A SEPARATE CIVIL CASE (CV-580854). SINCE THE FILING OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, THAT DEFAULT JUDGMENT HAS BEEN VACATED AND CV-580854 HAS BEEN DISMISSED PURSUANT TO CIVIL RULE 4(E).

DEFENDANT'S 10/29/2010 MOTION FOR LEAVE TO FILE BRIEF IN OPPOSITION INSTANTER IS GRANTED AND DEFENDANT'S BRIEF IN OPPOSITION HAS BEEN TAKEN INTO CONSIDERATION IN RULING ON PLAINTIFF DOSS'S 07/02/2010 MOTION FOR SUMMARY JUDGMENT.

AFTER CAREFUL CONSIDERATION, PLAINTIFF DOSS'S 07/02/2010 MOTION FOR SUMMARY JUDGMENT IS HEREBY GRANTED. FIRST, THIS COURT NOTES THAT THE COURT OF APPEALS REVIEWED THE RELATED CRIMINAL CASE UNDER THE SUFFICIENCY OF THE EVIDENCE STANDARD AND HELD THE EVIDENCE WAS INSUFFICIENT TO SUPPORT PLAINTIFF DOSS'S RAPE AND KIDNAPPING CONVICTIONS. THIS COURT NOTES THAT THE SUFFICIENCY OF THE EVIDENCE STANDARD/SCOPE OF REVIEW IS DISTINGUISHABLE FROM A CIRCUMSTANCE IN WHICH THE COURT OF APPEALS ANALYZES THE CASE UNDER A MANIFEST WEIGHT OF THE EVIDENCE STANDARD OF REVIEW, DISAGREES WITH THE JURY'S ASSESSMENT OF THE EVIDENCE, AND REMANDS THE CASE FOR A NEW TRIAL. FURTHER, THIS COURT OBSERVES THIS IS NOT A CASE IN WHICH THE JUDGMENT OF CONVICTION WAS VACATED BASED ON A TECHNICAL LEGAL OR FACTUAL ERROR. THROUGHOUT THE CRIMINAL CASE, PLAINTIFF DOSS MAINTAINED THAT THE ALLEGED VICTIM VOLUNTARILY ACCOMPANIED HIM AND ALL SEXUAL ACTS BETWEEN PLAINTIFF DOSS AND THE ALLEGED VICTIM WERE CONSENSUAL. THE COURT OF APPEALS FOUND NO EVIDENCE WAS PRESENTED TO COUNTER PLAINTIFF DOSS'S ACCOUNT OF THE FACTS. THE COURT OF APPEALS' DECISION TO REVERSE AND VACATE PLAINTIFF DOSS'S CONVICTION AND ORDER HIS IMMEDIATE RELEASE CAN ONLY BE INTERPRETED TO MEAN THAT EITHER PLAINTIFF DOSS WAS INNOCENT OF THE CHARGES UPON WHICH HE WAS CONVICTED, OR THAT NO CRIME WAS COMMITTED BY PLAINTIFF DOSS, OR BOTH. ✓

ACCORDINGLY, AND WITH NONE OF THE OTHER ELEMENTS UNDER R.C. CODE 2743.48(A) IN DISPUTE, THIS COURT FINDS PLAINTIFF IRAN DOSS TO BE A WRONGFULLY IMPRISONED PERSON AS DEFINED BY THE OHIO REVISED CODE.

FINAL.

COURT COST ASSESSED TO THE DEFENDANT(S)
THE STATE OF OHIO
Cuyahoga County }
SS. THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 20th
DAY OF April A.D. 2011
GERALD E. FUERST, Clerk
By _____, Deputy

[Handwritten Signature]
Date 1/25/11

RECEIVED FOR FILING

JAN 26 2011

GERALD E. FUERST, CLERK
Page 1 of 1

- 96
01/24/2011

EXHIBIT
A

[Cite as *Doss v. State*, 2011-Ohio-6429.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96452

IRAN DOSS

PLAINTIFF-APPELLEE

vs.

STATE OF OHIO

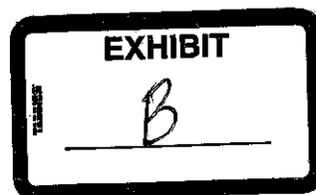
DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-665993

BEFORE: E. Gallagher, J., Celebrezze, P.J., and Jones, J.

RELEASED AND JOURNALIZED: December 15, 2011



ATTORNEYS FOR APPELLANT

William D. Mason
Cuyahoga County Prosecutor
By: John F. Manley
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Paul Mancino, Jr.
75 Public Square
Suite 1016
Cleveland, Ohio 44113-2098

Mike DeWine
Ohio Attorney General
By: Richard Cholar, Jr.
Assistant Attorney General
Corrections Litigation Section
150 E. Gay Street, 16th Floor
Columbus, Ohio 43215

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant, the state of Ohio, appeals from the decision of the Cuyahoga County Court of Common Pleas granting summary judgment in favor of appellee. For the following reasons, we affirm the judgment of the trial court.

