

ORIGINAL

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

IRAN DOSS

Plaintiff-Appellee

vs

STATE OF OHIO

Defendant-Appellant

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

COURT OF APPEALS  
CASE NO: 96452

**MERIT BRIEF OF APPELLEE**

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## STATEMENT OF THE CASE AND FACTS

This action was commenced by plaintiff Iran Doss seeking a declaratory judgment and 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 a related 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 the Court of Appeals that plaintiff, Iran Doss, committed no crime entitled him to be declared a wrongfully imprisoned person. The prosecutor's motion requesting that the transcript of proceedings in the underlying criminal case be transferred to this case was granted by the Common Pleas Court.

Plaintiff based his motion for summary judgment to be declared a wrongfully imprisoned person alleging he had been convicted and sentenced to a state prison. Plaintiff remained in prison until his sentence was vacated and he was ordered discharged and released by order of the Court of Appeals for Cuyahoga County. The Common Pleas Court thereafter granted plaintiff's 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  
APPELLANT'S PROPOSITIONS OF LAW**

***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 STANDARD THAN WHETHER THE EVIDENCE IN A CRIMINAL CASE IS SUFFICIENT TO CONVICT A PERSON BEYOND A REASONABLE DOUBT.***

**APPELLEE'S PROPOSITION OF LAW**

***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 in this court, like its brief in the Court of Appeals, merely reargues the facts from the criminal trial. However, those facts had been previously and 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 declaring that appellee was innocent of the offense or that no crime was committed.

It should be noted that, in this case, no additional evidence was presented by the state other than the trial transcript from appellee's criminal trial. The trial transcript was reviewed by the Court of Appeals in appellee's direct appeal from his criminal conviction. The Court of Appeals determined that appellee, Iran Doss, did not commit any crime and that no crime was committed. Appellant offered no other additional evidence other than

what was previously presented at appellee's criminal trial and reviewed by the Court of Appeals. After the Court of Appeals reversed and ordered appellee discharged the State of Ohio attempted to appeal to the Ohio Supreme Court which declined jurisdiction. ***State v. Doss***, Case No. 88443, 2008-Ohio-449 *appeal not allowed* 118 Ohio St.3d 1507, 889 N.E.2d 1025, 2008-Ohio-3369.

As summarized by the Court of Appeals involving the same parties, only in reverse order, the Court of Appeals concluded:

{¶ 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). *Doss v. State*, Case No. 96452, 2011-Ohio-6429.

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 same parties. The Court of Appeals held that appellee, Iran Doss, did not commit an 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 appellee did not commit an offense. The Common Pleas Court correctly interpreted the opinion of the Court of Appeals in appellee's criminal appeal **"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."**

In appellee's criminal case, the plaintiff was the State of Ohio and Iran Doss was the defendant. The same parties are now reversed. Consequently, the prior determination, by the Court of Appeals in the criminal appeal 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 even 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 appellee's convictions were vacated and he was ordered discharged and released, that should be the end of the proceedings.

Appellee satisfied all elements required by §2943.48 of the Ohio Revised Code to qualify as a wrongfully imprisoned individual:

(A) As used in this section and *section 2743.49 of the Revised Code*, a “**wrongfully imprisoned individual**” means an individual who satisfies each of the following:

(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 correction 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 or 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 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.

Further, the Court of Appeals found that there was insufficient evidence to convict appellee of the charges. The Court of Appeals could have, within its authority, reduced 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. Therefore, the vacation of appellee’s conviction was final.

The Supreme Court has noted that there is both a quantitative and qualitative difference between the sufficiency of the evidence and the weight of the evidence. Appellee’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, a reviewing court determines that there was sufficient evidence but, for other reasons, 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 State v. 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.

It is also important to note that the same parties are involved in this civil action as were in the criminal case. Thus res judicata, collateral estoppel or issue preclusion would be applicable. This doctrine was so noted in Goodson v. McDonough Power Equipment, Inc., 2 Ohio St.3d 193, 443 N.E.2d 978 (1983):

In Ohio, the general rule is that mutuality of parties is a requisite to collateral estoppel, or issue preclusion. As a general principle, collateral estoppel operated only where all of the parties to the present proceedings were bound by the prior judgment. A judgment in order to preclude either party from relitigation an issue, must be preclusive upon both. A prior judgment estops a party, or a person in privity with him, from subsequently relitigating the identical issue raised in the prior action. ...

As these issues have been conclusively determined between the same parties, they cannot again be relitigated. Appellant wants to relitigate these factual issues but they have already been decided by the court in another proceeding.

The case is different from a case where a jury returns a verdict of not guilty. In that circumstance one could rightly argue that there needs to be a full fledged trial. However where the entire trial has been reviewed by the Court of Appeals and it performed its constitutional duty in determining that a criminal defendant is innocent or that no crime has been committed, that determination has preclusive effect between the same parties in a later litigation involving a wrongful imprisonment proceeding under §2743.48 of the Ohio Revised Code.

Appellant misstates the claim that there was an acquittal only. An acquittal would be at the trial level and probably not have a preclusive effect in a later proceeding. While an acquittal would be one element needed for relief, it could normally not qualify one to be declared a wrongfully imprisonment person. Where there has been an acquittal at trial that individual would not have been sentenced to an indefinite or definite term at a state correctional institution. That is one of the five requirements to be declared a wrongfully individual as defined by §2743.48(A) of the Ohio Revised Code. See White v. State, Case No. 93632, 2009-Ohio-6828, appeal not allowed, 125 Ohio St.3d 1440, 927 N.E.2d 12, 2010-Ohio-2212)(holding that a person who has been sentenced to a local county jail could not be declared a wrongfully imprisoned person because a local county jail is not a state correctional institution).

### **CONCLUSION**

Appellee has satisfied all of the requirements of the statutory definition of a wrongfully imprisoned individual and the Common Pleas Court and Court of Appeals properly reviewed this case and declared appellee to be a wrongfully imprisoned person.

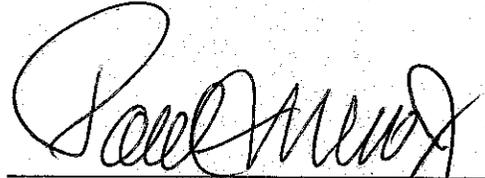
Therefore the judgment of the Court of Appeals should be affirmed.



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**SERVICE**

A copy of the foregoing **Merit Brief of Appellee** has been mailed to the following  
by ordinary U.S. mail on this **21<sup>st</sup>** day of **June**, 2012.



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