

ORIGINAL

IN THE SUPREME COURT OF OHIO

YANKO MANSARAY)	Case No. 2012-1727
)	
)	On Appeal from the
Plaintiff-Appellee)	Cuyahoga County Court
)	of Appeals, Eighth
-vs-)	Appellate District
)	
STATE OF OHIO)	Court of Appeals
)	Case No. 98171
Defendant-Appellant)	

BRIEF OF PLAINTIFF-APPELLEE YANKO MANSARAY

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INTRODUCTION

Plaintiff-Appellee Yanko Mansaray was convicted of drug possession and other crimes in 2007, following an illegal search of his home by United States Marshals. The Marshals sought a different man, for whom they possessed an arrest warrant, when they searched Appellee's home. In 2010, the Eighth District Court of Appeals held that the search was unconstitutional and reversed Mr. Mansaray's conviction while ordering suppression of the evidence gained from the search. Because the sole evidence arose from the illegal search, the prosecutor dismissed the charges. No further trial could be had on the crimes for which Mr. Mansaray was convicted. Appellee subsequently filed a claim in the Cuyahoga County Court of Common Pleas to be adjudged a wrongfully imprisoned individual pursuant to R.C. 2743.48(A). The trial court granted a motion to dismiss for failure to state a claim, but the Eighth District Court of Appeals reversed that ruling, finding that R.C. 2743.48 applied to Appellee's pleaded claims and that the motion to dismiss was granted in error. The court based its ruling on a plain reading of the statute and the language referring to "an error in procedure" that results in reversal of the conviction. The Cuyahoga County Prosecuting Attorney then appealed to this Court.

STATEMENT OF THE CASE AND FACTS

Mr. Mansaray was arrested because United States Marshals sought to locate and arrest Rodney Williams as part of a major drug trafficking investigation. *State v. Mansaray*, 2010-Ohio-5119, ¶ 6 (8th Dist. App. 2010)(hereinafter *Mansaray I*). Possessing an arrest warrant for Williams, the Marshals arrived at Appellee's home in Cleveland, but Williams was not present. Informants had provided a cell phone number which they claimed was being used by Williams but which was actually registered to Appellee. *Id.* at ¶¶ 7-8. At about 9:00 A.M. on December 8,

2006, the Marshals arrived at Appellee's home, surrounded the house, and knocked on the door. *Id.* at ¶ 9. Appellee answered, and was questioned about Williams, then detained while the Marshals searched the house for Williams. *Id.* The Marshals found what appeared to be ecstasy pills in plain view during their search, and contacted Cleveland police to take charge of the drugs. *Id.* at ¶¶ 9-10.

The trial court denied Appellee's motion to suppress, and a jury convicted him of drug possession and possession of criminal tools, but declined to convict him of drug trafficking. *Id.* at ¶ 11. The Eighth District Court of Appeals overturned Appellee's conviction in 2010, finding that the Marshals' use of an arrest warrant to enter a third party's home, without a reasonable belief that the person named in the warrant lived in that third person's home, was unconstitutional, and mandated suppression. *Id.* at ¶ 18. The conviction was reversed, and, absent any other basis for prosecution, the charges dropped.

Appellee filed a complaint to be judged a wrongfully imprisoned individual pursuant to R.C. 2743.48(A) in the Cuyahoga County Court of Common Pleas. His complaint asserted as its basis the issue at the heart of the instant matter, that Appellee was released due to an error in procedure, rather than proof of actual innocence, under subparagraph (A)(5) of the statute. The State, as here, asserted a theory of statutory interpretation that not only was not a plain reading as it claimed, but rewrote the statute. The trial court accepted the State's interpretation and ruled that the statute requires an error in procedure to have *occurred after* conviction and/or sentencing, rather than, as the statute says, to have *resulted in* overruling of the conviction subsequent to the conviction's issuance. On appeal, the Eighth District Court of Appeals reversed, finding that, although the statute requires a liberal construction, even its plain meaning was sufficient to obviate the State's interpretation from being possible, because the State's

arguments would cause an absurd result. *Mansaray v. State*, 2012-Ohio-3376, ¶ 6 (8th Dist. App. 2012) (hereinafter *Mansaray II*). The Eighth District ruled that the trial court had erred in granting the motion to dismiss. The State now advances to this Court the same distortion of the statute under the guise of a “plain meaning” construction.

