ORIGINAL

In the

Supreme Court of Ohio

DUANE HILL,	:	Case No. 13-1043
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
STATE OF OHIO,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 12AP-635
	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT STATE OF OHIO

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INTRODUCTION

A foundational principle of wrongful imprisonment law in Ohio has always been that the "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 v. State*, 47 Ohio St. 3d 47, 52 (1989). The Tenth District's interpretation of Ohio's wrongful imprisonment statute, R.C. 2743.48, threatens that principle.

By broadly interpreting the phrase "an error in procedure resulted in the individual's release," R.C. 2743.48(A)(5), the Tenth District decision creates the risk that every criminal defendant whose conviction is reversed on appeal—regardless of their actual culpability—may be eligible for payment as a "wrongfully imprisoned individual." Such a result simply cannot be what the General Assembly intended when it amended the wrongful imprisonment statute; the General Assembly could not have intended to open the state coffers to all criminal defendants who, regardless of the reason, have had their convictions overturned on appeal. In light of the uncertainty about the meaning of the statute, lower courts need guidance from this Court about the meaning of "error in procedure."

The Court has already accepted for review one case, *Mansaray v. State*, No. 2012-1727, in which it will interpret the error in procedure prong of R.C. 2743.48(A)(5). The second proposition of law in that case states that "R.C. 2743.48(A)(5) bars an action for wrongful imprisonment when the claimant's alleged 'error in procedure' is a trial court's denial of claimant's motion to suppress evidence that is subsequently reversed and the State elects to not retry the Defendant/Criminal." Memorandum in Support of Jurisdiction at 6, *Mansaray v. State*, No. 2012-1727 (Ohio Oct. 12, 2012). *Mansaray* will be the first time that this Court directly confronts the meaning and scope of the error in procedure language and whatever the Court decides in that case will necessarily affect cases such as this one.

While the Court's decision in *Mansaray* will be informative in this case, it may or may not be outcome determinative. Depending on the basis and scope of the Court's decision in that case, *Mansaray* may control the outcome here—or it may not. This case thus presents an opportunity to address issues that may be left undecided after *Mansaray*, namely, to answer the question of what constitutes an "error in procedure [that] resulted in the individual's release" pursuant to R.C. 2743.48(A)(5)? This Court's further review may be required to answer that question for two reasons.

First, if the decision in *Mansaray* is confined to *when* a violation must occur then review may be warranted in order to further clarify the meaning of the term "error in procedure resulting in an individual's release." The Tenth District's broad interpretation of the term "error in procedure" is inconsistent with this Court's past decisions interpreting R.C. 2743.48 and incompatible with the plain language of that statute. Instead of applying to any and all errors that might occur at trial, the error in procedure prong of R.C. 2743.48(A)(5) is limited to the more narrow class of errors specifically identified in statute: those that actually "result[]in an individual's release." Reading the statue in any other way would render other provisions superfluous, namely the requirement found in R.C. 2743.48(A)(4) that a claimant's conviction be "vacated, dismissed, or reversed on appeal."

Second, if *Mansaray* does not already say so then further review may also be needed to clarify that whatever else the error in procedure language may include, it should not be interpreted to encompass errors that occur prior to trial—such as violations of the Fourth Amendment. Such a broad interpretation would serve neither the purpose of the wrongful imprisonment statute nor the purpose of rules such as the exclusionary rule. In many cases, enforcement of pre-trial procedural standards means letting guilty defendants go free in order to

serve larger social goals. But a finding of wrongful imprisonment is too far removed from pre-trial conduct to serve as a deterrent, and the General Assembly did not intend for R.C. 2743.48 to provide a second benefit to the guilty in the form of payment from the State.

For these reasons, and for the reasons below, this Court should accept review of this case and hold it for the decision in *Mansaray*. Following a decision in that case, the Court may even wish to consider additional briefing, limited to the question of whether this case has or has not been fully resolved. In the alternative, the Court should accept jurisdiction over this case and reverse.

STATEMENT OF THE CASE AND FACTS

A. Ohio's wrongful imprisonment statute applies to those individuals who can satisfy all of the requirements of R.C. 2743.48(A).

Prior to 2003, claimants seeking to prove that they had been wrongfully imprisoned were required to establish that they were actually innocent of the crime for which they were charged. But the General Assembly amended that statute in 2003, and claimants can now establish *either* that "(1) subsequent to sentencing and during or subsequent to imprisonment, 'an error in procedure resulted in the individual's release'" *or* that "(2) the charged offense (and any lesser included offense) was not committed by the individual or no crime was committed at all (actual innocence)." *Doss v. State*, 135 Ohio St. 3d 211, 2012-Ohio-5678 ¶ 12 (interpreting R.C. 2743.48(A)(5)). But establishing actual innocence or an error in procedure resulting in release is not the only thing that claimants must do. Claimants must also prove that they did not plead guilty to the crime with which they were charged. R.C. 2743.48(A)(2). They must prove that their conviction was vacated, dismissed, or reversed. R.C. 2743.48(A)(4). And they must prove that they did not "engag[e] in any other criminal conduct arising out of the incident for which they were initially charged." *Gover v. State*, 67 Ohio St. 3d 93, 95 (1993) (interpreting R.C.

2743.48(A)(4)). If a claimant cannot affirmatively every element of R.C. 2743.48(A) then that claimant is not entitled to recover money from the State.

B. Duane Hill pled no contest to possession of drugs and trafficking in drugs. On direct appeal, the court of appeals determined that Hill had been illegally searched and that all evidence resulting from that search should have been suppressed.

On December 19, 2009, a Richland County woman reported that her baby had been shot and that the shooter had fled the scene. *State v. Hill*, 194 Ohio App.3d 93, 2011-Ohio-2019 ¶ 2 (5th Dist.). The woman's neighbors reported seeing an African-American man driving a car that was "possibly black with four doors." *Id.* Roughly two blocks from the scene of the crime, a police officer spotted a black 2001 two-door Oldsmobile Alero. *Id.* ¶ 3. The officer stopped the car and ordered the driver, an African-American man, out of the car. *Id.* The driver was Duane Hill, the claimant in this case. During a patdown, the officer discovered crack cocaine and a bundle of cash. *Id.* ¶ 4.

Hill was charged with two counts of possession of drugs, two counts of trafficking in drugs, and one count of possession of a Schedule IV controlled substance. *Id.* ¶ 1. Hill moved to suppress the drugs, arguing that they were discovered as the result of an illegal search and seizure. *Id.* ¶ 5. The trial court denied Hill's motion, and he subsequently entered a plea of no contest, reserving his right to challenge the denial of his suppression motion. *Id.* ¶ 6.

On appeal, the Fifth District Court of Appeals determined that the trial court had improperly denied Hill's motion to suppress and reversed and remanded for further proceedings. *Id.* ¶ 15. With the evidence of drugs unavailable on remand, the county prosecutor filed a motion to dismiss the criminal case against Hill. *Hill v. State*, No. 12AP-635, 2013-Ohio-1968 ¶ 3 (10th Dist.) ("App. Op.").

Hill subsequently filed a complaint seeking an order declaring him a "wrongfully imprisoned individual." *Id.* ¶ 2. The trial court granted Hill's motion for summary judgment.

Id. ¶ 4. On appeal, the State argued that Hill did not qualify as a "wrongfully imprisoned individual" for several reasons. Most relevant to these proceedings, the State argued that the illegal search and seizure did not qualify under R.C. 2743.48(A)(5) as an "error in procedure [resulting] in" Hill's release. The Tenth District disagreed with the State's arguments and affirmed.

THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

This case requires the court to interpret the meaning of the phrase "[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release." R.C. 2743.48(A)(5). Every person seeking to be declared a wrongfully imprisoned individual must satisfy the requirements of R.C. 2743.48(A). A decision from this Court regarding the meaning of that statute will therefore have widespread application, and will affect wrongful imprisonment cases throughout the State.

A. The Court should grant review and hold for a similar case, *State v. Mansaray*, which addresses the interpretation of R.C. 2743.48(A)(5).

By accepting *Mansaray* for review, this Court has already recognized that proper interpretation of R.C. 2743.48(A)(5) is a matter of public and great general interest. The second proposition of law in that case states that "R.C. 2743.48(A)(5) bars an action for wrongful imprisonment when the claimant's alleged 'error in procedure' is a trial court's denial of claimant's motion to suppress evidence that is subsequently reversed and the State elects to not retry the Defendant/Criminal." Memorandum in Support of Jurisdiction at 6, *Mansaray v. State*, No. 2012-1727 (Ohio Oct. 12, 2012). On its face then, this case presents a question that significantly overlaps with the one presented in *Mansaray*.

In *Mansaray*, as in this case, the claimant had actually committed the crime for which he had been convicted. And in each case, the claimant was released from prison only because the

reviewing court of appeals reversed a trial court's denial of a motion to suppress. Thus the claimed error in procedure—an improper search and seizure—is the same in both this case and in *Mansaray*.

Even if the State does not prevail in *Mansaray*, that outcome would not mean that this case should necessarily be resolved in Hill's favor. While a decision reversing the Eighth District Court of Appeals in *Mansaray* would necessitate reversal of the Tenth District in this case, the inverse is not equally true. In *Mansaray*, the Eighth District focused exclusively on *when* the error in procedure occurs, not *what* constitutes an error. *See Mansaray v. State*, No. 98171, 2012-Ohio-3376 (8th Dist.). Should this Court find that R.C. 2743.48(A)(5) limits the time period in which an error in procedure must occur, then such a decision would mandate reversal in this case. It is undisputed that Hill's claimed error did not occur "subsequent to sentencing and during or subsequent to imprisonment." But should the Court find that R.C. 2743.48(A)(5) places *no* time limitations on when the error could have occurred, there are still several issues that would need to be addressed in this case. These issues include 1) the overall breadth of the error in procedure prong of R.C. 2743.48(A)(5) and 2) whether an error occurring prior to trial, particularly a Fourth Amendment violation, can ever satisfy that prong.

B. The Court should grant review because the Tenth District's broad interpretation of "error in procedure" dramatically expands the class of people who can recover as wrongfully imprisoned individuals.

The Tenth District's broad interpretation of what constitutes an "an error in procedure [that] resulted in the individual's release" significantly expands the class of people who are determined to be wrongfully imprisoned. It could entitle virtually every defendant whose conviction gets reversed on appeal to payment from the state coffers. And under the Tenth District's interpretation, the State could be required to pay a claimant even when all parties agree that the claimant *actually committed* the crime for which he or she was originally imprisoned.

The cost to the State of the Tenth District's expansion of the pool of wrongfully imprisoned individuals is significant. A successful claimant in a wrongful imprisonment action is entitled to over $40,300 per year of imprisonment (adjusted for inflation). R.C. 2743.48(E)(2)(b). The State also pays successful claimants' lost wages, attorney's fees, court costs, expenses, and other damages. R.C. 2743.48(E)(2)(c)(d). Thus it is possible for just *one* wrongfully imprisoned individual to receive a payment in the hundreds of thousands, if not millions, of dollars.

The Tenth District's rule would also generate a significant increase in litigation—including litigation before this Court. When faced with the potential costs discussed above, prosecutors will have little choice but to do everything in their power to head off a wrongful imprisonment claim. This will likely take two forms.

First, whenever a conviction is reversed on appeal, the prosecutor will be increasingly likely to seek additional review in this Court. Even if an area of the law is well-settled, if a court of appeals makes a mistake of law or fact, the prosecutor will have a significant incentive to try and obtain further review, if only to avoid a later determination that the defendant was wrongfully imprisoned on the basis of an error in procedure.

