

In the
Supreme Court of Ohio

IRAN DOSS,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

: Case No. 2012-0162
:
: On Appeal from the
: Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
:
: Court of Appeals Case
: No. 96452

REPLY BRIEF OF STATE OF OHIO

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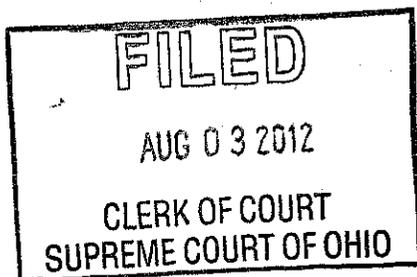


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INTRODUCTION

Time and again this Court has made clear: An acquittal or vacatur of a criminal conviction “is not sufficient to establish *innocence*.” *State ex rel. Jones v. Suster*, 84 Ohio St. 3d 70, 72 (1998) (emphasis in original). An overturned conviction therefore “is not to be given preclusive effect” in a wrongful-imprisonment action. *Walden v. State*, 47 Ohio St. 3d 47, 51-52 (1989). Instead, to prove wrongful imprisonment based on actual innocence, “[t]he petitioner carries the burden of proof in affirmatively establishing his or her *innocence*.”¹ *Suster*, 84 Ohio St. 3d at 72 (emphasis in original). This affirmative showing requires more than “merely a judicial finding that the state did not prove its case beyond a reasonable doubt.” *Id.*

The Eighth District below noted these precedents but disregarded them all the same, treating the vacatur of Doss’s conviction as a proxy for actual innocence just as the trial court did. For his part, Doss ignores this Court’s precedents entirely. His brief fails to cite—let alone discuss—those controlling authorities. And his alternative efforts to defend the judgment below fail.

First, Doss says that the Eighth District in his criminal appeal issued a “final determination . . . that [he] was innocent.” Doss Br. at 2. That is wrong. The court held only that the evidence against him was legally insufficient, meaning “merely a judicial finding that the state did not prove its case beyond a reasonable doubt.” *Suster*, 84 Ohio St. 3d at 72. There was never an affirmative finding of innocence in the criminal appeal.

¹ Under R.C. 2743.48(A)(5), wrongful imprisonment requires showing that a conviction was invalidated based either on “procedural error” or actual innocence. Actual innocence means “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.” Doss claims actual innocence and does not seek relief under the procedural-error prong of (A)(5). Am. Compl. ¶ 6.

Second, Doss insists that the vacatur of his criminal conviction “has preclusive effect” on the question of actual innocence in his civil wrongful-imprisonment action. Doss Br. at 6. But R.C. 2743.48, *Walden*, and this Court’s other precedents speak clearly to the contrary. An unsuccessful criminal conviction “is *not* to be given preclusive effect” in wrongful-imprisonment cases. *Walden*, 47 Ohio St. 3d at 51-52 (emphasis added).

Third, Doss says nothing to refute the State’s showing that the record below is rife with disputed issues of material fact concerning whether he committed rape. These disputed issues preclude him from being awarded summary judgment on his wrongful-imprisonment claim.

In short, Doss offers no sound response to the State’s straightforward arguments. Nor could he. This Court has repeatedly rejected the suggestion that an unsuccessful conviction is sufficient to establish actual innocence under Ohio’s wrongful-imprisonment statute. Because Doss urges just that, his arguments fail.

ARGUMENT

A. The Eighth District in Doss’s criminal appeal found the evidence legally insufficient to support a conviction for rape; it did not find Doss actually innocent.

Doss maintains that the Eighth District, in vacating his convictions, rendered “a valid and final determination” that Doss “was innocent of the offense” and that he “did not commit any crime.” Doss Br. at 2. He is wrong. The Eighth District in its criminal ruling never made a *factual determination* of Doss’s actual innocence. Instead, the question addressed in the criminal appeal concerned the *legal sufficiency* of the evidence adduced at trial:

- “We now turn to appellant’s fourth assignment of error. . . . Specifically, appellant argues that there was insufficient evidence to convict him of rape.”
- “When reviewing sufficiency of the evidence, . . .”
- “Before we analyze the sufficiency of the evidence against appellant, a brief discussion of a ‘substantially impaired’ rape victim is required.”