LAW AND ANALYSIS

The State advances three arguments against Appellee’s success before the appellate court. First, and for the first time before this court, it claims that a per se rule should bar any Fourth Amendment violation from being sufficient to satisfy R.C. 2743.48(A)’s requirements, because “[i]t defies logic to suggest that the State’s inability to proceed with prosecution because of an improper search automatically entitles that defendant to be paid.” Appellant Br. 4; *compare* 8th Dist. Def.-Appellee Br. ii *and* Def.-Appellant Mem. in Support of Jurisdiction i. Next, the State argues at length that ordinary grammatical rules should prevail in interpreting the statute, but then ignores all such rules to rewrite the statute, requiring an error in procedure to have *occurred* after a wrongful imprisonment claimant’s conviction and sentencing. Finally, the State argues that the appellate court ruled on the merits of Appellee’s wrongful imprisonment claim. For the reasons described below, each of the State’s arguments fails. For reasons of clarity, Appellee addresses the State’s reading of the statute first, as this issue indelibly colors the State’s other arguments.

Proposition of Law I: The State's Reading of R.C. 2743.48(A)(5) Impermissibly Rewrites the Statute and Fails to Constitute a "Plain Meaning" of the Words Written; Liberal Construction Should Apply

a. *The State's reading is grammatically incorrect*

The mechanism of compensation under R.C. 2743.48 is quite clear at this point. A claimant files suit in Common Pleas Court alleging him- or herself to have been wrongfully imprisoned, and the trial court determines if the claimant meets the requirements of 2743.48(A) to be so adjudged. After that determination, the claimant may file a claim with the Ohio Court of Claims in order to determine whether and how much compensation shall be paid. *Griffith v. City of Cleveland*, 120 Ohio St.3d 35, 2010-Ohio-4906, ¶ 30 (2010). The conditions that must be satisfied by a claimant are as follows, in the version in effect at the time of Appellee's filing:

- (1) The individual was charged with 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.

[emphasis added]

Mr. Mansaray has satisfied all of the conditions of R.C. 2743.48(A)(1-4). This case is focused entirely on the construction and meaning of the words “error in procedure” in (A)(5). The State has argued that R.C. 1.42 should apply to the interpretation of the statute, and that the plain language and ordinary rules of grammar and usage should be applied. Appellant Br. 12. A plain reading of (A)(5) does not support the State’s reading, which is neither plain nor according to common usage and grammar. In fact Appellee’s interpretation of the statute is in accord with the language of (A)(5).

The primary issue in the instant matter is what the General Assembly meant by the phrase “an error in procedure;” however, the Appellant focuses on the prepositional phrase which begins (A)(5). Appellee therefore begins his grammatical analysis there also. This Court has already examined the effect of this prepositional phrase, however; the State cites the language from the Court’s opinion in *Griffith*, noting the effect of the “error in procedure” addition to the statute. The Court there stated that the amendment “expands the criteria that an individual must satisfy. . . to include the condition that subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release as an alternative to the condition that subsequent to sentencing and during or subsequent to imprisonment . . . the offense . . . was not committed by the individual or by any other person.” *Griffith* at ¶ 21. This Court has *already* interpreted the statute to apply the “subsequent to” phrase to *either* condition, as demonstrated by the parallel construction of the above passage. The State argues a point already decided on logical, grammatically correct grounds.

If, however, further analysis is necessary, the State’s argument still collapses under ordinary grammar and usage. The State helpfully defines “error” but fails to note that an error is a noun. Appellant Br. 17. A noun, according to Merriam-Webster’s Dictionary, is a word that

can serve as the subject of a verb, be replaced with a pronoun, and which refers to an “entity, quality, state, action, or concept.” www.m-w.com/dictionary/noun. A noun may be modified – described – by an adjective, e.g. “a procedural error,” or “an obvious error.” Alternatively, a prepositional phrase, consisting of a preposition and its noun object, may be used to perform the function of an adjective, e.g. “an error *in procedure*,” or “an error *of grammar*.” However, prepositional phrases are not always adjectives.

In order for a sentence to be complete, a noun and a verb must function in concert. A verb denotes the action which the noun in the sentence takes. In R.C. 2743.48(A)(5), the relevant verb attached to the noun “error” is “resulted.” Verbs may also have objects – that is, noun receivers of the action – that add meaning to the sentence. An error in procedure caused reversal, for instance, where “reversal” is the object of “caused.” In the actual language of the statute, a prepositional phrase, “in the individual’s release” acts as a noun object of the verb “resulted.” Prepositional phrases may act, collectively, then, as single parts of speech. As an adjective, a prepositional phrase may modify a noun, and as a noun such a phrase may complete the action of the verb. Typically, an *adjectival* prepositional phrase follows the noun it modifies, although not always. Verbs are not modified by adjectives, however, but by adverbs, which – again, according to Webster’s – “typically serv[e to] modify. . . a verb, an adjective, another adverb, a preposition, a phrase, a clause, or a sentence, *expressing some relation of manner or quality, place, time, degree, number, cause.*” (emphasis added) www.m-w.com/dictionary/adverb. An adverb, then, in modifying a verb, may do so by denoting time or timing of the action of the verb.