Second, prosecutors will also be more likely to proceed with a retrial, even in instances where a second trial may not represent the most efficient allocation of resources. For example, prior to the Tenth District's decision, if a defendant had his conviction reversed after serving nine years of a ten year sentence, a prosecutor may have decided that a retrial was unwarranted because ensuring that a defendant served the final year of that sentence would not serve the overall public interest. But the Tenth District's decision has changed the calculus. No longer would the question of whether to retry a defendant be solely a penological one, primarily about

whether retrial is necessary in order to effectuate proper punishment; it would also be about whether an individual should be retried in order to demonstrate that they were not wrongfully imprisoned—and as a result are not entitled to payment from the State.

C. This case presents an opportunity to answer questions that may be left open by the decision in *Mansaray*.

It is possible that the Court's decision in *Mansaray* will fully and entirely resolve this case. But it is also possible that this case will provide an opportunity to answer the more general question of what type of error constitutes an "error in procedure [that] resulted in the individual's release." At the very least, this case presents—in a detailed way that *Mansaray* does not—the more specific question of whether errors occurring prior to trial, like Fourth Amendment violations, can satisfy the error in procedure prong of R.C. 2743.48(A)(5).

The Tenth District acknowledged that its interpretation of the error-in-procedure language found in R.C. 2743.48(A)(5) was not necessarily the interpretation that the General Assembly intended. App. Op. ¶ 45 ("We acknowledge that the text of the statute provides no express direction as to whether the General Assembly meant to include errors in procedure committed by law enforcement officers prior to the criminal prosecution itself, as opposed to procedural errors by an officer of the court, such as a prosecutor or trial judge."). This case provides the opportunity to determine whether the Tenth District interpreted R.C. 2743.48(A)(5) in a manner consistent with the General Assembly's intent. And it did not.

The Tenth District's interpretation is at odds with the intent of the General Assembly as revealed through the other sections of R.C. 2743.48(A), and as discussed in this Court's prior decisions. The General Assembly did not intend to dramatically expand the class of individuals who qualify as "wrongfully imprisoned individuals." Instead, the phrase "an error in procedure

resulted in the individual's release" must be more narrowly construed in order to give full effect to the language of the statute and to General Assembly's intent.

ARGUMENT

Appellant's Proposition of Law No. 1:

> *An error in procedure for purposes of R.C. 2743.48(A)(5) is a trial error which, by its own operation and without further intervening acts, directly results in the release of a defendant.*

From its inception, R.C. 2743.48 was never intended to compensate *every* defendant whose conviction was reversed on appeal. Instead, as this Court has found, the General Assembly intended for courts to "actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability." *Walden*, 47 Ohio St. 3d at 52. That backdrop informs an interpretation of the 2003 amendment to subsection (A)(5) at issue here because the General Assembly is presumed to be "fully aware of any prior judicial interpretation of an existing statute when enacting an amendment." *Clark v. Scarpelli*, 91 Ohio St. 3d 271, 278 (2001).

This legal and historic background of the wrongful imprisonment statute shows that, contrary to the Tenth District's decision, the General Assembly could not have intended to compensate every individual whose conviction was reversed on appeal. The text of the statute demonstrates that the General Assembly intended for only a smaller set of errors to satisfy the error in procedure requirement. There are at least three textual signs that point to the types of errors the General Assembly *did* intend to constitute an error in procedure for purposes of the wrongful imprisonment statute.

First, R.C. 2743.48(A)(5) does not just refer to errors in procedure generally; instead, it refers more specifically to "error[s] in procedure [that] *resulted in the individual's release.*" (Emphasis added.). The requirement that an error must result in an individual's release is a

significant limitation on the error in procedure prong. It is in effect a proximate cause requirement that prevents from qualifying as an error in procedure those instances where an individual is released from prison not because of an error itself, but because of a prosecutor's discretionary decision not to pursue the case any further.

Second, if the General Assembly had intended to repudiate the entire body of law interpreting R.C. 2743.48(A)(5), and if it had intended to permit every defendant whose conviction was reversed on appeal to be paid from the state's coffers, it could have clearly said so. *Cf. Walden*, 47 Ohio St. 3d at 53 (finding that if the General Assembly had wanted to specify a specific standard of review, then would have specifically done so). Rather than modify R.C. 2743.48(A)(5) to include an alternative avenue for relief, the General Assembly could have simply eliminated the fifth prong of the statute altogether. But it did not. If the General Assembly had wanted to provide compensation whenever there is *any* error, then it would have referred to errors in procedure without limitation. But it did not. It included language that limited recovery only to a subset of errors in procedure—those that, without any intervening or additional action, result in an individual's release.

Third, an interpretation of R.C. 2743.48(A)(5)'s error in procedure language that encompasses all reversible errors, like the interpretation adopted by the Tenth District, would render other portions of the statute superfluous. If the phrase "error in procedure resulted in the individual's release" includes all reversible errors then there would be no point in having a separate requirement that a claimant's conviction be "vacated, dismissed, or reversed on appeal." R.C. 2743.48(A)(4). After all, every conviction that satisfies R.C. 2743.48(A)(4) by having been vacated, dismissed, or reversed will have been so disposed of on the basis of some type of error.

The error in procedure requirement therefore must mean something more than that an error existed and a claimant's conviction was reversed.

Beyond these textual markers, interpreting R.C. 2743.48(A)(5) to encompass only the most egregious trial errors is consistent with established case law. Simply because there was an error at trial does not mean that the resulting conviction and imprisonment was wrongful. *See State v. Brewer*, 121 Ohio St. 3d 202, 2009-Ohio-593 ¶ 18 (recognizing a difference between a reversal based on insufficient evidence and one based on "ordinary trial errors"). Instead, in most cases the question of whether there was an error at trial is wholly distinct from the question of whether an individual was wrongfully imprisoned. *See Burks v. United States*, 437 U.S. 1, 15-17 (1978) (Reversal on the basis of ordinary trial error "implies nothing with respect to the guilt or innocence of the defendant.") There are some errors—like a failure to present sufficient evidence at trial—that go beyond simple correctable trial error. *Id.* (When a verdict is overturned for insufficient evidence "it is difficult to conceive how society has any greater interest in retrying a defendant when, on review, it is decided as a matter of law that the jury could not properly have returned a verdict of guilty.") And these errors are ones that, as discussed above, *directly* result in an individual's release. It is likely that the General Assembly had this body of case law in mind when it referenced only those trial errors that "resulted in the individual's release."

Appellant's Proposition of Law No. 2:

An error in procedure, for purposes of R.C. 2743.48(A)(5), does not include errors that occur prior to trial, such as violations of the Fourth Amendment's prohibition of illegal searches and seizures.

Ultimately, it is not necessary in this case to identify every type of error that could satisfy the requirements of R.C. 2743.48(A)(5); it is enough to say that the type of error involved here does not. Even under a broad reading of the error-in-procedure prong, pre-trial errors, like violations of the Fourth Amendment, fall outside the scope of the wrongful imprisonment statute. The error that Hill complains of in this case—an improper police search—therefore does not entitle him to relief as a "wrongfully imprisoned individual."

Treating a Fourth Amendment violation as an error in procedure for purposes of R.C. 2743.48(A)(5) does not advance either the goals of that amendment, or of Ohio's wrongful imprisonment statute. The Fourth Amendment's exclusionary rule "is not a personal constitutional right" and "[i]t is not calculated to redress the injury to the privacy of the victim of the search or seizure." *Stone v. Powell*, 428 U.S. 465, 486 (1976). Instead, the purpose of the exclusionary rule is to deter police conduct that may violate Fourth Amendment rights. *Id.* That is why Fourth Amendment violations, and subsequent errors in the application of the exclusionary rule, do not offer state prisoners an avenue for relief in federal habeas. *Id.* at 494-95. The same rationale for denying relief in the federal habeas context applies with equal force in the state wrongful imprisonment context.

In many cases, application of the exclusionary rule works to the detriment of a court's truth-seeking function. More often than not, "[a]pplication of the [exclusionary] rule . . . deflects the truth-finding process and often frees the guilty." *Id.* at 490. "Moreover, the physical evidence sought to be excluded is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant." *Id.* The United States Supreme Court has

recognized that "[t]he disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice." *Id.* The General Assembly did not intend for such defendants to receive a *second* windfall in the form of payment from the State.

Treating Fourth Amendment violations as errors in procedure for purposes for R.C. 2743.48(A)(5) will also do little to advance the deterrent purpose of the exclusionary rule. The goal of the exclusionary rule is to link the exclusion of evidence to a prior violation of the Fourth Amendment. *Stone*, 428 U.S. at 492 ("[W]e have assumed that the immediate effect of exclusion will be to discourage law enforcement officials from violating the Fourth Amendment by removing the incentive to disregard it."). But much like federal habeas claims, a wrongful-imprisonment proceeding is far removed in time from the conduct that the exclusionary rule seeks to deter. And being so removed, the deterrent effect is significantly reduced. Having already served to exclude evidence at the trial or direct appeal stage, there is no reason to think that further allowing a claimant to qualify as a "wrongfully imprisoned individual" on the basis of a Fourth Amendment violation would in any way increase the deterrent effect. The costs of allowing claimants to recover in such cases simply would not outweigh any marginal deterrence value. *Cf. id.* at 493-94 ("Even if one rationally could assume that some additional incremental deterrent effect would be present in isolated cases, the resulting advance of the legitimate goal of furthering Fourth Amendment rights would be outweighed by the acknowledged costs to other values vital to a rational system of criminal justice.")

Accordingly, whatever else may constitute an "error in procedure [that] resulted in an individual's release," that term simply cannot encompass Fourth Amendment violations. For

similar reasons all pre-trial errors, not just Fourth Amendment violations, fall outside the scope R.C. 2743.48(A)(5)'s error in procedure prong. As used in that statute, the word "procedure" is a term of art with a specific and narrow meaning. Defined by Black's Law Dictionary as "[t]he judicial rule or manner for carrying on a civil lawsuit or criminal prosecution," *Black's Law Dictionary* 1009 (8th ed. 2005), the word procedure is intended to reach only errors that occur during the prosecution of a crime—not during the investigation. Additionally, just as in the Fourth Amendment context, treating other errors committed by the police as errors in procedure for purposes of R.C. 2743.48(A)(5) will do little to deter or prevent similar errors in the future. And doing so will do little to advance the overall purpose of the wrongful imprisonment statute. In light of that, the General Assembly could not have intended for R.C. 2743.48(A)(5) to be interpreted as broadly as the Tenth District did below.

CONCLUSION

For these reasons, the Court should hold this case pending the decision in *Mansaray v. State*, No. 2012-1727 (granted Jan. 23, 2013). In the alternative, the Court should accept jurisdiction over this case and reverse.

Respectfully submitted,

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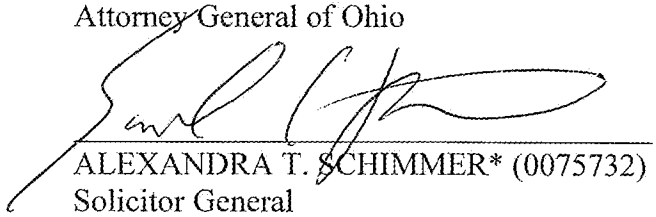
Attorney General of Ohio



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Defendant-Appellant State of Ohio was served by U.S. mail this 28th day of June, 2013, upon the following counsel:

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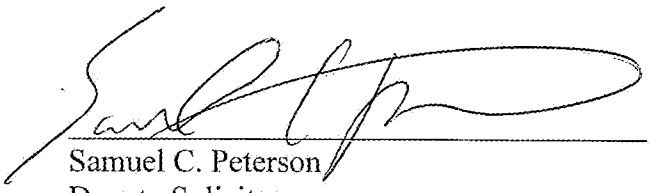

Samuel C. Peterson
Deputy Solicitor

APPENDIX

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Duane Hill,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-635 (C.P.C. No. 11CVC-08-10039)
State of Ohio,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 14, 2013

The Owen Firm, LLC, and *Benjamin A. Tracy,* for appellee.

