

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO. 2012 - 0162

STATE OF OHIO

Defendant-Appellant

vs.

IRAN DOSS

Plaintiff-Appellee

ON APPEAL FROM THE
COURT OF APPEALS FOR
CUYAHOGA COUNTY, EIGHTH
APPELLATE DISTRICT

COURT OF APPEALS
CASE NO: 96452

**MEMORANDUM OPPOSING JURISDICTION
OF APPELLEE**

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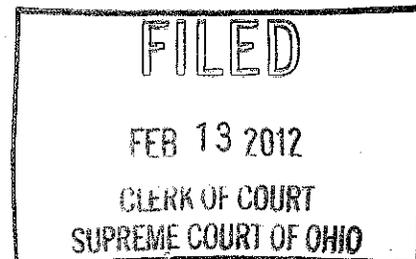


TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE DOES NOT PRESENT ANY SUBSTANTIAL QUESTION NOR IS IT A CASE OF GREAT GENERAL AND PUBLIC INTEREST.	1
STATEMENT OF THE CASE AND FACTS	2
<u>ARGUMENT IN SUPPORT OF PROPOSITION OF LAW:</u>	
<u>PROPOSITION OF LAW NO. 1</u>	3
A TRIAL COURT DOES NOT ERR IN GRANTING A MOTION FOR SUMMARY JUDGMENT TO DECLARE ONE A WRONGFULLY IMPRISONED PERSON WHERE AN APPELLATE COURT IN THE CRIMINAL APPEAL HAS DECLARED THAT THE DEFENDANT IS INNOCENT OR THAT NO CRIME HAS BEEN COMMITTED	
SERVICE	5

AUTHORITIES

<u>Grava v. Parkman Township</u> , 73 Ohio St.3d 379, 653 N.E.2d 226 (1995)*	4
<u>State v. Robinson</u> , 162 Ohio St.486, 124 N.E.2d 148 (1955)*	5
<u>Tibbs v. Florida</u> , 457 U.S. 31 (1982)*	5
<u>Ohio Revised Code: §2945.79(D)*</u>	4

EXPLANATION OF WHY THIS CASE DOES NOT PRESENT ANY SUBSTANTIAL QUESTION NOR IS IT A CASE OF GREAT GENERAL AND PUBLIC INTEREST.

This case does not present any issue that should be considered by the Ohio Supreme Court.

The Court of Appeals addressed the issues in this case and correctly concluded that the trial court was correct in granting a summary judgment. Significantly omitted from the appellant's memorandum was the fact that the trial court had the entire transcript from the criminal trial. That criminal trial was again reviewed by the Court of Appeals for Cuyahoga County and that court determined in the direct appeal that plaintiff, Iran Doss, did not commit a crime. The prosecutor failed to offer any other evidence other than it had been previously reviewed and certainly that issue should be considered *res judicata*. As stated by the Court of Appeals:

{¶ 14} With respect to appellee's conviction for rape in violation of R.C.2907.02(A)©, 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 am 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 raped 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).

As a result, there was no additional evidence presented by appellant to the trial court which would merit a different result. The issue was decided between the parties and the Court of Appeals ruled that Iran Doss did not commit any offense. This should be the end of the inquiry.

This was not strictly a case where a jury returned a verdict of not guilty. The Court of Appeals ruled that the plaintiff did not commit the offense. The Common Pleas Court likely interpreted the opinion from the Court of Appeals in a criminal opinion **“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.”**

STATEMENT OF THE CASE AND FACTS

This action was commenced by plaintiff Iran Doss seeking declaratory judgment in a determination that he was a wrongfully imprisoned person under §§2305.02 and 2743.48 of the Ohio Revised Code.

After the complaint was filed the matter was stayed pending a resolution of a claim that a default judgment entered against plaintiff, Iran Doss, in an unrelated civil case precluded his claim for compensation as a wrongfully imprisoned person. The stay was eventually lifted after the Court of Appeals for Cuyahoga County vacated the default judgment against Iran Doss in the related civil case brought on behalf of the victim in this criminal case. Plaintiff filed a motion for summary judgment contending that the determination by this court that plaintiff, Iran Doss, committed no crime entitling him to be declared a wrongfully imprisoned person. The prosecutor filed a motion requesting the transcript of proceedings in the related criminal case which was granted by the court.