The phrase “subsequent to sentencing, and during or after imprisonment” does, as the State argues, describe a temporal component for establishing (A)(5)’s elements, but it does not do so in the way the State advocates. The phrase, as a descriptor of time, is adverbial, and may

therefore modify a verb, an adjective, or another adverb as noted above. Prepositional phrases at the beginning of a sentence typically modify the verb and therefore are adverbial. The statute contains two independent clauses immediately following the phrase, that is, complete sentences with subject and verb. An “error in procedure” or proof of innocence (or lack of crime) are, respectively, the subjects of each of those independent clauses, and their verbs, “resulted in” and “is determined.” Each verb is modified by the prepositional phrase, because only one may be claimed as the basis for a wrongful imprisonment judgment. Since proof of innocence typically causes reversal only in the appellate or post-conviction relief stages of a criminal matter, it would obviously do so “subsequent to sentencing.” Indeed, if no sentence or imprisonment issues, there will never be a wrongful imprisonment claim. Logically and grammatically, the phrase “subsequent to sentencing, and during or after imprisonment” must modify either of the two verbs, “resulted in” or “was determined” (which, as the State describes, is best understood as “[the appropriate] court of common pleas determined”), which describe how to satisfy (A)(5)’s requirements.

The State’s construction produces absurd results on logical grounds besides violating grammar and this Court’s own reading of the statute. If an “error in procedure resulted in the individual’s release” prior to sentencing and/or imprisonment, no “wrongful” *imprisonment* would occur, and the issue would be moot. An error in procedure *may* “result” in release after conviction because it causes reversal of the conviction, as when a *Brady v. Maryland*, 373 U.S. 83 (1963) error or Confrontation Clause error is found by the appellate court. In fact, this is the typical progress of a criminal case: A conviction is reversed on appeal or at the post-conviction stage by an error or flaw in the original process of conviction at the initial trial. The adverbial phrase at the beginning of (A)(5) must grammatically modify either of the two disjunctive

possibilities for wrongful imprisonment status, since a claimant may only succeed on one, but either condition will arise after conviction and sentencing in order for wrongful imprisonment to have occurred. The State's argument to the contrary is patently wrong, and has no grammatical, logical, or criminal procedural basis.

Moreover, the State rewrites the statute entirely while claiming to deploy a "plain meaning" analysis. The State argues that the error in procedure must "*occur*" subsequent to sentencing and imprisonment. Appellant Br. 10. "Occur" and "result in" are simply not the same word. The intransitive verb "result" means "to proceed or arise as a consequence, effect, or conclusion," whereas "occur" means "to be found or met with" or "to come into existence." MERRIAM-WEBSTER.COM www.m-w.com/dictionary/result; www.m-w.com/dictionary/occur. These two words do not mean the same thing, yet the State has argued that "resulted in," means "came into existence," instead of "caused." This sleight-of-hand is disingenuous when the State claims to rely upon "plain meaning."

The State's reading of the statute is grammatically unsustainable, because it violates the rules of grammar as they exist independent of the law. The State also deliberately misreads the statute by changing a word to effect its preferred meaning. Whatever the General Assembly intended when it wrote and later amended R.C. 2743.48(A)(5), it did not grant the State permission to edit the statute for its own purposes. For that reason alone the State's argument should be denied.

- b. The State's own cited cases support Appellee's grammatical analysis, as does the history of amendment which the State traces.*

The State's reading of the statute relies on what it characterizes as "a general matter," that "a prepositional phrase modifies the language closest to it." Appellant's Br. 13. It cites several

cases, all of which are consistent with the more fundamental rules of grammar discussed above. For instance, the State relies upon this Court's correct diagnosis of a misplaced modifier in a statute in *City of Bryan v. Hudson*, 77 Ohio St. 3d 376, 380 (1997). In that case, the statute in question read "If you . . . are found to have a prohibited concentration of alcohol in your blood, breath, or urine, your driver's or commercial driver's license . . . will be suspended for the period of time specified by law by the officer, on behalf of the registrar of motor vehicles." *Id.* at 379 (emphasis in original). This Court correctly determined that the statute meant that "the phrase 'by the officer' modifies the phrase 'will be suspended,' and is modified by the phrase 'on behalf of the registrar of motor vehicles.'" In other words, the officer suspends the license on behalf of the Registrar of Motor Vehicles. This analysis was correct because "by the officer" is an adverbial phrase denoting the person who performs an action, in this case suspension of the license, and therefore the officer performed the suspension. Although this Court noted in *City of Bryan* that modifiers should be close to the words modified, as the State argues, it did not issue a per se edict that modifiers must always be adjacent to the modified word(s) because to do so would be grammatically improper; adverbial phrases may sometimes have to be separated from the verbs they modify, particularly in cases of parallel construction like the instant statute. More to the point, the rules related to the parts of speech discussed above were implicitly relied upon by the Court in its determination that "by the officer" modified "will be suspended," just as they should be relied upon by the Court in the instant matter.