Michael DeWine, Attorney General, and *Debra Gorrell Wehrle,* for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant, State of Ohio (the "state"), appeals from a summary judgment of the Franklin County Court of Common Pleas adjudicating plaintiff-appellee, Duane Hill ("Hill"), to be a wrongfully imprisoned individual as defined in R.C. 2743.48. For the reasons that follow, we find that the trial court correctly interpreted and applied the text of R.C. 2743.48, as amended in 2003. We therefore affirm.

I. Facts and Case History

{¶ 2} Hill commenced the current action by filing a complaint naming the state as defendant and seeking an order declaring that he was a wrongfully imprisoned individual. Obtaining such an order is the first step toward recovering compensation for wrongful imprisonment from the state under Ohio's wrongful imprisonment statutes. *See* R.C. 2743.48(B) and (E); *Doss v. State,* _____ Ohio St.3d _____, 2012-Ohio-5678, ¶ 10.

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{¶ 3} The parties filed cross-motions for summary judgment with attached evidentiary materials. The pleadings and evidence established the following: (1) on February 4, 2010, a grand jury of the Richland County Court of Common Pleas indicted Hill and charged him with five drug-related felonies that occurred on December 19, 2009, including drug trafficking and possession of cocaine; (2) Hill filed a motion to suppress evidence of a rock-like substance obtained from his person on December 19, 2009 by an officer of the Mansfield Police Department, asserting that the substance had been obtained through an illegal search and seizure; (3) the trial court denied Hill's motion to suppress; (4) Hill thereafter pled no contest and was convicted of the crimes alleged in the indictment and was sentenced to 18 months in prison; (5) on appeal, the Fifth District Court of Appeals concluded that the trial court erred in not granting Hill's motion to suppress the state's evidence, reversed Hill's conviction, and remanded the criminal case to the trial court for further proceedings;[1] (6) the county prosecutor thereafter filed a motion to dismiss Hill's criminal case based on the appellate court's decision and because "[w]ithout the evidence from the search, the State would be unable to prove the matter beyond a reasonable doubt"; (7) on May 9, 2011, the trial court dismissed the criminal case against Hill "without prejudice," and Hill was released from custody. Based on these undisputed facts, Hill alleged that he had been wrongfully imprisoned for 318 days.

{¶ 4} The Franklin County Court of Common Pleas granted summary judgment to Hill, finding that he had met all of the criteria set forth in R.C. 2743.48(A). That statute provides, as follows:

> 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, 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

[1] The decision of the Fifth District Court of Appeals reversing Hill's conviction is *State v. Hill*, 194 Ohio App.3d 93, 2011-Ohio-2019 (5th Dist.). The facts surrounding Hill's search are recounted in that decision at ¶ 2-4.

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> 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, 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 the court of common pleas in the county where the underlying criminal action was initiated that the charged offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

{¶ 5} The state timely appealed, asserting the following two assignments of error:

> [1.] The trial court committed reversible error by declaring Appellee/Appellee a Wrongfully Imprisoned individual even though he failed to satisfy the statutory criteria.
>
> [2.] The trial court committed reversible error by attempting to utilize the civil Wrongful Imprisonment Statute of R.C. § 2743.48 as a punitive/deterrent mechanism against law enforcement.

II. Legal Analysis

A. Standard of Review

{¶ 6} Summary judgment is appropriate where "the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made." *Capella III, L.L.C. v. Wilcox*, 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6.

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{¶ 7} As this court stated in *Brown v. Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-790, 2011-Ohio-3652, ¶ 16:

> [A] party seeking summary judgment bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 [1996]. Thereafter, the burden shifts to the non-moving party to show why summary judgment is inappropriate. Civ.R. 56(E). If the non-movant fails to respond, or fails to support its response with evidence of the kind required by Civ.R. 56(C), the court may enter summary judgment in favor of the moving party. *Snyder v. Ford Motor Co.*, 3d Dist. No. 1-05-41, 2005-Ohio-6415, ¶ 11; Civ.R. 56(E).

{¶ 8} Moreover, "appellate review of summary-judgment motions is de novo." *Capella III*, citing *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548 (2001). "De novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." (Internal citations omitted.) *Holt v. State*, 10th Dist. No. 10AP-214, 2010-Ohio-6529, ¶ 9.

B. History of Ohio's Wrongful Imprisonment Statute, R.C. 2743.48

{¶ 9} The determinative issue in this case is whether Hill met all five statutory criteria of R.C. 2743.48(A) warranting his adjudication as a wrongfully imprisoned individual. The parties to this appeal disagree as to the proper interpretation of R.C. 2743.48(A) and, in considering their arguments, we find it useful to examine the development of that provision since its initial enactment in 1986.

{¶ 10} Prior to 1986, a person who had been wrongfully imprisoned in Ohio could receive compensation for that wrongful imprisonment only if the General Assembly enacted a law specifically providing for payment of compensation to that named individual, i.e., enactment of "*ad hoc* moral claims legislation." *Walden v. State*, 47 Ohio St.3d 47, 49 (1989). In 1986, however, the General Assembly enacted R.C. 2305.02 and 2743.48 " 'to authorize civil actions against the state, for specified monetary amounts, in the Court of Claims by certain wrongfully imprisoned individuals.' " *Id.*, quoting Sub.H.B. No. 609. In *Walden*, the Supreme Court of Ohio described the new two-step process established by the General Assembly, as follows:

> In the first step, the claimant must bring an action in the court of common pleas to secure a determination that he is a wrongfully imprisoned individual entitled to compensation. As relevant here, a "wrongfully imprisoned individual" was defined in former R.C. 2743.48(A) as one who satisfied four criteria:
>
> "(1) He was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, the effective date of this section [September 24, 1986], and the violation charged was an aggravated felony or felony.
>
> "(2) He was found guilty of the particular charge or a lesser-included offense * * * and the offense of which he was found guilty was an aggravated felony or felony.
>
> "(3) He was sentenced to an indefinite or definite term of imprisonment in a state penal or reformatory institution for the offense of which he was found guilty.
>
> "(4) Subsequent to his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person."
>
> R.C. 2305.02 grants exclusive jurisdiction to the court of common pleas "to hear and determine an action or proceeding that is commenced by an individual * * * that seeks a determination by the court that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person." Once the claimant secures this determination, R.C. 2743.48(D) provides that he "has and may file a civil action against the state, in the court of claims, to recover a sum of money * * *" in an amount fixed by R.C. 2743.48(E).

Id. (Fn. deleted.)

{¶ 11} In December 1988, the General Assembly enacted Am.H.B. No. 623, which, inter alia, added language to subsection (A)(2) of R.C. 2743.48 to establish that only individuals who "did not plead guilty to" the charge of which they had been found guilty could be deemed wrongfully imprisoned individuals. That same 1988 amendment added the criterion now codified as R.C. 2743.48(A)(4), i.e.:

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> The individual's conviction was vacated, 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.

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{¶ 12} As a result of the enactment of Am.H.B. No. 623, the four criteria in R.C. 2743.48(A), as quoted by the court in *Walden*, were renumbered, with R.C. 2743.48(A)(4) now being codified as (A)(5) of the statute. But, both before and after the 1988 amendment and until 2003, a wrongful-imprisonment compensation claimant ("WI claimant") was required to prove that he did not commit the offense of which he was found guilty or that no other person committed the offense. *See Ellis v. State*, 64 Ohio St.3d 391, 393 (1992) ("Under both R.C. 2305.02 and former 2743.48(A)(4), now 2743.48(A)(5), in order to secure a declaration of wrongful imprisonment, the petitioner must demonstrate that the 'offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.' ") Courts have interpreted this text as requiring proof of "actual innocence." *See, e.g., Doss*, 2012-Ohio-5678, ¶ 12; *Nelson v. Ohio*, 183 Ohio App.3d 83, 2009-Ohio-3231, ¶ 13-14 (10th Dist.).

{¶ 13} In December 2002 and effective April 9, 2003, however, the 124th General Assembly enacted Sub.S.B. No. 149 and changed subsection (A)(5) of R.C. 2743.48 to read, as follows:

> [A] "wrongfully imprisoned individual" means an individual who satisfies each of the following:
>
> * * *
>
> (5) Subsequent to sentencing and during or subsequent to his 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 to indicate relevant text added by S.B. No. 149.)

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{¶ 14} In analyzing the amended text, the Ohio Legislative Service Commission observed that the General Assembly had thereby provided an "alternative to the condition" that a WI claimant either had not committed the offense of which he had been charged or that the offense had not been committed by any other person, i.e., that the WI claimant was, in fact, innocent. Ohio Legislative Service Commission Final Bill Analysis of 2002 Sub.S.B. No. 149, found at http://lsc.state.oh.us/analyses/fnla124.nsf/All%20Bills%20and%20Resolutions/2558EFFB4897BAAC85256CAA005F47A7 (accessed May 14, 2013).

{¶ 15} As a result of the statutory amendment, a WI claimant could satisfy (A)(5) by proving that "an error in procedure resulted in the individual's release." *Id.*

{¶ 16} This court has previously recognized that the "revised statute thus provides an alternative to the actual-innocence requirement: the person seeking wrongful-imprisonment status need establish only that an error in procedure resulted in his or her release." *Nelson*, 2009-Ohio-3231, ¶ 14. Similarly, the Fifth District Court of Appeals has acknowledged that "[R.C. 2743.48(A)(5)] was amended, effective April 9, 2003, to allow a person * * * who could not establish his or her actual innocence, but who could establish that an error in procedure resulted in his or her release to file a complaint against the state of Ohio seeking a declaration that he or she had been wrongfully imprisoned." *Nelson v. State*, 5th Dist. No. 2006 AP 0061, 2007-Ohio-6274, ¶ 30 (holding that a WI claimant had satisfied R.C. 2743.48(A)(5) where the claimant's conviction had been reversed because it was obtained in violation of the speedy-trial statutes, R.C. 2945.71 et seq., a procedural error of the trial court).

{¶ 17} More recently, the Supreme Court of Ohio acknowledged that R.C. 2743.48(A)(5) may be fulfilled in either of two ways: a WI claimant may prove either that "(1) subsequent to sentencing and during or subsequent to imprisonment, 'an error in procedure resulted in the individual's release' or (2) the charged offense (and any lesser included offense) was not committed by the individual or no crime was committed at all (actual innocence.) R.C. 2743.48(A)(5)." *Doss* at ¶ 12. *See also Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, ¶ 21 (noting that "[e]ven though [Sub.S.B. No. 149] *expanded the criteria by which a claimant could establish that he or she is a*

wrongfully imprisoned individual, nothing in the act indicates a change to the established two-step process." (Emphasis added.)).

{¶ 18} Accordingly, pursuant to the express text of subsection (A)(5) of R.C. 2743.48 as in effect at all times relevant to Hill's wrongful-imprisonment compensation case, Hill was required to prove *either* that "an error in procedure resulted in [his] release" from prison, *or* that he had "not committed the charged offense," *or* that the "charged offense was not committed by any other person."

{¶ 19} Accordingly, if Hill satisfied the "error in procedure" alternative provided to WI claimants in 2003, he was not required to prove his actual innocence as a requisite to adjudication as a wrongfully imprisoned individual.

C. Analysis of State's First Assignment of Error

{¶ 20} In its first assignment of error, the state posits that the trial court erred in declaring Hill a wrongfully imprisoned individual because Hill failed to satisfy the statutory criteria of R.C. 2743.48(A). The state does not contest that Hill satisfied the criteria established in R.C. 2743.48(A)(1) and (3). Having reviewed the record, we find that Hill did establish those two criteria, as he demonstrated both that he was charged through indictment with felonies and also that he was sentenced to a definite term of imprisonment in a state correctional institution based on having been found guilty of those felonies. The state argues, however, that Hill failed to satisfy the criteria established in subsections (A)(2), (4), and (5) of the statute. We discuss each of those subsections separately.