Plaintiff based his motion for summary judgment and declared a wrongfully imprisoned person alleging to been convicted and sentenced to a state prison. Plaintiff remained in prison until his sentence was vacated and he was ordered discharged by order of the Court of Appeals for Cuyahoga County. The Common Pleas Court granted the motion for summary judgment ruling:

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 the 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 him 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.

**ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW
PROPOSITION OF LAW NO. 1**

**A TRIAL COURT DOES NOT ERR IN GRANTING A MOTION FOR SUMMARY
JUDGMENT TO DECLARE ONE A WRONGFULLY IMPRISONED PERSON WHERE
AN APPELLATE COURT IN THE CRIMINAL APPEAL HAS DECLARED THAT THE
DEFENDANT IS INNOCENT OR THAT NO CRIME HAS BEEN COMMITTED.**

Appellant, in its memorandum to this court, like the brief filed in the Court of Appeals, merely rehashes the facts from the criminal trial. However those facts had been previously thoroughly reviewed by the Court of Appeals for Cuyahoga County in defendant's direct appeal. Thus, regardless of the number of witnesses there remains a valid and final determination between the same parties that declaring that plaintiff is innocent of the offense or that no crime was committed.

In plaintiff's criminal case, the plaintiff was the State of Ohio and Iran Doss was the defendant. The same parties are now reversed. Consequently, that determination, by the Court of Appeals is *res judicata*. In ***Grava v. Parkman Township***, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995), the court applied *res judicata* to the same "nucleus of facts" where the facts were determined in a prior court proceedings or in an administrative proceedings. The syllabus in ***Grava*** so holds:

A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. ...

In so ruling, the Supreme Court approved the following principles:

Section 24(1) of the Restatement of Judgments, *supra*, at 196 provides: "**When a valid and final judgment rendered in action extinguished the plaintiff's claim pursuant to the ruled of merger or bar***, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.**" See also, 46 American Jurisprudence 2d, *supra*, at Section 24 of the Restatement of Judgments, *supra*, at 198-199, defines a "transaction" as a "**common nucleus of operative facts.**" Comment c to Section 24, at 200, plainly states: "**That a number of different legal theories casting liability on an actor may apply to a given episode does not create multiple transactions and hence multiple claims. This remains true although the several legal theories depend on different shadings of facts, or would emphasize different elements of the facts or would call for different measures of liability or different kinds of relief.**" 73 Ohio St.3d @ 382-83, 653 N.E.2d @ 229.

Since plaintiff's convictions were vacated and his order of discharge that should be the end of the proceedings.

Further, the Court of Appeals found that there was insufficient evidence to convict plaintiff on the charge, the Court of Appeals could have, within its authority, reduce the charges or the Common Pleas Court could have reduced the charge. Section 2945.79(D) of the Ohio Revised Code allows a court to convict one of a lesser degree than the offense. That was not done and therefore this is final.

The Supreme Court has noted that there is both a quantitative and qualitative difference between the concept of sufficiency of the evidence and the weight of the evidence. Plaintiff's conviction in this case was not reversed as being against the manifest weight of the evidence. In a case where a court determines that the conviction was against the manifest weight of the evidence, the court determines that there was sufficient evidence but, for other reasons, rules that a new trial is in order. See Tibbs v. Florida, 457 U.S. 31 (1982); State v. Robinson, 162 Ohio St.486, 124 N.E.2d 148 (1955).

Thus, as stated in Thompkins "Whether the evidence is legally sufficient to sustain a verdict is a question of law. ..." and "a conviction based on legally insufficient evidence constitutes a denial of due process. ..." 78 Ohio St.3d @386, 678 N.E.2d @546.


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SERVICE

A copy of the foregoing Memorandum Opposing Jurisdiction has been mailed to William D. Mason, Attorney for Defendant-Appellant, Courts Tower/Justice Center 1200 Ontario Street, Cleveland, Ohio 44113, on this 10th day of February 2012.


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