- “While we offer no opinion on this specific issue, we note that this testimony is sufficient to establish that J.P. *may have been* substantially impaired. However, we conclude that there is insufficient evidence to find that appellant had knowledge of J.P.’s condition of substantial impairment – not just intoxication – beyond a reasonable doubt.”

State v. Doss, No. 88443, 2008-Ohio-449 ¶¶ 11-13, 20 (8th Dist.) (“*Doss II*”) (emphasis in original), App’x Exh. E.

Plainly, the Eighth District was deciding whether the evidence was legally sufficient—that is, whether the State proved its case beyond a reasonable doubt. And “[w]hether the evidence is legally sufficient to sustain a verdict is a question of law.” *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997) (citing *State v. Robinson*, 162 Ohio St. 486 (1955)). By contrast, the court in *Doss*’s criminal appeal had no occasion to consider, nor did it determine, whether as a factual matter *Doss* was actually innocent as specified in R.C. 2743.48(A)(5).

B. Reversal of a conviction based on insufficient evidence does not prove actual innocence and has no preclusive effect on the question of actual innocence in wrongful-imprisonment actions.

Doss next insists that the vacatur of his criminal conviction “has preclusive effect” on the question of actual innocence in this wrongful-imprisonment action. *Doss Br.* at 6. But R.C. 2743.48 and this Court’s precedents foreclose that argument. A mere acquittal is different from actual innocence and has no preclusive effect in wrongful-imprisonment cases.

To show actual innocence under the wrongful-imprisonment statute, a claimant must prove that the charged offense “either was not committed by the individual or was not committed by any person.” R.C. 2743.48(A)(5). This Court has emphasized that this standard differs from an acquittal or legal insufficiency: “[T]he General Assembly intended that the court of common pleas actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability.” *Walden*, 47 Ohio St. 3d at 52 (interpreting the actual innocence language in the predecessor statute, R.C. 2743.48(A)(4)).

Accordingly, under R.C. 2743.48(A)(5), “the petitioner carries the burden of proof in affirmatively establishing his or her *innocence*.” *Suster*, 84 Ohio St. 3d at 72 (emphasis in original). By contrast, an acquittal “is merely a judicial finding that the state did not prove its case beyond a reasonable doubt.” *Id.*

Doss strains to argue that his situation is different because “[t]his was not strictly a case where a jury returned a verdict of not guilty,” but rather a case where an appeals court found the evidence lacking. Doss Br. at 4; *see also id.* at 6. But Doss never explains how this distinction is significant, and it is not. An acquittal, whether it rests on a jury verdict or an appellate finding of legally insufficient evidence, means one thing: the prosecution has failed to prove the essential elements of the charged offense beyond a reasonable doubt. *Tibbs v. Florida*, 457 U.S. 31, 40 (1982) (“A reversal based on the insufficiency of the evidence has the same effect [as a verdict of not guilty] because it means that no rational factfinder could have voted to convict the defendant.”).

Doss’s reliance on *res judicata* and collateral estoppel is also improper. This Court has already held that preclusion principles are irrelevant to the question of actual innocence in the wrongful-imprisonment context. A prior acquittal “is not to be given preclusive effect.” *Walden*, 47 Ohio St. 3d at 51-52. Instead, Ohio’s wrongful-imprisonment statute requires a civil trial *de novo* in which a *claimant* “carries the burden of proof” to “affirmatively establish[]” his innocence under R.C. 2743.48(A)(5). *Suster*, 84 Ohio St. 3d at 72.

This Court has spoken clearly and sensibly. Doss does not acknowledge these precedents, much less offer persuasive reasons to discard them. His claim that the vacatur of his criminal conviction has preclusive effect on the question of his actual innocence therefore fails.