R.C. 2743.48(A)(2) – Absence of Guilty Plea

{¶ 21} The state first argues that Hill did not satisfy R.C. 2743.48(A)(2). That provision requires that a claimant seeking adjudication as a wrongfully imprisoned individual prove that he "did not plead guilty" to the felony or felonies with which he was charged. The state acknowledges that Hill pled "no contest" but notes that Hill acknowledged in his plea hearing that he understood that a no-contest plea acts as an admission of the facts alleged against him by the state. The state contends that Hill's acknowledgment of the facts as alleged in the indictment satisfies subsection (A)(2), particularly as the trial court advised Hill that, if he pled no contest, he would be found guilty and sentenced without a trial.

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{¶ 22} We easily dispose of this argument. It is well-established that a "plea of no contest is *not an admission of defendant's guilt*, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." (Emphasis added.) Crim.R. 11(B)(2); *accord Columbus v. Good*, 10th Dist. No. 91AP-175 (Aug. 22, 1991) ("In entering a plea of no contest, a defendant does not admit guilt for the offense but, rather, admits the truth of the facts alleged in the indictment or complaint."). As the trial court in this case correctly observed, the plain language of Crim.R. 11 is clear: a plea of no contest does not equate to a guilty plea. The General Assembly could easily have provided that claimants who had entered no-contest pleas as well as guilty pleas would be barred from wrongful-imprisonment compensation. It did not.

{¶ 23} We therefore reject, as did the trial court, the state's argument that Hill had failed to prove the criterion of R.C. 2743.48(A)(2) that he had not pled guilty to the criminal charges against him.

R.C. 2743.48(A)(4) – Potential Further Criminal Proceedings for Acts Associated with the Reversed Conviction

{¶ 24} The state next argues that Hill did not satisfy R.C. 2743.48(A)(4), which provides that a WI claimant whose conviction was reversed on appeal must also prove that "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." The state again emphasizes that Hill admitted the facts charged against him relative to his possession of drugs on December 19, 2009 and argues that Ohio courts have repeatedly found that the policy underlying the wrongful-imprisonment statute precludes the compensation of people who are not innocent.

{¶ 25} We note initially that, to the extent a WI claimant must establish actual innocence of the crime of which he was convicted, that requirement is not based on subsection (A)(4) of R.C. 2743.48 but, rather, on subsection (5), which references proof that the underlying crime either "was not committed by the individual or was not committed by any person." The state nevertheless argues that Hill's acknowledgment of the facts contained in the indictment, through his plea of no contest (entered after the trial

court erroneously denied his motion to suppress), is nevertheless relevant to the criterion stated in R.C. 2743.48(A)(4), i.e., that no criminal proceeding is pending, can be brought, or will be brought, against him for any act associated with that conviction. In support, the state cites to the decision of the Supreme Court of Ohio in *Gover v. State*, 67 Ohio St.3d 93 (1993), and its progeny.

{¶ 26} In *Gover*, the Supreme Court specifically interpreted subsection (4) of R.C. 2743.48, as in effect in 1993. Gover, the WI claimant, had been charged and convicted of the crime of safecracking based on his conduct on September 13, 1988. On that date, Gover was arrested after a police officer observed him emptying his pockets of coins, costume jewelry, and other items that had earlier been part of a restaurant display that apparently resembled, but was not, a safe. *See State v. Gover*, 67 Ohio App.3d 384 (1st. Dist.1990). The restaurant's general manager had previously observed Gover in the restaurant moving in a crouched position and exiting the restaurant with bulging pockets. On appeal, the court of appeals reversed the conviction as the state could not prove the existence of an actual safe or vault. Accordingly, the state had not proven all elements of the crime of safecracking of which Gover had been convicted, and the court of appeals reversed that conviction.

{¶ 27} Gover subsequently filed an action seeking adjudication as a wrongfully imprisoned individual. The Supreme Court acknowledged that Gover had not committed the offense of safecracking with respect to his conduct on September 13, 1988, but opined that Gover "was nevertheless committing other criminal offenses," *Gover v. State* at 96, and suggested that the prosecutor might have charged him with burglary, rather than safecracking. The Supreme Court remanded the wrongful-imprisonment case to the civil trial court for it to determine whether Gover had committed offenses other than safecracking on the date of the alleged criminal conduct.[2] In an opinion written by Justice

[2] There is a discrepancy within the Supreme Court's *Gover v. State* opinion as to the relevant dates of the offense alleged of Gover. In the final paragraph of its opinion, the court instructed the trial court to consider "whether [Gover] committed other offenses on September 18, 1988." *Id.* at 96. In two other places in the opinion, however, the Supreme Court states that the incident underlying Gover's conviction occurred on September 13, 1988. Moreover, the decision of the First District Court of Appeals states that the date of the incident was September 13, 1988. *State v. Gover*, 67 Ohio App.3d 384 (1st Dist.1990). The date September 18 does not otherwise appear in either the decision of the court of appeals or the Supreme Court. We therefore assume that the reference to September 18 in the final paragraph of the Supreme Court's opinion was erroneous, and that the court's instruction to the trial court was for it to consider on remand

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Pfeifer, the Supreme Court explained that subsection (4) is "intended to filter out those claimants [for compensation] who have had their convictions reversed, but were committing a different offense at the time that they were engaging in the activity for which they were initially charged." *Id.* at 95. Similarly, consistent with the statute as then in effect, the court concluded that "[w]hen the General Assembly enacted Ohio's wrongful imprisonment legislation, it 'intended that the court of common pleas actively separate those who were wrongfully imprisoned from those who have *merely avoided criminal liability*.' " (Emphasis added.) *Id.*, citing *Walden* at 47 Ohio St.3d 52. These observations were made in 1993, prior to the 2003 amendment to R.C. 2743.48(A)(5) and at a time when a WI claimant was required to prove actual innocence.

{¶ 28} In the case before us, the state argues that Hill, by pleading no contest, admitted that he was in possession of crack cocaine and that he therefore "merely avoided criminal liability" based on application of the exclusionary rule. The state relies on the Supreme Court's statements in *Gover* and Hill's plea of no contest after the trial court denied his motion to suppress. It argues that Hill may not be deemed to be a wrongfully imprisoned individual because his lack of actual innocence on December 19, 2009 precludes a finding that Hill satisfied subsection (A)(4) of R.C. 2743.48.

{¶ 29} In making this argument, the state seeks to graft the innocence component of subsection (5) of R.C. 2743.48(A) into subsection (4) based on *Gover*'s description of the overarching purpose of the wrongful-imprisonment statute as in effect in 1993. But, as discussed earlier in this decision, and as recognized by the Supreme Court of Ohio in *Doss*, the General Assembly in enacting Sub.S.B.No. 149 in 2002 effected a substantive change to the statutory wrongful-imprisonment compensation scheme. It "expanded the criteria by which a claimant could establish that he or she is a wrongfully imprisoned individual." *Griffith*, 2010-Ohio-4905, ¶ 21. After that statutory change, a released prisoner may establish his status as a wrongfully imprisoned individual without proving his innocence if he can instead establish that he was released as the result of an error in procedure. *See Griffith* at ¶ 29 (describing the addition of the "error in procedure" provision of R.C.

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whether Gover, on September *13*, 1988, rather than September *18*, 1988, committed any criminal offense other than safecracking.

2743.48(A)(5) as establishing an "alternative" to the determination whether the claimant "committed the offense").

{¶ 30} In determining whether Hill established the R.C. 2743.48(A)(4) criterion, we must apply the current text of that provision, rather than decide the case based on observations made in *Gover* concerning the pre-2003 version of the statute. That is, we must determine whether Hill proved by a preponderance of the evidence[3] that "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" and not whether Hill's release from prison represented merely the avoidance of criminal liability. In short, comments in *Gover* based on the text of a prior version of R.C. 2743.48(A) simply cannot prevail over contradictory text in the current version of the statute.

{¶ 31} Hill provided evidence that the Richland County prosecutor formally represented to the court in its motion to dismiss the criminal case against him that "without the evidence from the search [i.e., the crack cocaine], the State would be unable to prove the matter beyond a reasonable doubt." This acknowledgement appears, on its face, to satisfy the statutory criterion of subsection (A)(4) that "no criminal proceeding * * * can [or will] be brought" by the former prosecutor against Hill for "any act associated with that conviction."

{¶ 32} The state posits two theories, however, as to why we should find that Hill failed to meet the criterion in subsection (A)(4). It first contends that Hill admitted through his no-contest plea that he had cocaine on his person on December 19, 2009 and observes that the criminal case was dismissed "without prejudice." The state thus suggests a possibility that a county or city prosecutor might yet re-file charges against Hill based on his conduct on that date. Secondly, the state observes that Hill tested positive for marijuana at the time of his sentencing hearing in May 2010, suggesting that Hill might be prosecuted for offenses involving marijuana possession or use at that later time. It contends that Hill's marijuana use approximately five months after the December 19, 2009

[3] The Supreme Court of Ohio has established that "[i]n a proceeding under R.C. 2305.02, the claimant bears the burden of proving his innocence by a preponderance of the evidence." *Walden* at paragraph three of the syllabus.

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incident is an "act associated with" his reversed conviction and, therefore, within the scope of R.C. 2743.48(A)(4).

{¶ 33} In considering the first of the state's two contentions, we must determine whether Hill proved that no other prosecutor can, or will, bring a criminal proceeding against him based on his having crack cocaine on his person on December 19, 2009. As noted above, Hill did prove that the Richland County prosecutor who had initially prosecuted him did not intend to retry him. But, arguably, Hill did not prove that no other legal officer, such as a municipal law director, would not prosecute him for his December 19, 2009 acts.

{¶ 34} It is true that a technical reading of R.C. 2743.48(A)(4) would require a WI claimant to establish that no further criminal proceedings can, or will, be brought by a county or city prosecutor, even if that hypothetical future criminal prosecution would necessarily be unsuccessful. But it would defeat the purpose of R.C. 2743.48(A) to interpret the statue in that way. No wrongful- imprisonment claimant could ever satisfy the criterion if the provision imposes a requirement on a WI claimant to prove that no city or county prosecutor will thereafter file new charges based on the same facts as involved in the reversed conviction. This is because it is not possible to prove that a future event will not happen. A claimant can establish, however, that successful prosecution of new charges, if filed, would necessarily be legally precluded.

{¶ 35} We conclude, on this de novo review, that Hill did establish that no other prosecutor "can or will" prosecute Hill based on offenses involving his possession of crack cocaine on December 19, 2009. We base that conclusion on the same circumstance identified by the Richland County prosecutor in seeking dismissal of the indictment—because it was suppressed by the court of appeals no prosecutor could introduce evidence identifying the substance as cocaine that Hill had on his person when arrested and, without that evidence, no prosecutor could successfully prove that Hill committed drug offenses. No allegations were made that appellant violated laws other than the drug-related offenses and, reading the facts of the case as available to us, we do not discern, nor has the state suggested, that Hill might yet be charged with committing criminal offenses other than drug-related offenses on December 19, 2009. The facts in Hill's case are thus distinguishable from the facts in *Gover*.

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{¶ 36} The state's second proferred basis for finding that Hill failed to meet the criterion in R.C. 2743.48 is its suggestion that Hill's admitted use of marijuana in 2010 was an "act associated with his reversed conviction," as that phrase is used in subsection (A)(4).

{¶ 37} In interpreting R.C. 2743.48(A)(4), the Supreme Court observed in *Gover* that "[c]laimants seeking compensation for wrongful imprisonment must prove that *at the time of the incident for which they were initially charged,* they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged." (Emphasis added.) *Gover v. State* at 93. The court did not suggest in any way that conduct divorced in time from the events underlying the safecracking charge could be considered an act associated with the safecracking charge. Accordingly, nothing in *Gover* supports the state's contention that a WI claimant's alleged criminal conduct on subsequent dates constituted other acts "associated with" the reversed conviction, even if those subsequent acts were of a similar nature to that involved in the reversed conviction. The statute simply does not include text precluding payment of wrongful-imprisonment compensation to someone who may have engaged in separate criminal conduct at a time after his original alleged crime but prior to his conviction of the earlier alleged crime.