{¶ 2} Appellee was indicted on April 22, 2005, for two counts of rape in violation of R.C. 2907.02(A)(1)(c) and one count of kidnapping with a sexual motivation in

violation of R.C. 2905.01(A)(2) and (4) and R.C. 2941.147 stemming from events that allegedly occurred on the night of December 31, 2004. On March 27, 2006, a jury found appellee guilty of one count of rape and one count of kidnapping and appellee was sentenced to four years in prison.

{¶ 3} On appeal in *State v. Doss*, Cuyahoga App. No. 88443, 2008-Ohio-449 (“*Doss I*”), this court found that the record contained insufficient evidence to sustain appellee’s convictions. We vacated those convictions and ordered him to be discharged from prison.

{¶ 4} On July 25, 2008, appellee filed a declaratory judgment action in the Cuyahoga County Court of Common Pleas seeking a determination that he had been a wrongfully imprisoned person as defined by R.C. 2305.02 and 2743.48. On July 2, 2010, appellee filed a motion for summary judgment relying solely on this court’s decision in *Doss I*. The state, relying on the transcripts from appellee’s criminal trial, opposed appellee’s motion for summary judgment arguing that appellee had failed to establish his innocence by a preponderance of the evidence.

{¶ 5} On January 26, 2011, the trial court granted appellee’s motion for summary judgment on the basis of our holding in *Doss I*. Specifically, the trial court stated, “[t]he court of appeals’ decision to reverse and vacate [appellee’s] conviction and order his immediate release can only be interpreted to mean that either [appellee] was innocent of the charges upon which he was convicted, or that no crime was committed by [appellee],

or both.” The state brought the present appeal, advancing the following sole assignment of error:

“The trial court erred in granting appellee’s motion for summary judgment when it held that the vacation of his criminal conviction on appeal could only mean actual innocence or that no crime was committed.”

{¶ 6} Our review of a trial court’s grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241. Pursuant to Civ.R. 56(C), summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Horton v. Harwick Chem. Corp.* (1995), 73 Ohio St.3d 679, 653 N.E.2d 1196, paragraph three of the syllabus; *Zivich v. Mentor Soccer Club* (1998), 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264.

{¶ 7} “The Ohio Revised Code provides a two-step process whereby a person claiming wrongful imprisonment may sue the State for damages incurred due to the alleged wrongful imprisonment.” *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 72, 1998-Ohio-275, 701 N.E.2d 1002, citing *Walden v. State* (1989), 47 Ohio St.3d 47, 547

N.E.2d 962. The first action, in the common pleas court, seeks a preliminary factual determination of wrongful imprisonment. *Id.* The second action, in the Court of Claims, provides for damages. *Id.*

{¶ 8} A “wrongfully imprisoned individual” is defined in R.C. 2743.48(A) as an individual who satisfies each of the following requirements:

“(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

“(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

“(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

“(4) The individual’s conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

“(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.”

{¶ 9} In a wrongful imprisonment claim, the petitioner bears the burden of proving by a preponderance of the evidence, his or her innocence. *Jones v. State*, Cuyahoga App. No. 96184, 2011-Ohio-3075, at ¶9, citing *Suster*, 84 Ohio St.3d at 72.

In the present instance, the state argues that appellee, by relying solely on this court's decision in *Doss I*, has failed to establish his innocence by a preponderance of the evidence.

{¶ 10} This court has previously stated that “[e]vidence insufficient to prove guilt beyond a reasonable doubt does not necessarily prove innocence by a preponderance of the evidence as required by R.C. 2743.48.” *Id.* at ¶11, citing *Ratcliff v. State* (1994), 94 Ohio App.3d 179, 640 N.E.2d 560. While we are mindful that a criminal insufficient evidence finding does not *necessarily* lead to the conclusion that a defendant's innocence has been established by a preponderance of the evidence, we find that the uncontroverted evidence in the record sub judice mandates that we affirm the trial court's grant of summary judgment.

{¶ 11} As the trial court noted in its January 26, 2011 journal entry, the only contested issue before the court was appellee's innocence under R.C. 2743.48(A)(5). None of the other elements under R.C. 2743.48(A) were disputed before the trial court.

{¶ 12} The sole evidence before the trial court on summary judgment consisted of trial transcripts from appellee's criminal trial.¹ This court previously reviewed this evidence in *State v. Doss*, Cuyahoga App. No. 88443, 2008-Ohio-449, and concluded not

¹The state of Ohio's brief in opposition to plaintiff's motion for summary judgment references allegations made by the alleged victim in an amended complaint from her civil suit against appellee. However, contrary to statements on page 4 of the state's brief, certified copies of this referenced amended complaint are not attached to the state's brief and not before the trial court on summary judgment.

only that the evidence was insufficient to sustain appellee's convictions but that appellee's own statement describing the events was *uncontradicted evidence* in his favor on elements of both the kidnapping and rape charges.

