

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

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MOTION FOR  
RECONSIDERATION

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Now comes plaintiff-appellee, Iran Doss, and moves that the court reconsider the decision released on December 6, 2012. The essence of the court's ruling was that defendant's reversal and discharge by the Court of Appeals for Cuyahoga County in his criminal case was insufficient to award him a successful claim as a wrongfully imprisoned person under §2743.48 of the Ohio Revised Code.

The court, in so ruling stated in part, at ¶ 16:

A judgement of acquittal is not enough. The state contends that in support of his action for declaratory judgment, Doss did not provide the trial court with any additional evidence to prove that the other party consented, or that he did not know and could not reasonably have known of any impairment of her ability to consent, or any other proof of his actual innocence of the charge of rape and all lesser included offenses. The trial and appellate courts, therefore, grant Doss a preliminary determination of eligibility for compensation without the required affirmative proof of his actual innocence.

However, the court overlooked the ruling by the Court of Appeals for Cuyahoga County in appellee's criminal conviction. The court recounted appellee's written statement to the police on January 20, 2005 concerning the encounter with the victim. That entire opinion is attached to the merit brief of appellant where the court quoted extensively from the written of appellee and then further stated:

Additionally, when asked whether appellant thought J.P. seemed intoxicated, he said, **“Yes, she was hugging me and she didn’t know me and she said she loved me.”** When asked if anyone else said J.P. was intoxicated, appellant replied, **“Yes, the bartender and the bouncer.”** Finally, the following question and answer are found in appellant’s written statement”

**“Q. Before you left your bedroom with this girl what did you say to her?”**

**A: After we were fondling each other I said do you want to go in the living room and she said yes.”**

(Journal Entry and Opinion of Court of Appeals for Cuyahoga County, Case No. 88443 Feb. 11, 2008).

Accordingly, to state that nothing was presented on behalf of appellee concerning the circumstances and the sexual conduct between the victim and the appellee the court ignores what was contained in the record and available not only to the Common Pleas Court of Cuyahoga County but also to the Court of Appeals for Cuyahoga County.

Given the fact that this information was previously presented and reviewed by the Court of Appeals for Cuyahoga County and further reviewed denied by the Ohio Supreme Court, requires that this be given preclusive effect in these circumstances.

Thus, *res judicata* would be applicable. This principle is not even stated or alluded to in the opinion of the court.

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:

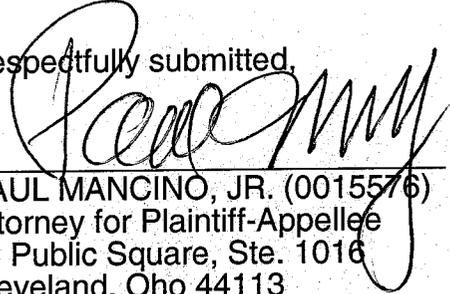
Section 24(1) of the Restatement of Judgments, *supra*, at 196 provides: **“When a valid and final judgment rendered in action extinguished the plaintiff’s claim pursuant to the ruled of merger or bar\*\*\*, the claim extinguished includes all rights of the plaintiff to remedies against the defendant 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 therefore requests reconsideration.

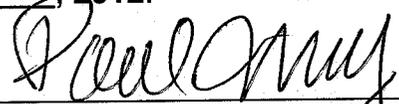
Respectfully submitted,



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### PROOF OF SERVICE

I hereby certify that a copy of the within *Motion for Reconsideration* has been sent to Michael DeWine, Attorney General, Alexandra T. Schimmer, Solicitor General, Matthew P. Hampton, Deputy Solicitor, 30, East Broad Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215 and Timothy J. McGinty, Courts Tower/Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113, on this 12<sup>th</sup> day of December, 2012.



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