{¶ 38} We therefore reject the state's argument that the fact that Hill tested positive for marijuana in May 2010, shortly before he was sentenced and approximately five months after his arrest, precludes a finding that Hill satisfied R.C. 2743.48(A)(4). Assuming, arguendo, that a prosecution against Hill based on his positive marijuana drug test might yet occur, that prosecution would not be based on acts "associated with" the alleged criminal offense that occurred on December 19, 2009.

{¶ 39} Accordingly, we reject the state's argument that Hill failed to satisfy the criterion in R.C. 2743.48(A)(4), because he tested positive for marijuana in May 2010.

R.C. 2743.48(A)(5) – Release as the Result of an "Error in Procedure"

{¶ 40} The General Assembly amended subsection (A)(5) of R.C. 2743.48 in 2003 to provide that a wrongful-imprisonment claimant must prove either that "an error in procedure resulted in the individual's release, or it was determined * * * that the charged offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person." As discussed earlier, and consistent with the

amended statutory text, "[t]he revised statute thus provides an alternative to the actual-innocence requirement: the person seeking wrongful-imprisonment status need establish only that an error in procedure resulted in his or her release." *Nelson*, 2009-Ohio-3231, ¶ 14.

{¶ 41} In this case, therefore, we must more specifically address and interpret the term "error in procedure" as used in R.C. 2743.48(A)(5). The state argues that the General Assembly intended to include only *structural* error within the scope of the provision. It defines structural error for this purpose as meaning only procedural error that prompts an appellate court to order an immediate release from prison, rather than ordering reversal and remand for further proceedings. It contends that the General Assembly did not intend that subsection (A)(5) would be established every time an appellate court reverses a conviction on evidentiary grounds and remands the case for further proceedings.

{¶ 42} We agree with the state that the General Assembly did not intend that every reversal and remand of a criminal conviction based on evidentiary error satisfy subsection (A)(5) of R.C. 2743.48. But we reach that conclusion based on the text of the statute itself. An individual relying on the procedural-error prong of R.C. 2743.48(A)(5) must establish more than that his or her conviction was reversed and the case remanded. This is due, however, not to the "error in procedure" language of the statute but, rather, due to the language that modifies that phrase—only errors in procedure that *resulted in the individual's release* satisfy subsection (A)(5).

{¶ 43} In this case, Hill did not establish the (A)(5) criterion simply by demonstrating that his conviction was reversed and remanded. Hill's case was not one where remand could have produced a successful prosecution on retrial despite evidentiary error in the first trial. Rather, he established that his conviction was reversed and remanded based on the appellate court's discernment of procedural error that effectively precluded successful prosecution of the charged offenses on remand. Indeed, the prosecutor expressly observed on remand that the state could not successfully retry Hill since it could not introduce evidence of the cocaine found on Hill's person as the result of what the court of appeals had found to be an unconstitutional search and seizure. Thus, there was a direct causal relationship between the procedural error of the police in

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obtaining the critical evidence against Hill and the ultimate dismissal of the criminal charges against him.

{¶ 44} Our analysis is consistent with that of the trial court in this case, which observed that, only in cases where the procedural error "vitiates the basis for all criminal liability," would an error in procedure result in the individual's release. (July 18, 2012 Decision, at 13.) In addressing the issue of the meaning of the phrase "error in procedure," the trial court used the definitions of "procedure" found in *Black's Law Dictionary* (9th Ed.2009), that is, "a specific method or course of action" or "the judicial rule or manner for carrying on a civil lawsuit or criminal prosecution." (July 18, 2012 Decision, at 13, citing *Black's Law Dictionary* (9th Ed.2009), at 1323.) It also referenced Black's definition of "criminal procedure" as "[t]he rules governing the mechanisms under which crimes are investigated, prosecuted, adjudicated and punished. *It includes the protection of accused persons' constitutional rights.*" (Emphasis added.) *Black's Law Dictionary*, at 431. The trial court concluded that the procedural error in Hill's case was not a mere technical violation. Rather, "the procedural errors made in [Hill's] case rest upon a complete disregard for one's personal rights guaranteed by the Bill of Rights in the United States Constitution and Ohio Constitution." (July 18, 2012 Decision, at 15.) The trial court in this case found that both the police officer and the trial court in the criminal case had thus committed procedural errors, observing that the court of appeals "reversed [Hill's] conviction due to the errors in procedure made by Officer Kaufman and the trial court's factual analysis when ruling on the motion to suppress." (July 18, 2012 Decision, at 16.)

{¶ 45} We acknowledge that the text of the statute provides no express direction as to whether the General Assembly meant to include errors in procedure committed by law enforcement officers prior to the criminal prosecution itself, as opposed to procedural errors by an officer of the court, such as a prosecutor or trial judge. In the final analysis, however, we are constrained to look to the text of the statute itself. In 2003 when the General Assembly amended the statute, it could have expressly included modifiers limiting the term "procedural error." But it did not limit "procedural error" to include only structural error or to exclude procedural errors committed prior to the litigation of the

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criminal case.[4] *Accord Walden* at 47 Ohio St.3d 49 (where, in interpreting the wrongful-imprisonment statute, the court observed that "[t]he General Assembly, had it wanted to do so, knew how to specify a 'clear and convincing' standard, but did not," and therefore refused to find that the statute requires clear and convincing proof). Similarly, we lack the authority to rewrite the statute to limit the term "procedural error" to only structural error.

{¶ 46} Rather, courts construing the Revised Code are required to interpret words in statutes according to rules of grammar and common usage unless they have a particular or technical meaning. *Id.* at 49. Accordingly, we interpret the phrase "procedural error" according to its common usage. In the absence of contradictory legislative clarification or limitation of the term "procedural error," we find that the procedural error committed here that ultimately resulted in the Hill's release from prison falls within the scope of R.C. 2743.48(A)(5). It is not relevant whether that release occurs by direct and immediate order of an appellate court or by order of a trial court after reversal and remand by an appellate court.

{¶ 47} Our holding is consistent with precedent established by the Eighth District Court of Appeals in *Mansaray v. State,* 8th Dist. No. 98171, 2012-Ohio-3376.[5] In that case, as in the case before us, an individual had been convicted of drug offenses based on evidence obtained by police in violation of the Fourth Amendment. The court held that "the trial court's denial of Mansaray's motion to suppress, which was subsequently found

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[4] Although not relied upon by the state, we note that the initial phrase of R.C. 2743.48(A)(5) provides that "*[s]ubsequent to sentencing and during or subsequent to imprisonment*" (emphasis added), an error in procedure resulted in the prisoner's release or a trial court determined that the claimant was actually innocent. The text emphasized above existed in the statute prior to the 2003 amendment, and we do not believe that this modifying language relates to the timing of the commission of errors of procedure. We are unaware of any procedural error that could conceivably result in a convict's release from prison if the error occurred after conviction and sentencing. To read the phrase as including only post-sentencing procedural errors would render the amendment meaningless. *Accord Mansaray v. State,* 8th Dist. No. 98171, 2012-Ohio-3376, at ¶ 15.

Rather, we believe that the "subsequent to sentencing" phrase modifies the timing of the convict's release, i.e., it mandates that the individual be released from prison subsequent to sentencing, based on an error of procedure that occurred before sentencing.

We further note that the Legislative Service Commission in its Final Bill Analysis of Sub.S.B. No. 149, described the bill as including a new provision that "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 it was determined by the court of common pleas that the offense of which the individual was found guilty was not committed by the individual or by any other person."

[5] On January 23, 2013, the Supreme Court of Ohio accepted the state's appeal of the Eighth District's decision in *Mansaray.* That appeal is currently pending as case No. 2012-1727. *See* http://www.sconet.state.oh.us/pdf_viewer/pdf_viewer.aspx?pdf=194148.pdf (accessed May 14, 2013).

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to be improper, constitutes an error in procedure under R.C. 2743.48(A)(5)." *Id.* at ¶ 17. It observed that R.C. 1.47(B) provides that "[i]n enacting a statute, it is presumed that * * * [t]he entire statute is intended to be effective" and that R.C. 1.42 provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." *Id.* at ¶ 14. Mansaray's wrongful imprisonment complaint thus stated a claim that he should be adjudicated a wrongfully imprisoned individual.

{¶ 48} Similarly, we have recognized that a prosecutor's violation of *Brady v. Maryland*, 373 U.S. 83 (1963), in failing to disclose possibly exculpatory evidence to the defendant, constituted an error in procedure for purposes of R.C. 2743.48(A)(5). *Larkins v. State,* 10th Dist. No. 09AP-140, 2009-Ohio-3242,¶ 10.

{¶ 49} We acknowledge the counterintuitive nature of our holding. We are not unsympathetic to the policy arguments presented by the state. Certainly, a case for paying wrongful-imprisonment compensation is more compelling where the claimant can prove his or her factual innocence. Moreover, both courts and legal commentators have identified as the traditional purpose of wrongful-imprisonment statutes the facilitation of financial compensation to those who are factually innocent. *See* 53 A.L.R. 6th 305 (2010), *Construction and Application of State Statutes Providing Compensation for Wrongful Conviction and Incarceration* (observing that "[a]t a minimum most statutes require some proof of innocence in addition to compliance with statutory rules and restrictions"); *see also* Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes*, 44 Ind.L.Rev. 503, 521 (2011) ("One consistent aspect of compensation statutes is that innocence will not be considered established if reversal occurred merely because of procedural or jurisdictional errors," citing *Walden*); Faridi, Hoffman, and Montuora, *Undoing Time: A Proposal for Compensation for Wrongful Imprisonment of Innocent Individuals*, 34 W.New Eng.L.Rev. 1, 23 (2012) ("compensation is not for individuals who are unable to prove their innocence in fact"); Mckneelen, *"Oh Lord Won't You Buy Me a Mercedes Benz?": A Comparison of State Wrongful Conviction Compensation Statutes*, St.Mary'sL.Rev. & Soc. Just 185, 192, 195-97 (2013) (observing that 27 states and the District of Columbia have enacted wrongful-compensation statutes and that many states specify additional eligibility requirements other than being innocent). But compare Kahn, *Presumed Guilty Until*

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Proven Innocent: The Burden of Proof in Wrongful Conviction Claims under State Compensation Statutes, 44 U.Mich.J.L.Reform 123, 138 (2010).

{¶ 50} One legal commentator has, however, rejected the suggestion that "convictions rendered wrongful by errors unrelated to innocence are less important, or that they can or should be discounted as based on 'technicalities' [as] [s]uch errors and violations of rights are tremendously significant and legitimate for different reasons." Findley, *Defining Innocence*, 74 AlbanyL.Rev. 1157, 1185 (2010-11). Had the trial court correctly ruled on Hill's motion to suppress, Hill undoubtedly would not have changed his not-guilty plea to one of no contest and would never have been found guilty of the drug crimes of which he was accused. Hill was, therefore, in a generic sense, wrongfully imprisoned. His incarceration was the result of procedural error of either the arresting law enforcement officer, the trial court, or both. Ultimately, his release occurred as a direct result of judicial recognition of that procedural error.

{¶ 51} It is not our role, however, to weigh competing policy considerations. Nor may we decide this case based on what we think the General Assembly meant to do, despite contradictory statutory text, or should do. Rather, we are required to construe and interpret the law as it is written. In doing so, we find that the General Assembly in 2002 changed Ohio's statutory framework to establish as Ohio's policy that wrongful-imprisonment compensation is warranted where an individual's release from prison results from the recognition of reversible procedural error that precludes further successful prosecution, regardless of guilt or innocence. We can discern no other purpose of the General Assembly in enacting the 2002 amendment to the wrongful-imprisonment statute than to allow individuals in Hill's posture to be recognized as falling within the classification of "wrongfully imprisoned individual."

{¶ 52} We therefore overrule the state's first assignment of error.