{¶ 13} With respect to appellee's conviction for kidnapping in violation of R.C. 2905.01(A)(2) and (4), this court, in reviewing the record, stated "no evidence was presented showing force, threat, deception, or the restraint of liberty." *Id.* at ¶10. "Nobody testified that [the alleged victim] went with [appellee] against her will, or that [appellee] restrained her in any way." *Id.* at ¶10. This court explicitly stated, "[appellee's] statement maintained that the ride home, as well as the sex, was consensual. No evidence contradicts, or even questions, this." *Id.* at ¶10.

{¶ 14} With respect to appellee's conviction for rape in violation of R.C. 2907.02(A)(1)(c), this court noted the challenge of distinguishing permissible sexual conduct with a person who is merely intoxicated from impermissible sexual conduct with someone who is substantially impaired. *Id.* at ¶18.

{¶ 15} We noted that "[t]he only evidence in the record of events happening between 2:30 and 8:00 a.m. on New Year's Day is [appellee's] statement." *Id.* at ¶23. After reviewing the evidence in the record, this court stated, "[t]he only evidence about [the alleged victim's] mental condition at the time of the alleged rape is found in [appellee's] statement. A careful review of this statement reveals no evidence that [appellee] knew, or should have known, that J.P.'s 'ability to resist or consent is

substantially impaired because of voluntary intoxication.” Id. at ¶23. We noted that “the state presented no evidence in opposition to appellee’s statement.” Id. at ¶20.

{¶ 16} This court concluded, “[t]he evidence shows that [appellee] had consensual sex with a woman who had been drinking alcohol, albeit while his girlfriend was in the other room. [Appellee] gave a detailed description of [the alleged victim’s] consensual conversation with him, and [her] not only being aware, but being in control, of her actions. From all accounts, and as strange as this ‘good Samaritan’ scenario may seem, [her] decision to go home and sleep with [appellee] was just as voluntary as her intoxication on New Year’s Eve.” Id. at ¶25.

{¶ 17} Based upon the unique circumstances presented in this case, specifically the uncontradicted evidence in the form of appellee’s own statement recounting the events of the night in question, and the fact that the state introduced no further evidence beyond the criminal record discussed above, we find no error in the trial court’s conclusion that the state of Ohio failed to raise a genuine issue of fact in regards to any of the elements under R.C. 2743.48(A).

{¶ 18} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said lower court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES, J., CONCURS;
FRANK D. CELEBREZZE, JR., P.J., DISSENTING WITH
SEPARATE OPINION

FRANK D. CELEBREZZE, JR., P.J., DISSENTING:

{¶ 19} I respectfully dissent because Doss has not demonstrated that he is entitled to judgment as a matter of law.

{¶ 20} In his two-page motion for summary judgment, Doss only points to the decision of this court reversing his convictions. The Ohio Supreme Court has instructed that “a previous finding of not guilty is not sufficient to establish innocence. The petitioner seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is merely a judicial finding that the state did not prove its case beyond a reasonable doubt.” *Ellis v. State*, 64 Ohio St.3d 391, 393, 1992-Ohio-25, 596 N.E.2d 428, 430. The petitioner carries the burden of proof in affirmatively establishing his or her innocence under R.C. 2743.48(A)(5). *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 72, 1998-Ohio-275, 701 N.E.2d 1002.

{¶ 21} The differing burdens of proof are key to distinguishing why a vacation of Doss’s conviction does not prove his innocence. Our holding in *Doss I* does not mean

that Doss is innocent — merely that, based upon the evidence the state presented, Doss’s guilt could not be established beyond a reasonable doubt. The same cannot automatically be said of whether Doss can show by a preponderance of the evidence that he did not know or reasonably should not have known of the victim’s incapacity. *Ratcliff v. State* (1994), 94 Ohio App.3d 179, 182, 640 N.E.2d 560 (“[A]n appellate court’s reversal of a criminal conviction does not require a court to find that the claimant was not engaging in criminal conduct at the time in question. Evidence insufficient to prove guilt beyond a reasonable doubt does not necessarily prove innocence by a preponderance of the evidence.”).

{¶ 22} This is not a case where the evidence is so clear that Doss can be found to be innocent solely on this court’s prior opinion, especially, as the dissenting opinion points out, where “[a]t least to some eyewitnesses, the victim was displaying signs of being too intoxicated to perform ordinary functions” and “[t]he majority opinion is full of instances illustrating the victim’s overtly high level of intoxication.” *Doss I* at ¶30, (Sweeney, J., dissenting).