C. Summary judgment is improper because disputed issues of material fact pervade Doss's actual-innocence claim.

Finally, Doss continues his silent treatment toward the State's arguments by saying nothing to refute the State's detailed showing, in its opening brief, that disputed issues of material fact pervade his actual innocence claim. State Br. at 15-17.

Instead, Doss complains that the State's factual focus is simply an effort to relitigate his criminal appeal. Doss Br. at 2. That is wrong and demonstrates yet another instance where Doss confuses an unsuccessful conviction (*i.e.*, the State's failure to prove guilt beyond a reasonable doubt) and the burden of proof in his wrongful-imprisonment action (*i.e.*, *his* burden to affirmatively prove his innocence). The State need not (and is not) rearguing its own criminal threshold of proof in order to show that Doss has failed to carry *his* burden in this wrongful-imprisonment suit.

In the same vein, Doss is also misguided in criticizing the State for introducing "no additional evidence" in the civil action "other than the trial transcript from [Doss's] criminal trial." *Id.* Again, it is *he* who bears the burden of proof, not the State. And if there are disputed issues of fact concerning his actual innocence, then summary judgment is improper.

The Eighth District's analysis below reflects similar misunderstandings. Citing the lack of "further evidence beyond the criminal record," the court said that judgment in Doss's favor was compelled. *Doss v. State*, No. 96452, 2011-Ohio-6429 ¶ 19 (8th Dist.) ("*Doss III*"), App'x Exh. B. But R.C. 2743.48 demands more of both Doss and the courts. The statute requires courts to assess whether the claimant has established actual innocence, not whether the State has adduced additional evidence of guilt separate and apart from that offered at the criminal trial.

Here, the State identified considerable evidence supporting each element of the rape offense, which undercuts any notion that Doss could prevail at summary judgment. The panel

majority ignored these evidentiary arguments entirely, confirming that the court did not conduct an independent review but simply looked to the prior panel's analysis of the criminal trial record and considered it dispositive.

If this Court's admonition—that courts must “actively separate” the “wrongfully imprisoned” from those who “merely avoided criminal liability,” *Walden*, 47 Ohio St. 3d at 52—is to be taken seriously, then the failure of the courts below to discharge their statutory duty to review innocence claims *de novo* cannot be excused.

Obvious disputed issues of fact remain concerning Doss's actual innocence because ample evidence still supports each element of the rape offense: (1) “sexual conduct with another,” (2) when “[that person's] ability to resist or consent is substantially impaired because of a mental or physical condition,” and (3) “the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired.” R.C. 2907.02(A)(1)(c).

Doss admitted that he engaged in sexual conduct with J.P. State Br. at 16. There was significant testimony about J.P.'s severe intoxication, from which substantial impairment could be inferred. *Id.* And Doss's own statement to the police, plus testimony from other eyewitnesses, confirm that Doss observed J.P. when she was exhibiting signs of severe intoxication. *Id.* at 16-17.

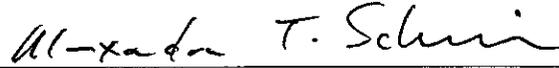
In short, and as detailed fully in the State's opening brief, there are material issues of disputed fact concerning whether Doss knew or had reasonable cause to believe that J.P.'s “ability to resist or consent [wa]s substantially impaired.” R.C. 2907.02(A)(1)(c). These disputed issues of fact preclude awarding summary judgment to Doss.

CONCLUSION

For all of these reasons, Doss was not entitled to summary judgment, and the Court should vacate the decision below and remand the case for further proceedings.

Respectfully submitted,

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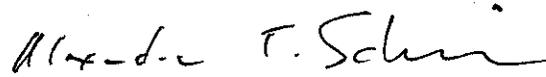
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of State of Ohio was served by U.S. mail this 3rd day of August, 2012, upon the following counsel:

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