D. Analysis of State's Second Assignment of Error

{¶ 53} In its second assignment of error, the state contends that "[t]he trial court committed reversible error by attempting to utilize the civil Wrongful Imprisonment Statute of R.C. § 2743.48 as a punitive/deterrent mechanism against law enforcement." It takes issue with the following concluding comments of the trial court in its written decision:

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> Plaintiff's case is one where a reversal by a Court of Appeals removes the entire basis for alleging criminal liability. Even if the Court's decision today minimally expands the pool of individuals who could be declared a "wrongfully imprisoned individual," to hold otherwise has the potential of legitimizing illegal and unconstitutional conduct. The procedural safeguards for the Fourth Amendment exist to ensure that one's right to privacy is protected and that citizens are free from unreasonable intrusion by the police. The wrongful imprisonment statute exists, not only to compensate individuals who are innocent, but also to ensure that constitutional protections are not mere words. It serves as an incentive for police and courts alike to safeguard an individual's rights."

(July 18, 2012 Decision and Entry, at 18.)

{¶ 54} The state argues that there is no evidence or other reason to believe that the General Assembly enacted the wrongful-imprisonment compensation statutes in order to deter improper police conduct. But assuming, arguendo, that the state is correct that the General Assembly did not expressly have as a purpose for amending the statute the deterrence of improper police conduct, "reviewing courts are not authorized to reverse a correct judgment on the basis that some or all of the lower court's reasons are erroneous." *Ritchie v. Ohio Adult Parole Auth.*, 10th Dist. No. 05AP-1019, 2006-Ohio-1210, ¶ 24, citing *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 100 Ohio St.3d 72, 2003-Ohio-5062, ¶ 8. The trial court's inclusion of the commentary quoted above does not, therefore, constitute reversible error.

{¶ 55} Rather, we have considered de novo whether Hill satisfied the five statutory criteria set forth in R.C. 2743.48(A), thereby warranting his adjudication on summary judgment as a wrongfully imprisoned individual. We have found, as did the trial court, that Hill did satisfy those criteria. The portion of the trial court's decision of which the state complains, whether reasonable or not, has not affected our de novo review of the trial court's grant of summary judgment to Hill.

{¶ 56} Accordingly, we overrule the state's second assignment of error.

III. Disposition

{¶ 57} There is no genuine issue of material fact, reasonable minds can only find that Hill met the criteria of R.C. 2743.48(A), and Hill is therefore entitled as a matter of

law to summary judgment adjudicating him a wrongfully imprisoned individual. Having overruled both of the state's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT, P.J., and SADLER, J., concur.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Duane Hill,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-635 (C.P.C. No. 11CVC-08-10039)
State of Ohio,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on May 14, 2013, both of appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

DORRIAN, J., KLATT, P.J., & SADLER, J.

/S/ JUDGE

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Tenth District Court of Appeals

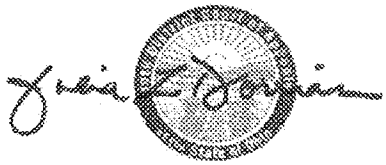
Date: 05-15-2013

Case Title: DUANE HILL -VS- OHIO STATE

Case Number: 12AP000635

Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Julia L. Dorrian

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

DUANE HILL,	:	
Plaintiff,	:	
vs.	:	**CASE NO. 11 CV 10039**
STATE OF OHIO,	:	**JUDGE TIMOTHY S. HORTON**
Defendant.	:	

DECISION AND ENTRY

GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT FILED NOVEMBER 9, 2011

AND

DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FILED MAY 16, 2012

This matter is before the Court upon Plaintiff's Motion for Summary Judgment, filed November 9, 2011, and Defendant's Motion for Summary Judgment, filed May 16, 2012.

Plaintiff commenced the above captioned matter on August 11, 2011 by filing a complaint. Plaintiff, Duane Hill, named the State of Ohio as the Defendant. Plaintiff seeks a determination and declaration from the Court that Plaintiff is a "wrongfully imprisoned individual" within the meaning of Ohio Revised Code Section 2743.48 (2010). (Complaint, ¶ 1.) In the event that the Court ultimately holds Plaintiff is a wrongfully imprisoned individual, liability would be conclusively established against the State of Ohio for the purposes of a later action in the Court of Claims. (Complaint, ¶ 3).

Plaintiff filed a Motion for Summary Judgment on November 9, 2011. Defendant filed Memorandum in Opposition to Plaintiff's November 9, 2011 Motion for Summary Judgment on December 30, 2011. Within the memorandum in Opposition, Defendant also notified the Court that Defendant would also be filing a motion for summary judgment. On January 27, 2012, Plaintiff filed a reply.

Defendant filed its Motion for Summary Judgment on May 16, 2012. On May 25, 2012, Plaintiff filed Response to Defendant's Motion for Summary Judgment. On June 8, 2012, Plaintiff filed a reply.

Said Motions for Summary Judgment are hereby considered submitted to the Court pursuant to Loc. R. 21.01. Upon review and consideration of the motions, responses, and supporting evidence, the Court hereby **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Defendant's Motion for Summary Judgment for the reasons that follow.

I. BACKGROUND

The following facts are undisputed by the parties:

On December 19, 2009, Officer Korey Kaufman of the City of Mansfield Division of Police ("Officer Kaufman") arrested and searched Plaintiff, Duane Hill, at 63 Bentley Avenue, in Mansfield, Ohio. During the search, Officer Kaufman found crack cocaine on Mr. Hill's person. A Richland County grand jury indicted Mr. Hill on two counts of possession of drugs with forfeiture specifications, in violation of Ohio Revised Code 2925.11(A), each a felony in the fourth degree, and two counts of trafficking in drugs with forfeiture specifications, in violation of R.C. 2925.03(A)(2), each a felony of the fourth degree. Mr. Hill was also charged with possession of a Schedule IV controlled substance, a fifth degree felony. Mr. Hill filed a motion to suppress, asserting the search and seizure were illegal and therefore, the fruits of the search and seizure should be suppressed. On May 17, 2010, the trial court denied the motion to suppress after holding a hearing. Mr. Hill then entered a plea of no contest to the charges, was found guilty by the trial court, and on June 28, 2010, was sentenced to eighteen months in prison. (Plea Transcript at 10:2-10:9).

On April 25, 2011, the Fifth District Court of Appeals of Ohio found that Officer Kaufman lacked reasonable and articulable facts to support his stop of Mr. Hill. *Ohio v. Hill*, 194 Ohio App.3d 93, 2011-Ohio-2019, 954 N.E.2d 1252, ¶ 15-16. In its opinion, the Appellate Court held that the trial court "erred prejudicially by failing to grant the motion to suppress and to

recognize that the search and seizure involved was unconstitutional, unreasonable, and illegal." *Id* at ¶¶7-16.

According to the Appellate Court and the trial court's record, the facts leading up to the search and seizure occurred as follows:

On December 19, 2009, Officer Kaufman responded to a call of shots fired. At the scene, a woman reported that her baby had been shot, and was screaming, "they shot my baby, they shot my baby." (Suppression Transcript at 7:4-5); See also, *Ohio v. Hill*, 194 Ohio App.3d 93, 2011-Ohio-2019, 954 N.E.2d 1252, ¶2. Officer Kaufman spoke with two neighbors who reported seeing a black man in a "newer" vehicle, "possibly black with four doors." *Hill* at ¶2. About ten or fifteen minutes later, Officer Kaufman began patrolling the area looking for a "black male in a 'newer' black vehicle." *Id.* Around this time, a dispatch report came over the radio indicating that two suspects were involved, specifically referring to each by name. *Id*; see also, Suppression Tr. at 23:8-23:11. When he was two or three blocks away from the scene of the incident, Officer Kaufman observed a black vehicle backing out of a driveway onto a street. This black vehicle was driven by Mr. Hill. Mr. Hill's vehicle, unlike the on-scene reports of a "newer," four-door vehicle, was not newer, but about nine years old and had only two doors. Despite those differences and the fact that the suspects had fled the scene at least fifteen minutes prior, and would likely "be much farther away after fourteen minutes plus than two to three blocks," Officer Kaufman stopped the black vehicle from backing out of the driveway. *Hill* at ¶¶3, 15. He then ordered the driver to exit the vehicle. *Id* at ¶3. Officer Kaufman knew Mr. Hill by name from a previous incident. *Id* at ¶3. Officer Kaufman knew that Mr. Hill's name did not match the names of the two suspects announced on the dispatch. *Id.* Officer Kaufman also testified during the suppression hearing of Mr. Hill's distinctive, and therefore memorable, height and build, stating he was approximately six feet seven inches (6' 7") tall and four hundred-twenty (420) pounds. (Suppression Tr. at 15:3). Officer Kaufman also testified that Mr. Hill "was a nice guy." (Suppression Tr. at 15:2). However, "[u]pon observing the driver to be a black male,

Officer Kaufman began a pat down" for his safety. *Hill* at ¶3. During the pat down, Officer Kaufman "felt a golfball-sized bulge" in Mr. Hill's pocket and testified that he "immediately knew the bulge to be crack cocaine. Upon seizing the crack cocaine and continuing the pat down search, Officer Kaufman retrieved a bundle of cash from [Mr. Hill's] other pocket." *Id* at ¶4.

After reviewing the totality of the facts and circumstances, the Appellate Court held that the trial court was simply "left with the stop of a black man in a black car," which does not rise to the "necessary level" to support the stop by Officer Kaufman. *Id* at ¶15. In so ruling, the Appellate Court reversed the trial court's decision regarding suppression of the evidence, and remanded the matter to the trial court for further proceedings.

On May 6, 2011, after the matter had been remanded back to the trial court, , the Richland County Prosecutor, on behalf of the state of Ohio, moved to dismiss all charges, stating that the state "was unable to prove the matter beyond a reasonable doubt." (Motion to Dismiss, p. 1). On May 9, 2011, the trial court dismissed all charges against Plaintiff. The State of Ohio did not appeal the Appellate Court's decision. Since his sentencing on June 28, 2010, Mr. Hill had spent a total of 316 days in prison.

Mr. Hill commenced the current action on August 11, 2011 by filing a complaint seeking an order declaring that he is a wrongfully imprisoned individual within the meaning of R.C. 2743.48. On November 9, 2011, he filed Motion of Plaintiff, Duane Hill, for Summary Judgment. Plaintiff asserts that he fits all of the conditions required in R.C. 2743.48 required to be declared a wrongfully imprisoned individual. On May 16, 2012, Defendant filed Motion for Summary Judgment asserting that the undisputed facts show that Plaintiff does not fit the criteria to be declared a wrongfully imprisoned individual. Rather, Defendant asserts that summary judgment should be made in its favor.

II. STANDARD OF REVIEW

The Ohio Supreme Court has set forth three factors for courts to consider upon a motion for summary judgment. Pursuant to Civ.R. 56, summary judgment is appropriate when:

> (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, who is entitled to have evidence construed most strongly in his favor.

Bostic v. Connor, 37 Ohio St.3d 144, 146, 524 N.E.2d 881 (1988) (quoting *Harless v. Willis Day Warehousing Co.,* 54 Ohio St.2d 64, 375 N.E.2d 46 (1978).

Summary judgment will not lie if there is a genuine dispute regarding material facts. *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265. "The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Zivich, supra,* quoting

Once the party moving for summary judgment has satisfied its burden, the nonmoving party has a reciprocal burden to set forth specific evidence: the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or otherwise, must set forth specific facts showing that there is a genuine issue for trial." R.Civ. 56(E); *Dresher v. Burt,* 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). "Doubts must be resolved in favor of the non-moving party." *Murphy v. Reynoldsburg,* 65 Ohio St.3d 356, 359, 604 N.E.2d 138 (1992), citing *Osborne v. Lyles,* 63 Ohio St.3d 326, 333, 587 N.E.2d 825 (1992).