The State's other cases similarly demonstrate consistency with Appellee's interpretation of R.C. 2743.48. In *King v. State Farm Ins. Co.*, 2003-Ohio-6950, ¶ 42 (8th App. Dist. 2003), an insurance policy limited liability "to bodily injury to one person" and the court found the phrase "to one person" necessarily modified "bodily injury." The court cited a *different* "general rule" to

which the State adverts in the instant matter, in this case declaring that a prepositional phrase follows the word it modifies. *Id.* The court was correct, however, that the phrase “to any person” modified “injury,” which was already modified by “bodily.”¹ The injury was already bodily and not, for instance, personal, and was further limited to bodily injury to one person, and not to multiple persons, or, as the court further noted, to other insureds. *Id.* at ¶ 43. The court in *In Re E.M.D.R.E.*, 2010-Ohio-925, ¶¶ 46-47 (12th App. Dist. 2010) also followed the same rules concerning parts of speech and modifiers. In that case, the court examined a statutory section which stated

With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody to the movant if the court determines in accordance with division (E) of the section that the child cannot be placed with one of the child’s parents . . . and determines in accordance with section (D) of this section that permanent custody is in the child’s best interest. (emphasis added by the court).

In the passage which the State cites, the court noted that the initial prepositional phrase “necessarily limits” the remainder of the sentence to those circumstances.” This statement is true, as the phrase is adverbial, describing under what conditions “the court shall grant” permanent custody for the purposes of the statute. The court clearly understood this relationship, as subsequent paragraphs demonstrate. The Twelfth District’s reading of the statute applies the same rule of adverb and verb modification which Appellee has put forward above, without standing for a per se rule as the State wishes, where a prepositional phrase always modifies the word closest to it. If that rule applied, the phrase would modify “the court.” The State has offered no conceivable way to understand “court” modified by “with respect to” a particular

¹ The use of bodily also gives the lie to the oft-cited rule that adverbs are words that end in “-ly.” Other examples include daily, unlikely, and elderly, as in “daily routine,” “unlikely event,” and “elderly person.”

thing. By contrast, the action “shall grant” can be limited by the addition of the phrase “with respect to” – that is, the court shall grant, for the purposes of the statute, only those motions filed pursuant to the statutory section and in compliance with the other conditions.

Finally, the State cites a dissent by “[a] jurist who formerly taught college-level composition” opining about “rigid syntax” in English, and the difficulty of the “dangling or misplaced modifier.” Appellant Br. 13, n.3. The State’s parenthetical summarizing that dissent’s grammatical conclusions, however, utterly distorts – to the point of misrepresentation – that esteemed jurist’s conclusions. The language in question comes from *Safeco Ins. Co. v. Motorists Mutual Ins. Co.*, 2006-Ohio-2063, ¶ 31 (8th App. Dist. 2006)(Karpinski, J., dissenting). The State claims that the dissent asserts a rule of English grammar in the abstract, that Judge Karpinski was “finding that prepositional phrase clearly modified immediately preceding language.” Appellant Br. 13, n. 3. However, what the dissent actually describes is a problem of disjunction: “It is quite clear that the qualifying prepositional phrase at the end of the policy sentence above modified what immediately precedes it. It is not clear, however, that the qualifying tail reaches over and modifies what is on the other side of the ‘or.’” *Safeco* at ¶ 31. In other words, the dissent agrees that the prepositional phrase modifies the language next to it, but finds ambiguous whether the same phrase modifies language after a disjunctive “or.” For this reason, the dissent found ambiguity in the language, because the contract as written could not resolve the question of which interpretation was correct. *Id.* at ¶ 32. The dissent does not mean what the State claims it does. By contrast, in the instant matter, this Court has already used the adverb-verb rules and common sense to determine that the prepositional phrase modifies either of the two clauses separated by a disjunctive “or.” *Griffith* at ¶ 21.

Finally, the State reviews the history of the statute's amendments and successfully proves Appellee's point. In the course of examining the alterations to the statute, the State first notes that the language at issue, "subsequent to sentencing and during or subsequent to imprisonment" appeared in the original form of the statute as enacted in 1989. Appellant Br. 6. Later, the language remained unchanged in subsequent revisions, including the 2003 alteration which added the language about an error in procedure. *Id.* at 7-8. That the phrase was definitely intended to apply to either condition is clear from the fact that it remained in the same position in the sentence while the new language was inserted immediately following it. If, as the State maintains, the phrase was meant to modify only the error in procedure, the State fails to explain why the opening phrase predates the addition of "error in procedure" to the statute, and what internal clues or analysis supports the complete switch from one modified term to another. The statute may suffer from inartful drafting, but the State's explanation of its meaning is absurd; by the State's logic, the temporal language now applies *only* to the error in procedure. If a claimant proved actual innocence *before* the trial concluded, or was acquitted based upon such proof, he or she could now enter a claim for wrongful imprisonment, because only an error in procedure must cause the release of the claimant *after* sentencing and incarceration. The State would have this Court limit the statute in the name of reducing the number of claimants, while offering an interpretation of the statute that is so absurd as to open the floodgates to all defendants acquitted of felony charges.

In an equally bizarre formulation, the State's arguments for a plain meaning of the statute simply negate the actual intent of the General Assembly and the language of the Statute. The State declares that "[w]hile the improper search found in Mansaray's criminal case proceedings may have entitled him to have his conviction vacated, dismissed, or reversed, any such 'errors in

procedure' could not thereby function to fully exonerate plaintiff from any criminal culpability as R.C. 2743.48(A)(5) plainly intends to do." Appellant Br. 22. As noted, this Court has already determined in *Griffith* that the "or" in the statute is disjunctive, that is, that either an error in procedure *or* actual innocence may suffice to satisfy (A)(5). The State demonstrates that it believes the statute does, or should, read "and" instead of "or" – that is, the State believes that even when an error in procedure results in release, the claimant must still demonstrate actual innocence to be adjudged wrongfully imprisoned. The clear and practical import of that construction of the statutory language is to render the "error in procedure" language superfluous, as the State has asserted this Court must not do to any language in a statute. Appellant Br. 14.

The State's proffered reading of the statute, on which its analysis primarily rests, is not only flawed grammatically, but alters the language of the statute while pretending to offer a "plain meaning." Whatever an "error in procedure" may be, it does not occur after sentencing and/or imprisonment, but only causes an effect (vacation of the sentence) after that point. Any other reading does violence to the language and intent of the statute. Further, the State's proposed construction leads to multiple and conflicting absurd results which mangle the language of the statute far more completely than the State alleges that Appellee's construction would have it. The State's construction of the grammar, "plain meaning" and import of the statute must be rejected to avoid these results.

c. The "error in procedure" language alters the demonstrable intent and meaning of the statute and, construed liberally as it must be, encompasses the instant matter.

This Court has addressed the amended language, that is, the central issue of the instant case, only obliquely, in the language already quoted above from *Griffith*. There, the Court merely acknowledged that a claimant for wrongful imprisonment status may receive such status through

either an error in procedure, or through proof of actual innocence, established after the conviction and sentencing. *See also Nelson v. State*, 2010-Ohio-1777, ¶ 10 (Ct. of Claims 2010) The State has summarized the history of the statute's amendments without seriously distorting that history. The State's temporal gloss of the statute is unfeasible, and merely obscures the fact that the phrase "error in procedure" is ambiguous; and, further, that the only reasonable means of resolving that ambiguity is to apply R.C. 1.11 due to the statute's remedial intent.

That R.C. 2743.48 is remedial in nature is clear from its very purpose: It was written expressly to right a wrong, in this case a wrong perpetrated by the State. *Walden v. State*, 47 Ohio St.3d 47, 52 (1989); *Wright v. State*, 69 Ohio App. 3d 775, 778 (10th Dist. Ct. App. 1990) (noting that remedial laws are enacted to correct past defects or to redress an existing wrong). As noted in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374 (2011) at ¶ 9, a remedial law is one that affects the remedy provided, or substitutes a new or altered remedy for the enforcement of an existing right. The remedy for wrongful imprisonment is compensation, determined by the Court of Claims. R.C. 2743.48(D). The means for access to that remedy is R.C. 2743.48(A). Because the statute is remedial in intent and nature, R.C. 1.11 mandates that it be construed liberally when ambiguity exists, in order to effect a just result for the parties.

The State's history of the statute does not include any meaningful discussion of the meaning of the phrase "error in procedure" because the legislative history does not reflect it. *Nelson* at ¶ 23. None of the fiscal analyses proffered by the State actually illuminate the intended meaning of the phrase; they essentially repeat the language without further gloss. The Court of Claims also noted in *Nelson* that "Decisional law that predates the 2003 amendment to R.C. 2743.48(A)(5) offers little guidance in light of the fact that a claim for wrongful imprisonment was contemplated only in cases of actual innocence." ¶ 25. In fact, that court determined,

because prior to the amendment claims based upon “errors of law committed by judges” and “violation of constitutional rights” were rejected, the amendment “represents a significant departure from the original intent of the General Assembly in creating a claim for wrongful imprisonment, which was to compensate only the innocent, not those who merely avoided criminal liability.” *Id.* at ¶25. An error in procedure must be something different than a claim of actual innocence, and must be an error significant enough to mandate reversal. As the court discussed in *Nelson*, the error reasonably fits within the Fifth and Fourteenth Amendment guarantees of due process, and therefore also the rights guaranteed by the amendments in the Bill of Rights which have been applied to the states by the operation of the Fourteenth Amendment. *Id.* at ¶ 26. The Court of Claims in *Nelson*, however, dismissed the possibility and determined that the amendment was void for vagueness (a decision beyond that court’s authority) due to the court’s inability to locate a reasonable standard by which to define an “error in procedure.” *Id.* at ¶ 33.

Despite the Court of Claims dismissal, other courts have found, that in fact exactly the constitutional error logically defines the phrase. In *Larkins v. State*, 2009-Ohio-3242, ¶ 6 (10th Dist. Ct. App. 2009) the State stipulated to a procedural error that resulted in the vacation of Larkins’ sentence. *Larkins* dealt with a violation of the right to exculpatory evidence articulated by *Brady v. Maryland*, 373 U.S. 83 (1963). In that case, the defendant was convicted of murder, attempted murder, and robbery. *Larkins* at ¶ 2. His requests via mandamus for certain documents were refused, but the documents were nonetheless released to Cincinnati’s Bishop Alfred Nickles pursuant to a public records request to the Cleveland Police. *Id.* at ¶ 3. The Cuyahoga County Court of Common Pleas ruled that the withholding of the documents had been contrary to *Brady*’s requirements and first ordered a new trial, then ultimately dismissed the charges

against Larkins, all of which was affirmed by the Eighth District Court of Appeals; he then filed a claim of wrongful imprisonment with that same court. *Id.* at ¶¶ 4-6. The Court of Common Pleas, in part on the basis of the State's stipulation that an error in procedure caused Larkins' imprisonment, ruled that he was indeed a wrongfully imprisoned person. *Id.* at ¶ 6.

The right to exculpatory evidence defined by *Brady* arises from the Due Process Clause of the Fourteenth Amendment. 373 U.S. at 86. The Court characterized the fundamental purpose of due process: "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." 373 U.S. at 87. If one constitutional right protecting the accused during prosecution is, according to the State of Ohio, an error of procedure, then so should be any other which results in a trial so unfair that further prosecution is foreclosed by the State's own actions. Put another way, imprisonment is still wrongful if the State won its conviction using constitutionally inappropriate means, and this recognition is at the heart of the 2003 addition of "an error in procedure" to the wrongful imprisonment statute.²

The finding of the *Larkins* court (and the State's acquiescence to it, in stipulation) makes sense semantically and logically, and gives lie to the Court of Claims' dismissal of the amended language. As that court noted in *Nelson*, an error is "a mistake of law or of fact in a court's judgment, opinion, or order." *Id.* at ¶ 12. A procedural error must be one which somehow violates "the judicial rule for carrying on a civil lawsuit or a criminal prosecution." *Id.* An error which deprives a defendant of fundamental procedural rights guaranteed by the United States

² In *Stallings v. State*, CV 2009-12-8907 (Ct. Comm. Pl. Summit Cty. 2011), the trial court granted a motion for summary judgment for wrongful imprisonment status where the conviction had been overturned on grounds of Confrontation Clause violation, and the record was adequate to prove satisfaction of R.C. 2743.48((A)1-5).

and/or Ohio Constitutions is, literally, an error in procedure, but just as significantly, of a magnitude sufficient to grant release from a conviction and sentence. If an error of constitutional magnitude is not an appropriate error in procedure under the statute, what error could possibly be sufficient? The State's reading of the statute to exclude Fourth Amendment violations, as discussed below, has no basis in the language of the statute or the nature of the error. Construed liberally, a procedural error which results in the voiding of both a conviction and a sentence, and prevents a retrial of the defendant, must satisfy the condition of R.C. 2743.48(A)(5) or no error can.

Proposition of Law II: The Exclusionary Rule is a Procedural Remedy which Corrects A Violation of the Fundamental Right to Due Process; Logically Under the Facts of this Case It Should Satisfy the Statute.

That a Fourth Amendment violation is an error in procedure is hardly debatable. The Fourth Amendment protection at issue in this matter is fundamental to the United States Constitution and its guarantees of liberty under the Fourteenth Amendment's Due Process protections, specifically in criminal prosecutions. *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949) ("Due process of law thus conveys neither formal nor fixed requirements."); *Mapp v. Ohio*, 367 U.S. 643, 657-58 (1961) ("However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness."); *Albright v. Oliver*, 510 U.S. 266, 271 & 272 (1994) ("We hold that it is the Fourth Amendment, and not substantive due process [that defines analysis of the claim in that case] . . . the Due Process Clause of the Fourteenth Amendment confers both substantive and procedural rights"). The State never argued that the violation that freed Appellant – the failure to

exclude unlawfully seized evidence – was not procedural in nature. Indeed, it could not, since that error was undoubtedly procedural, as the Eighth District noted in *Mansaray II. Id.* at ¶ 17.³ While the Fourth Amendment protects a substantive right, the exclusionary rule is a procedural remedy available only in trial, and specifically as a deterrent to improper law enforcement practices. *United States v. Leon*, 468 U.S. 897, 906 (1984) (“The rule thus operates as ‘a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the person aggrieved.’”) (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)).

The Fourth Amendment is a personal constitutional right which is enforced solely through the procedural mechanism of the exclusionary rule. A failure to apply the exclusionary rule when evidence was improperly obtained is a procedural error that *can* result in the reversal of a conviction, when the evidence for conviction is solely or substantially provided by the improperly obtained evidence. Such a violation may also be deemed harmless when only duplicative or limited evidence for conviction arises from the Fourth Amendment violation. In particular circumstances, the effect of a Fourth Amendment violation’s correction may be to prevent retrial by the State. Because such a violation is an error in procedure, it would serve in those limited numbers of cases as the basis for satisfaction of R.C. 2743.48(A)(5).

The State argues that an application of the exclusionary rule in the criminal trial “does not confer upon the accused moral absolution” because the claimant in a wrongful imprisonment case has “just avoided criminal liability.” Appellant Br. 4-5. This argument attempts to focus this Court on whether or not Appellee is a good person who “deserves” compensation. The statute, as

³ In fact, the State did not contest this issue until its Memorandum in Support of Jurisdiction before this Court; while the Court certainly has discretion to consider the issue, the State’s previous silence raises the question of its waiver of the issue.

amended, does not address the claimant's worthiness except in terms of the claimant's satisfaction of the statute's requirements, and Appellee has always pursued the claim under the aegis of the error in procedure prong of (A)(5). As noted above, the intent of the amendment must, logically, have been to establish an alternate path from actual innocence to a wrongful imprisonment judgment. If an error in procedure continues to require actual innocence the amendment is superfluous and the intent of the General Assembly is improperly ignored.

The State's argument with respect to the effect of the exclusionary rule on a claimant's eligibility for wrongful imprisonment status, however, amounts to a per se rule that is inappropriate even under the Appellant's own analysis. Appellant argues that a failure to properly exclude evidence "does not result in the defendant's release from custody and assuredly does not entitle the defendant to obtain damages from the State of Ohio." Appellant Br. 3. Bizarrely, the Appellant then continues to discuss the burden of proof of criminal culpability and actual innocence, which are irrelevant to the instant discussion, except as obfuscation. Appellee has not argued that a violation of the Fourth Amendment's exclusionary rule must automatically result in payment by the State to the defendant in question. Appellee *has* argued, however, that where, as here, a former criminal defendant can satisfy the conditions of R.C. 2743.48(A)(1-5) because of an error in procedure rather than actual innocence, that person satisfies the statutory prerequisites and is entitled to a declaration of wrongful imprisonment.

The Appellant argues that "suppression does not confer upon the accused moral absolution of the hard facts that landed him in court" as if the issue were actual innocence. Appellant Br. 5. Appellant wishes this Court to decide matters of law based upon its presumed moral opprobrium towards Appellee's conduct. Such a basis of decision would return to the era prior to the enactment of R.C. 2743.48, when "*ad hoc* moral claims legislation" determined

wrongful imprisonment, only impermissibly substituting this Court in the role of the General Assembly. Appellant. Br. 5. In fact, the statute offers a comprehensive gate-keeping structure to limit the number of claims of wrongful imprisonment to those in which some genuine problem exists with the conviction and sentence of the claimant. Five different parts of R.C. 2743.48(A) govern whether a claimant may be judged wrongfully imprisoned, and five different requirements must be met by a given claimant. In the instant matter, Appellee has met those requirements: He was charged with a felony (A)(1); found guilty of the felony without pleading guilty to it or a lesser-included offense (A)(2); sentenced to a definite term of imprisonment for the offense of which he was convicted (A)(3); that conviction was reversed on appeal, and the prosecuting attorney will not or cannot bring a charge against Appellee for any acts associated with the conviction (A)(4); and, finally, an error in procedure resulted in Appellee's release after his imprisonment on the issued sentence (A)(5).

Appellee meets the five requirements on the basis of facts, not speculation about his moral worth, and cannot represent the opening of floodgates because his case is specifically tied to facts unique to his circumstances. The State could have prosecuted him again, had it gathered any evidence at all independent of its accidental and illegal discovery of drugs, particularly if it had procured witness testimony against Appellee. Merely because of the practical effect of the State's negligence in building its case against Appellee, it insists that it must be allowed to ignore the prejudicial effect of the Fourth Amendment violation on Appellee's liberty. To revert momentarily to the grammar discussion above, a person is wrongfully imprisoned when the imprisonment occurs by improper means. The United States Supreme Court has recognized that not only conviction of an actually innocent person is wrongful, but so is conviction of a person by wrongful means, such as the violation of his or her rights, whether that violation comes about

via a forced confession, a prejudicial identification, an inappropriate interrogation, a failure to secure a proper warrant, or even the failure to advise a defendant of his rights to an attorney and to remain silent. Appellee satisfies the statutory requirements, while Appellant's attempt to impose a per se rule barring any claimant from establishing wrongful imprisonment due to a Fourth Amendment violation alters the statute and violates its intent while denying the gatekeeping function the statute serves.

Proposition of Law III: The State's Argument Concerning Judicial Notice is Irrelevant and Ignores the Actual Ruling of the Eighth District.

Appellant argues that trial courts hearing wrongful imprisonment claims "must not sua sponte take judicial notice" of any aspect of the underlying criminal proceeding. Appellant Br. 24. The rationale for this sweeping rule appears to be the State's belief that it was denied the chance to offer evidence under a civil standard before the trial court. Appellant Br. 25. The Appellant is correct that for the purposes of the motion to dismiss, the trial court was obligated to treat Appellee's pleaded facts as true, but incorrect in claiming that the appellate court evaluated the merits of the claim rather than the facts pleaded. The State appears to misread the actual import of the Eighth District's opinion. That opinion states, first, that "we agree with *both parties* and the trial court that the requirements in R.C. 2743.48(A)(1)-(4) are satisfied by Mansaray." *Mansaray II* at ¶ 20. (emphasis added). The State is late in objecting to judicial notice, given that at the appellate level it not only failed to object but concurred with Appellee as to the relevant issue on appeal. Secondly, the opinion in *Mansaray II* does not determine that Appellee was wrongfully imprisoned, but merely that "Mansaray sufficiently pled a wrongful imprisonment claim in order to survive a motion to dismiss for failure to state a claim" because the court, as it

should have, took the claims in the complaint as true, thus finding that Appellee satisfied the pleading requirements of 2743.48(A)(5). *Id.* at ¶¶ 9, 20. The Eighth District did not find, with improper evidence, and by weighing the merits, that Appellee was wrongfully imprisoned; it merely held that the trial court “erred when it granted the State’s motion to dismiss.” By appealing that ruling, the State has actually missed an opportunity, on remand, to present its civil trial evidence of other wrongful activities by Appellee. Instead, the State has wrongly insisted that Appellee is already due a huge sum from the State’s coffers as a wrongfully imprisoned individual, raising the question of the ripeness of the instant matter.

The Eighth District ruled on the error in procedure language based upon its *own prior ruling* – pled in the complaint – that the evidence was illegally seized, and its liberal reading of the statute, not on facts judicially noted by the trial court. *Mansaray II* at ¶¶ 16-17. It also ruled only on whether the motion to dismiss had been properly granted by the trial court, and explicitly remanded the case for further proceedings. *Id.* at ¶ 22. The State’s attempt to argue the judicial notice issue now, rather than before the Eighth District, is procedurally inappropriate. In this proceeding, it is an entirely irrelevant attempt at deflection, which seeks to alter the Eighth District’s ruling in order to justify this case’s appearance before this Court. The State’s claim as to judicial notice should be rejected on this basis alone, irrespective of any substantive flaws.

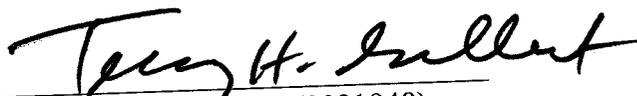
CONCLUSION

Appellee Yanko Mansaray’s construction of R.C. 2743.48(A)(5) should prevail because the statute is remedial in intent and therefore must be liberally construed. Moreover, the State’s argument for interpretation is grammatically unsound, illogical, and produces absurd results. The State impermissibly rewrites the language of the statute despite claiming that it offers a “plain

meaning” of the statute as written, and produces a statute that is patently contrary to any reasonable understanding of the General Assembly’s intent in enacting the language in question. The State’s attempts to dispute the Fourth Amendment’s exclusionary rule as an error in procedure, and the trial court’s judicial notice of Appellee’s satisfaction of much of the statute’s requirements similarly overreach. The State’s request for a per se rule always barring Fourth Amendment violations from coverage of the statute is not based on the facts of the case but on generic disputes about actual innocence which do not bear on the “error in procedure” language. Similarly, its claims regarding the trial court’s judicial notice are not only newly raised before this Court but misstate and distort the ruling of the appellate court to manufacture an issue where none exists. The State’s construction of R.C. 2743.48(A)(5) must be rejected, and Appellee be permitted to pursue his claim as ordered by the appellate court in *Mansaray II*.

Respectfully submitted,

FRIEDMAN & GILBERT



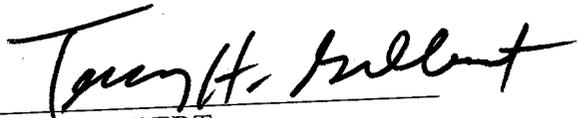
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CERTIFICATE OF SERVICE

I certify that a copy of this Brief of Plaintiff-Appellee was sent by regular U.S. Mail, postage prepaid, this 21st day of May, 2013, to the following:

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