III. LAW AND ANALYSIS

"The Ohio Revised Code provides for a two-step process whereby a person claiming wrongful imprisonment may sue the State for damages incurred due to the alleged wrongful imprisonment." *State ex rel. Jones v. Suster,* 84 Ohio St.3d 70, 72, 1998-Ohio-275, 701 N.E.2d 1002, citing *Walden v. State,* 47 Ohio St.3d 47, 547 N.E.2d 962 (1989). The person claiming wrongful imprisonment must first seek a preliminary factual determination of wrongful imprisonment, declared by a court of common pleas. Only after this determination is made, can the individual seek damages through the Court of Claims. *Id.*

Ohio Revised Code 2743.48 (A) provides that to be declared a "wrongfully imprisoned individual," Plaintiff must satisfy all five of the following factors:

> (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 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.

Griffith v. City of Cleveland, 128 Ohio St.3d 35, 40, 2010-Ohio-4905, 941 N.E.2d 1157.

Plaintiff asserts that the undisputed facts show that he has met all five factors, and therefore Summary Judgment should be granted in his favor. Defendant asserts that the undisputed facts show that Plaintiff fails to satisfy all five factors because: (1) Plaintiff pled guilty when entering a plea of "no contest" and therefore is unable to meet the requirement of R.C. 2743.48(A)(2) that Plaintiff "not plead guilty to the particular charge;" (2) Plaintiff provided a false statement to the trial court and engaged in using marijuana while on pre-trial probation, such that Plaintiff does not meet the requirement of R.C. 2743.48(A)(4) that no criminal proceedings can be brought for acts associated with the original conviction; and (3) the reversal

and remand by the Appellate Court does not equate to R.C. 2743.48(A)(5) requirement that "an error in procedure resulted in [Plaintiff's] release."

A. R.C. 2743.48(A)(1) and (3)

Defendant does not dispute that Plaintiff was charged with a felony and meets the requirements of R.C. 2743.48(A)(1), that to be a wrongfully imprisoned person, one must be charged with a aggravated felony or felony. Plaintiff was indicted on four fourth degree felonies, and one fifth degree felony.

Defendant does not dispute that Plaintiff was sentenced to a term of imprisonment and meets the requirement of R.C. 2743.48(A)(3). Plaintiff was sentenced to eighteen months in prison.

B. R.C. 2743(A)(2)

In order to be declared a "wrongfully imprisoned person," Plaintiff must satisfy R.C. 2743(A)(2), which requires that Plaintiff was found guilty of, *but did not plead guilty to,* the felonies charged against him for possession of and trafficking in illegal drugs. Plaintiff pled "no contest" and was "found guilty" on the five felonies to which Plaintiff was charged. (Plea Hearing Tr. at 6:3-10:8).

Ohio Rule of Criminal Procedure 11(B)(2) states:

> The pleas of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, or complaint, and the plea or admission *shall not be used against the defendant in any subsequent civil or criminal proceeding.*

Any plea of no contest, therefore, is not a guilty plea. *City of Cuyahoga Falls v. Bowers,* 9 Ohio St.3d 148, 459 N.E.2d 532 (1984) (holding a no contest plea may not be the basis for finding of guilty where the statement of facts reveals a failure to establish all the elements of the offense); see also *State ex rel. Sawyer v. O'Connor,* 54 Ohio st.2d 380, 382, 377 N.E.2d 494 (1978) (upon a plea of no contest, the trial court has the power to consider whether the facts alleged constitute

the basis for a finding of guilty or not guilty); *State of Ohio v. Ronald Schroyer,* 2nd Dist. No. 21659, 2007-Ohio-4573, 2007 Ohio App. LEXIS 4113.

Defendant asserts that the circumstances surrounding Plaintiff's plea of "no contest" are such that Plaintiff did not overcome the requirement in RC. 2743.48(A)(2) that he "not plead guilty to the particular charge." Specifically, Defendant asserts that the statement made by the trial court to Plaintiff informing him that if he pleads guilty or no contest "you're going to be making an admission of guilt" precludes Plaintiff from claiming he did not plead guilty to the offenses charged.

The plain language of Crim.R. 11 is clear: a plea of no contest does not equate to a guilty plea. A misstatement by a trail court does not summarily overrule the plain language of a rule of procedure relied on by attorneys state-wide. While this Court will not speculate as to the meaning of the trail court's earlier statement, it is clear that the trail court did not intend to change the effect of Plaintiff's no contest plea, nor choose to not accept it. Just before accepting Plaintiff's plea, the trial court clarified: "When you plead no contest, you are saying I don't contest the allegations that I have been accused of, and because you've admitted those facts, I can find you guilty." (Change of Plea Tr. 9:9-14). No where within the transcripts of the change of plea hearing does Plaintiff change his plea of no contest to a plea of guilty. The plea of no contest was accepted by the Court: "I accept that plea as knowingly and voluntarily made. I find you guilty on your no contest plea." (Change of Plea Tr. 10:6-9). Plaintiff has therefore satisfied R.C. 2743.48(A)(2).

C. R.C. 2743.48(A)(4)

To be declared a "wrongfully convicted individual," R.C. 2743.48(A)(4) requires Plaintiff satisfy the following: (1) Plaintiff's conviction was vacated, dismissed, or reversed on appeal; (2) the prosecuting attorney cannot or will not seek any further appeal; and (3) "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 Plaintiff "for any act associated with" his conviction.

The Fifth District Court of Appeals of Ohio ruled in *Ohio v. Hill*, 194 Ohio App.3d 93, 2011-Ohio-2019, 954 N.E.2d 1252, to vacate the trail court's decision regarding the suppression of evidence. In so doing, Plaintiff's conviction was reversed. The prosecutor, representing the State of Ohio, did not appeal the Appellate Court's decision. The period in which the prosecutor could have sought reconsideration or appeal to the Ohio Supreme Court has since expired. Ohio R. App. P. 26; Ohio S.Ct. Prac. R. 2.2.

However, Defendant asserts that because Plaintiff told the trial court during his sentencing hearing that he would test clean for any illegal substances, yet tested positive for marijuana and a sleep aid, a criminal proceeding "can be brought, or will be brought *** against [Plaintiff] for an act associated with [his]conviction." Specifically, Defendant alleges Plaintiff lied to the trial court.

Defendant's arguments misconstrue the requirements set forth in R.C. 2743.48(A)(4). The criminal conduct for which the possibility of criminal proceedings still remains must be acts *associated with* the conviction. The Supreme Court of Ohio and other Ohio courts have interpreted this phrase to mean that Plaintiff must prove that, "*at the time of the incident for which they were initially charged,*" Plaintiff was "not engaging in any other criminal conduct *arising out of the incident for which they were initially charged.*" *Gover v. State of Ohio,* 67 Ohio St.3d 93, 616 N.E.2d 207, (1993) syllabus (emphasis added) (quoting *Walden v. State,* 47 Ohio St. 3d 47, 547 N.E.2d 962 (1989); see also, *Jones v. State of Ohio,* 8th Dist. No. 96184, 2011 Ohio 3075, 2011 Ohio App. LEXIS 2616; *Brown v. State of Ohio,* 6th Dist. No. L-05-1050, 2006-Ohio-1393, 2006 Ohio App. LEXIS 1260; *Ramirez v. State,* 6th Dist. No. WD-02-075, 2004-Ohio-480, 2004 Ohio App. LEXIS 418.

The Ohio Supreme Court, in analyzing an older version of the wrongful imprisonment statute at issue here, stated that the statutory language of (A)(4) was "intended to filter out those

claimants who have had their convictions reversed, but were committing a different offense at the time that they were engaging in the activity for which they were initially charged." *Gover, 76 Ohio St.3d 93 at 95.* In *Gover,* the Supreme Court held that a criminal defendant failed to prove he was a wrongfully imprisoned individual pursuant to 2743.48(A)(4) because, while the criminal defendant did not commit the underlying offense of safecracking, the criminal defendant nevertheless committed other criminal offenses that had not been charged, such as burglary, while he was at the scene of the crime.

In *Ramirez,* the Sixth District Court of Appeals held that evidence that the criminal defendant discussed with a confidential informant and an undercover agent the possibility of setting up drug deals was competent, credible evidence that the criminal defendant could have been prosecuted for *conspiracy to* traffic in marijuana, in addition to his conviction of trafficking marijuana, reversed for insufficient evidence. Because any criminal act that arose out of the incident for which he was initially charged could defeat the criminal defendant's civil case for wrongful imprisonment, the court held that R.C. 2743.48(A)(4) was not met.

Both examples illustrate the requirement that the criminal behavior alleged to defeat (A)(4) must arise from the same incident that gave rise to Plaintiff's initial charges of possession of illegal drugs and trafficking in illegal drugs. The Court need not determine whether Plaintiff lied to the trial court during his sentencing hearing.[1] A statement by Plaintiff during the sentencing hearing held months after the original incident that gave rise to his reversed conviction is hardly an event "associated with" Plaintiff's conviction as required.

In addition, the State's analysis is misplaced. The State is essentially requesting this Court to consider alleged criminal behavior by the Plaintiff that would never had been revealed but for the illegal and unconstitutional stop of an illegitimate suspect. Officer Kaufman did not have probable cause to stop Plaintiff. Even assuming that he did, the stop should have ended

[1] Plaintiff asserts his statement to the trial court that he would test clean reflects a misunderstanding of drug kinetics, not a lie to the trial court.

once Officer Kaufman saw Plaintiff step out of his vehicle; at this point, the Officer recognized the Plaintiff and knew that Plaintiff's name did not match the names released by dispatch. The State cannot reap the benefits of an unconstitutional, unreasonable, and illegal stop. As such, Plaintiff has satisfied R.C. 2743.48(A)(4).

D. R.C. 2743.48(A)(5)

R.C 2743.48(A)(5) requires that that "subsequent to imprisonment, an error in procedure resulted in the [Plaintiff's] release." Plaintiff contends that he has satisfied this condition because: (1) Officer Kaufman erred by not following the appropriate constitutional procedures for a search and seizure; (2) the trial court erred by not following the appropriate procedure and suppressing the evidence found by Officer Kaufman's unconstitutional search; and (3) these errors were "uncovered by the Fifth District Court," ultimately leading to the removal of the charges against Plaintiff and Plaintiff 's release. (Plaintiff Memo Opposition, page 10.)

According to Defendant, however, the mention of an error in procedure in (A)(5) merely clarifies that "it does not matter why the individual is actually released from prison, so long as he has not committed a criminal offense." (Defendant Motion, page 7.) Defendant asserts that the Ohio legislature intended to compensate only those who were actually innocent. Additionally, Defendant asserts that the error Plaintiff relies upon is not the type of procedural error the legislature contemplated when it amended the wrongful imprisonment statute to include the procedural error prong.

1. Actual Innocence is Not Required for a Declaration That One is a Wrongfully Imprisoned Individual

The error in procedure prong is a fairly recent addition to the wrongful imprisonment statute. Prior to the mendment of R.C. 2743.48(A)(5), the statute read:

> Subsequent to his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.

Therefore, prior to the 2003 amendment, an individual, such as Plaintiff, who could not establish his or her actual innocence could not be declared a 'wrongfully imprisoned individual.'

Contrary to Defendant's assertion that the error in procedure prong does not change the requirement that the individual be innocent of a criminal offense, the 2003 amendment provides an alternative way for an individual to recover. As the plain language of the statute stands today, an individual, such as Plaintiff, who cannot establish actual innocence has a cause of action against the State of Ohio if he or she can establish that an error in procedure ultimately resulted in his or her release. In other words, the amendment provides an alternative to recovery aside from actual innocence.

The Tenth District Court of Appeals recognized this alternative method of recovery in its ruling in *Nelson v. State of Ohio*, 183 Ohio App.3d 83, 86-87, 2009-Ohio-3231, 915 N.E.2d 729:

> The revised statute thus provides an alternative to the actual innocence requirement: the person seeking wrongful imprisonment status need only establish that an error in procedure resulted in his or her release.

In *Nelson*, the Tenth District determined that, pursuant to the amended R.C. 2743.48(A)(5), the Court of Claims has jurisdiction over the damages issue of a wrongful imprisonment claim even without an innocence determination by a court of common pleas, pursuant to the amended R.C. 2743.48(A)(5). After a jury trial, the appellant in *Nelson* had been found not guilty of attempted murder, but guilty of felonious assault. A prior appeal resulted in a reversal of the conviction due to an improper jury instruction that felonious assault was a lesser included offense to attempted murder. He was then re-indicted on charges of felonious assault and appellant moved to dismiss the indictment on due process and speedy trial grounds. The trial court denied the motion and the appellant entered a plea of no contest. An appellate court held that appellant's trial rights to a speedy trial were violated and reversed the trial court's ruling on the appellant's motion to dismiss. But, the appellate court's ruling did not occur until appellant had been sentenced and had begun serving time in prison. The appellant

received a declaration from a common pleas court that he was a wrongfully imprisoned individual based on the procedural error prong. The Tenth District determined that the declaration, even though only based upon the error in procedure prong, sufficiently created jurisdiction for the Court of Claims.

In 2011, the Court of Claims awarded Nelson damages for 1,065 days of wrongful imprisonment, not upon proof of innocence, but rather proof of an error in procedure. *Nelson v. Ohio,* Ct. of Claims No. 2008-09503-WI, 2011-Ohio-4838, 2011 Ohio Misc. LEXIS 417 (Aug. 4, 2011).

This alternative means of recovery recognizes that an individual could be wrongfully imprisoned for other reasons besides innocence, such as an when an individual's constitutional rights were violated as they were in *Nelson*. Indeed, wrongful imprisonment is not synonymous with actual innocence.

2. Procedural Errors Were Made by Both Officer Kaufman and the Trial Court

Procedural error has not been defined by the legislature for purposes of the error in procedure prong. "Procedure," according to Black's Law Dictionary, is "a specific method or course of action; the judicial rule or manner for carrying on a ... criminal prosecution." Black's Law Dictionary (9th ed. 2009). According to Black's Law Dictionary, "Criminal Procedure" is defined as "the rules governing the mechanisms under which crimes are investigated, prosecuted, adjudicated and punished. It includes the protection of accused persons' constitutional rights." *Id.*

The Fourth Amendment to the United States Constitution sets out the right of an individual to be secure "against unreasonable searches and seizures." The United States Supreme Court through a multitude of case law, has delineated procedural steps law enforcement officers must follow in order to ensure they are not violating a individual's Fourth Amendment rights. Evidence obtained in violation of an individual's constitutional rights is

suppressed and excluded from being used against that individual during court proceedings. See, *Weeks v. United States*, 232 U.S. 383, 393, 34 S.Ct. 341, 58 L.Ed. 652 (1914) (holding that evidence obtained in violation of the Fourth Amendment is to be excluded); *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d. 1081 (1961) (deciding that the Fourth Amendment, and exclusionary rule, is applicable against the states); *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d. 441 (1963) (holding that evidence is excluded as "fruit of the poisonous tree" where the evidence to be excluded was acquired by "exploitation" of the "primary illegality" in the search and seizure chain and the taint of the primary illegality has not been purged); *Terry v. Ohio*, 392 U.S. 1, 21-22, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (holding that reasonable articulable suspicion justifies a stop both limited in scope and duration, and that a reasonable articulable suspicion that a subject is armed justifies a limited pat-down); *Arizona v. Johnson*, 555 U.S. 323, 326-27, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009) (holding that "to proceed from a stop to a frisk, the police officer must reasonable suspect that the person stopped is armed and dangerous").

A warrantless search and seizure is not per se unreasonable *only if* an exception applies. In the case of Plaintiff, Officer Kaufman, who did not have a warrant, proceeded under an exception, announced in *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L. Ed. 2d 889, which guides investigative stops. Under *Terry*, a "police officer may stop an individual to investigate unusual behavior, even absent a prior judicial warrant or probable cause to arrest, where the officer has a reasonable, articulable suspicion that specific criminal activity may be afoot." *Hill*, 194 Ohio App.3d at 97. The Appellate Court analyzed the totality of the circumstances and determined that Officer Kaufman illegally searched Plaintiff and illegally seized objects from Plaintiff's person. Because of this, all evidence obtained during the illegal search should have been suppressed.

Defendant asserts that the Ohio legislature did not intend to compensate "an individual who committed a crime but was released solely because of a technical violation of the Ohio Rules

of Procedure." (Defendant Motion, page 7.) The procedural error in Plaintiff's case, however, was not a *mere* technical violation. Nor, was it a *mere* error in the Ohio Rules of Procedure. Rather, the procedural errors made in Plaintiff's case rest upon a complete disregard for one's personal rights guaranteed by the Bill of Rights in the United States Constitution and Ohio Constitution.

Under the guidelines of *Terry*, Officer Kaufman was required to have reasonable articulable suspicion in order to stop Plaintiff. Although Officer Kaufman had been informed a suspect was driving a "newer," "possible" four-door vehicle. However, he stopped Plaintiff, driving a two-door, eight-year old vehicle. Even assuming the color of the vehicle was enough reasonable suspicion to stop Plaintiff, once Plaintiff stepped out of the vehicle, Officer Kaufman knew Plaintiff and knew that his name did not match either of the two suspects whose names were released over the radio by dispatch. Instead of releasing Plaintiff from the investigative stop, the officer continued with an illegal search. As stated by the Appellate Court, once all of the circumstances surrounding the initial stop are analyzed, "we are left with the stop of a black man in a black car." *Hill* at ¶15.

By ruling that the search and seizure were illegal, the Appellate Court held that the trial court erred in its decision to not suppress the evidence, therefore reversing its decision. In order to reverse the trial court, the Appellate Court was required to independently, "without deference to the trail court's conclusion," determine as a matter of law "whether the facts meet the appropriate legal standard." *Hill* at ¶8, (citing *State v. Claytor,* 85 Ohio App.3d 623, 620 N.E.2d 906 (1994). The exclusion or suppression of evidence obtained in violation of the Fourth Amendment has multiple functions, including discouraging lawless police conduct. *Terry*, 555 U.S. at 12. Perhaps its most vital function is "the imperative of judicial integrity." *Id.*, quoting *Elkins v. United States,* 364 U.S. 206, 222, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960). A ruling admitting evidence, has the "necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional

imprimatur." *Id.* In the case of Plaintiff, the trial court was presented with a procedure that outlines the manner in which officers must proceed to ensure that an individual's rights are enforced. The objective facts show that the circumstances surrounding Plaintiff's stop could not support a constitutional seizure. The trial court erred when analyzing the facts of Plaintiff's case, and determining the actions by the officer satisfied that procedure.

3. An Error in Procedure Resulted in Plaintiff's Release

R.C. 2743.48(A)(5) requires that the error in procedure, resulted in Plaintiff's release. The plain meaning of the term 'resulted' connotes causation: the error in procedure must be causally connected to the individual's freedom such that the only reasonable result of the error must be release. Here, the Appellate Court reversed Plaintiff's conviction due to the errors in procedure made by Officer Kaufman and the trial court's factual analysis when ruling on the motion to suppress. As a result, all evidence obtained during the illegal search was suppressed. The basis for all criminal charges against Plaintiff was excluded.

Defendant alleges that because the Appellate Court simply reversed and remanded, not dismissed and discharged as the court in *Nelson,* any errors did not ultimately result in Plaintiff's release. Defendant asserts that the legislature did not intend for all persons whose convictions were reversed to receive compensation for wrongful imprisonment; if it had, then Defendant asserts, the statute would have been written differently. To support this proposition, Defendants point to *Mickey v. Ohio Dep't of Rehab. & Corr., et al.*, 10th Dist. No. 02AP-539, 2003-Ohio-90, at n. 6, 2003 Ohio App. LEXIS 78. Defendants assert, the Tenth District in *Mickey* "found that a simple reversal and remand for new trial did not equate to wrongful imprisonment." (Defendant Motion, page 9.) *Mickey,* however, was decided before the error in procedure prong was added to R.C. 2743.48(A)(5). In *Mickey,* the Tenth District Court of Appeals upheld the Court of Claims' decision rendering judgment for the Ohio Department of Rehabilitation and Correction ("ODRC"), because appellant did not affirmatively prove his

innocence or secure a determination from a common pleas court that the appellant was innocent. *Mickey* at ¶ 24. Therefore, *Mickey* is inapplicable.

The Court's reading of the statute is not intended to declare that when an appellate court reverses and remands a case, it is a 'per se' procedural error. On the contrary, Plaintiff's case is one of a rare group of cases where a reversal by a court of appeals vitiates the basis for all criminal liability. In the case of Plaintiff, whether the court reversed and remanded or whether the court dismissed is irrelevant. The result is the same: the Appellate Court's decision vitiates the basis for all criminal liability. The only way Plaintiff could have been found liable for criminal activity was based upon evidence illegally obtained by Officer Kaufman. The State recognized this when, after the Appellate Court's decision, it noted the basis of the charges was gone and therefore, the State could not prove the matter beyond a reasonable doubt. As such, Plaintiff has satisfied R.C. 2743.48(A)(5).

E. <u>CONCLUSION</u>

The plain language of R.C. 2743.48 provides that an individual is not required to prove his or her innocence in order to be found a "wrongfully convicted individual." Here, Plaintiff has shown that an error in procedure occurred, and that it ultimately resulted in his release: The Court of Appeals declared the trial court erred in allowing the evidence, thereby vacating Plaintiff's conviction, and in so doing, removing the entire basis of the State's charges. *The only way Plaintiff could have been found liable for criminal activity was through the errors in procedure in enforcing Plaintiff Duane Hill's substantive rights.*

The exclusion rule is a guard against police misconduct, acting as a deterrant "that without it, the constitutional guarantee against unreasonable searches and seizures would be a mere 'form of words.'" *Terry,* at 12, quoting *Mapp* v. *Ohio*, 367 U.S. 643, 655 (1961). It also ensures that courts, which sit under the Constitution, "will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions." *Id.*

Plaintiff's case is one where a reversal by a Court of Appeals removes the entire basis for alleging criminal liability. Even if the Court's decision today minimally expands the pool of individuals who could be declared a "wrongfully imprisoned individual," to hold otherwise has the potential of legitimizing illegal and unconstitutional conduct. The procedural safeguards for the Fourth Amendment exist to ensure that one's right to privacy is protected and that citizens are free from unreasonable intrusion by the police. The wrongful imprisonment statute exists, not only to compensate individuals who are innocent, but also to ensure that constitutional protections are not mere words. It serves as an incentive for police and courts alike to safeguard an individual's rights.

Having found that Plaintiff meets all five requirements of R.C.§ 2743.48 , the Court finds that Defendant's Motion for Summary Judgement is not well taken, and hereby **DENIES** Defendant's Motion for Summary Judgment. The Court finds that Plaintiff's Motion for Summary Judgment is well taken, and hereby **GRANTS** summary judgment for Plaintiff, Duane Hill. The Court **ADJUDGES AND DECREES** that Plaintiff Duane Hill is a "wrongfully imprisoned" individual, as defined in R.C.§ 2743.48.

THIS IS A FINAL APPEALABLE ORDER.

IT IS SO ORDERED.

TIMOTHY S. HORTON, JUDGE

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Franklin County Court of Common Pleas

Date: 07-18-2012

Case Title: DUANE HILL -VS- OHIO STATE

Case Number: 11CV010039

Type: MOTION GRANTED

It Is So Ordered.

/s/ Judge Timothy S. Horton

Franklin County Ohio Clerk of Courts of the Common Pleas- 2012 Jul 18 4:15 PM-11CV010039

Court Disposition

Case Number: 11CV010039

Case Style: DUANE HILL -VS- OHIO STATE

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes