

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 14-0735
	:	
Plaintiff/Appellant,	:	On Appeal from the
	:	Cuyahoga County
	:	Court of Appeals,
v.	:	Eighth Appellate
	:	District
C.K.	:	
	:	Court of Appeals
Defendant/Appellee.	:	Case No. CA-13-100193
	:	
	:	
	:	

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**PLAINTIFF-APPELLEE'S MEMORANDUM**

**CONTRA JURISDICTION FILED UNDER SEAL**

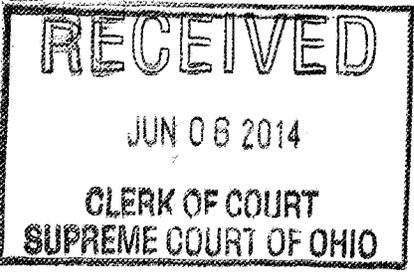
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NICHOLAS A. DICELLO (0075745)  
 WILLIAM B. EADIE (0085627)  
**SPANGENBERG SHIBLEY &  
 LIBER**  
 1001 Lakeside Avenue East, Suite  
 1700  
 Cleveland, Ohio 44114  
 (216) 696-3232 | (216) 696-3924  
 (FAX)  
 ndicello@spanglaw.com  
 weadie@spanglaw.com

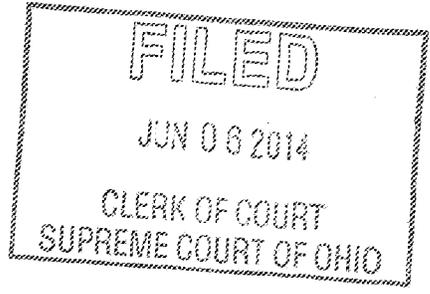
TIMOTHY J. MCGINTY (0024626)  
 Cuyahoga County Prosecutor  
 BRIAN R. GUTKOSKI (0076411)  
 Assistant Prosecuting Attorney  
 1200 Ontario Street, 9<sup>th</sup> Floor  
 Cleveland, Ohio 44113  
 (216) 443-7860  
 bgutkoski@prosecutor.cuyahogacounty.us

**Counsel for Appellant**  
**State of Ohio**

**Counsel for Appellee,**  
**C.K.**



June 5, 2014



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## **I. INTRODUCTION**

In the early morning hours of September 23, 2009, C.K.—an honorably discharged Air Force veteran, licensed concealed-carry permit holder, electrical engineer, and part-time college professor—shot and killed an intruder. The intruder was a convicted murderer high on crack cocaine, who had forcibly entered C.K.’s home and was savagely beating C.K.’s tenant. This was the third time the intruder had forced his way in that morning, literally kicking out a part of C.K.’s back door to gain entry. After the shooting, C.K. asked his tenant to call the police, and provided the police with his gun.

Remarkably, C.K. was indicted for murder. C.K. stood trial twice. The first trial ended in a mistrial due to prosecutorial misconduct. The second trial ended in a conviction reversed because C.K. had “established all three elements of the affirmative defense of self-defense” and the “Castle Doctrine fully applie[d] to the facts of” C.K.’s case. State v. C.K., 195 Ohio App.3d 343, 2011-Ohio-4814, 959 N.E.2d 1097 (8th Dist.).

The State dismissed the charges on remand. The State admitted it had no intention of ever retrying C.K., and has no ongoing investigation. Judge David Matia, who presided over C.K.’s two criminal trials and later expunged C.K.’s criminal record, noted that “any intellectually honest person would agree that [C.K.] would be basically incapable of being convicted of murder in a new trial.”

In 2012, C.K. filed a civil claim for wrongful imprisonment. C.K. produced un rebutted evidence that the State will not re-indict him for the 2009 shooting. C.K. also produced un rebutted evidence of his actual innocence. The Trial Court never addressed these factual issues. Instead, the Trial Court found for the State on the narrow legal issue of whether the lack of a statute of limitations in murder cases precluded individuals like C.K. from ever being designated wrongfully imprisoned. This is the only issue on appeal.

The Eighth District reversed, finding that the statute of limitations question was not dispositive under the statutory language, and remanding back to the trial court for further factual determinations. C.K. v. State, 2014-Ohio-1243 (8th Dist). Specifically, whether C.K. can prove criminal proceedings will not be brought by the State, and whether C.K. can prove he is actually innocent. The State asks this Court to decide the issue prematurely, as the trial court has yet to render these factual findings.

**II. EXPLANATION AS TO WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST.**

The Eighth District held that a claimant like C.K. is not *per se* ineligible to be declared a Wrongfully Imprisoned Individual merely because he had been convicted of murder, which has no statute of limitations. This Court has already declined jurisdiction to review a case that reached precisely the same conclusion, and on which the C.K. court relied: LeFever v. State, 2013-Ohio-4606 ¶ 26 (10th Dist.), appeal not allowed, 2014-Ohio-2021.

The Eighth and Tenth Districts addressed the “no criminal proceeding . . . can be brought or will be brought” language in the fourth element of the statute regarding people wrongfully imprisoned for murder, which has no statute of limitations. Both courts found that, in accord with traditional statutory interpretation principles, interpreting “can be brought” to include every possible chance of criminal proceedings would render “will be brought” meaningless surplusage, because the State can always initiate criminal proceedings. (This includes more than murder cases, too: the State can initiate criminal proceedings beyond the statute of limitations, and does, resulting in Sixth Amendment claims against the State.) “Can be brought” must exclude cases where such criminal proceedings are neither factually nor legally supportable—and the claimant must still show that no criminal proceeding “will be brought.” This uncontroversial interpretation gives value to both clauses, in accord with basic statutory

interpretation principles. (The LeFever court found that the evidence showed the plaintiff in that case had failed to prove no criminal proceedings “will be brought.”)

The State misleads this Court as to the extent of the Eighth District’s holding to exaggerate this case’s importance, claiming the appellate court “gave its earlier vacation of the underlying criminal conviction pursuant to the Castle Doctrine preclusive effect, in the subsequent R.C. 2743.48 wrongful imprisonment proceeding.” (Mem. in Supp. at 2.) This is untrue. The Eighth District held that “there is a factual question as to whether C.K. satisfies the fourth prong” and “[a]dditional evidentiary inquiry is necessary to determine whether another criminal proceeding in connection with his prior murder conviction “can be brought, or will be brought” against C.K.” C.K. v. State, 2014-Ohio-1243, ¶35. That additional factual inquiry should take place before this Court accepts jurisdiction, as there will inevitably be a subsequent appeal that can embrace both the factual and legal issues at hand.

Nor are the State’s doomsday predictions that “county prosecutors throughout Ohio will recoil whenever a criminal conviction is reversed and remanded on appeal,” and that the decision will wreak “financial havoc on the state’s coffers” connected with reality. The Eighth District reached the same not-so-startling conclusion as the Tenth District recently did: that the General

Assembly did not intend to carve out a class of wronged claimants by using the words “no criminal proceeding is pending, can be brought, or will be brought” to secretly mean “the statute of limitations has run.” (The State misquotes the statute as “criminal proceedings cannot be brought against them,” (Mem. in Supp. at 1), despite this error having been pointed out in the appellate briefing below.)

Finally, there is no conflict between appellate districts meriting review: all courts that have considered this issue have reached the same conclusion, that barring claimants wrongfully convicted of murder does not comport with the wrongful imprisonment statute’s language or history.

### **III. ARGUMENT REGARDING PROPOSITION OF LAW.**

#### **A. STATE’S FIRST PROPOSITION OF LAW**

Under R.C. 2743.48(A)(4), a claimant must prove no further criminal prosecution can be brought for any act associated with his or her conviction. A claimant whose criminal case remains open, under investigation and in which the criminal statute of limitations has not expired, is unable to satisfy R.C. 2743.48(A)(4).

The only decision reached by the trial and appellate courts is how to interpret the “no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney” language.

The Eighth District followed the Tenth District’s logic in LeFever in holding that the “can be brought” and “will be brought” language cannot be interpreted so as to render “will be brought” mere surplusage, a fundamental precept of statutory

interpretation. The C.K. and LeFever Courts reconciled the language by arriving at a common sense, plain-meaning interpretation of “criminal proceeding . . . can be brought”: a prosecution that is legally and factually supportable. A claimant still must prove that the state will not bring charges, and that such charges are precluded as factually or legally baseless, before then having to prove he is actually innocent. (This Court declined jurisdiction to review LeFever.)

The Eighth District did not determine that C.K. met this burden, but remanded for the trial court to consider the issue for the first time. Nor has the trial court made any factual findings regarding the other elements of the wrongful imprisonment statute, including whether C.K. is actually innocent. C.K. will not be declared a Wrongfully Imprisoned Individual unless he proves those elements. The State’s fact section, which is directly at odds with every court’s interpretation of the record, is irrelevant: the trial court will reach these issues for the first time on remand. This appeal is premature.

The State argues that “can be brought” must include any possible chance, no matter how remote or improper, that charges can be brought. This renders the “will be brought” clause meaningless: the State always “can” bring criminal proceedings—and does, outside the statute of limitations, in Sixth Amendment speedy trial violation cases. The State’s interpretation fails basic statutory interpretation analysis: there would never be a case where criminal proceedings

“can be brought” that did not subsume every instance where criminal proceedings “will be brought.”

The State goes further in grafting a statute of limitations element into the statutory language, where that term is never used, then applying it to preemptively eliminate recovery for people wrongfully convicted of the most heinous crime. The State never explains why the General Assembly would provide recovery to those wrongfully imprisoned for a crime, but implicitly exclude the people most deeply wronged by the false conviction. This would be a fundamental rewrite of the statute.<sup>1</sup>

The State’s First Proposition of Law is flawed in that it does not apply to C.K.: there is no “investigation” pending, and the State admitted, on the record in open court before the same trial judge that presided over C.K.’s criminal trial, that it has no intention of ever prosecuting C.K. The Proposition is further flawed in describing C.K. as a claimant “in which the criminal statute of limitations has not expired.” The statute of limitations for murder has no expiration. The State cannot point to anything in the statute or its legislative history suggesting the General

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<sup>1</sup> Denying compensation through such a flawed interpretation would also contravene the liberal interpretation afforded R.C. 2743.48 as a remedial statute. Because its purpose is “to correct past injustices,” R.C. 2743.48 is a remedial statute. Wright v. State, 69 Ohio App.3d 775, 779, 591 N.E.2d 1279 (10th Dist. 1990); State v. Moore, 165 Ohio App.3d 538, 2006-Ohio-114, 847 N.E.2d 452, ¶ 21 (4th Dist.). “Remedial laws . . . shall be liberally construed to promote their object and assist the parties in obtaining justice.” R.C. 1.11.

Assembly secretly intended to eliminate claimants wrongfully imprisoned for murder from recovery.

B. STATE'S SECOND PROPOSITION OF LAW

Under R.C. 2743.48(A)( 4), contemporaneous criminal conduct arising *out* of the offense for which the claimant was originally charged bars a later action for wrongful imprisonment. Gover v. State, 67 Ohio St.3d 93 (1993).

The Eighth District considered the State's argument that C.K. could not satisfy the fourth prong because of his criminal conduct, "namely, drug abuse, 'in the week leading' to the shooting incident," and found it "disingenuous." C.K. v. State, 2014-Ohio-1243, ¶41. As the Eighth District found, the drug use claims were (at best) a red herring:

We fail to see how C.K.'s alleged illegal drug use, even if it were true, could be construed as "criminal conduct arising out of" the shooting incident, or "associated with" his murder conviction. The state essentially asks us to interpret the statute as requiring a wrongful imprisonment claimant to prove that he or she did not engage in any criminal conduct, whether or not contemporaneous with the incident for which the individual was initially charged. There is no case law authority that would support such an interpretation of the statute. The state's allegation that C.K. engaged in illegal drug activity would appear to be, at best, a red herring and, at worse, an attempt to create a bias against C.K. in this wrongful imprisonment action.

Id.

The State now pivots, claiming that both the alleged drug use and an "execution" style murder require the finding that C.K. cannot satisfy the fourth

element of the statute—something not addressed by the Trial Court or the Appellate Court. This is truly disingenuous.<sup>2</sup>

The Trial Court did not reach this issue, and will need to make this factual finding on remand. This Court is not in position to address the factual questions of whether the shooting was justified.

The State’s characterization of the shooting bears no resemblance to the detailed factual and legal findings by the Eighth District in reversing the conviction. The Eighth District, reviewing the entire criminal record under a manifest weight of the evidence standard, held that “at trial, the evidence unequivocally established that [the intruder], who had previously been evicted from the residence, was unlawfully in the house on the day he was shot and killed by [C.K.]” State v. [C.K.], 2011-Ohio-4814 ¶26. “[C.K.] had the lawful right to eject [the intruder], and use deadly force to defend himself” under the recently-strengthened Castle Doctrine. Id. Finally, “[C.K.] has established all three elements of the affirmative defense of self-defense, and the Castle Doctrine fully applies to the facts of the instant case.” Id. at ¶30. The court “reluctantly

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<sup>2</sup> While the State claims the issue involves “admitted” drug purchases, (Mem. in Supp. at 12), this is yet another fabrication unsupported by the record: The State relied on C.K.’s motion *in limine* to exclude drug paraphernalia found in the home from evidence in the murder trial as an “admission.” Presumably the State hopes to paint C.K. as a criminal to curry favor and secure a review by this Court. In any event, it is irrelevant to the fact that this case presents no issue of importance or error by the appellate court.

remand[ed] the matter for a new trial” because it was “restrained by the standard of review under the manifest weight of the evidence and cannot discharge [C.K.]” Id. at ¶31. This Court declined jurisdiction to review the case.

Calling this an “execution” is disingenuous, but it is also irrelevant: C.K. still must prove, at the trial court level, that he is actually innocent of murder.

#### **IV. CONCLUSION**

This is not a controversial case, and involves factual issues not yet determined below. Accepting jurisdiction is unnecessary and premature.

Respectfully submitted,



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NICHOLAS A. DICELLO (0075745)  
WILLIAM B. EADIE (0085627)  
**SPANGENBERG SHIBLEY & LIBER LLP**  
1001 Lakeside Avenue East, Suite 1700  
Cleveland, Ohio 44114  
(216) 696-3232  
(216) 696-3924 (FAX)  
*ndicello@spanglaw.com*  
*weadie@spanglaw.com*  
**www.spanglaw.com**

*Counsel for Appellee*

**CERTIFICATE OF SERVICE**

On June 5, 2014, a true and correct copy of the foregoing was sent via regular U.S. Mail, postage prepaid, to:

TIMOTHY J. MCGINTY (0024626)  
Cuyahoga County Prosecutor  
DIANE SMILANICK (0019987)  
Assistant Prosecuting Attorney  
The Justice Center, 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
*Counsel for Defendant-Appellant*

  
\_\_\_\_\_  
NICHOLAS A. DICELLO (0075745)  
WILLIAM B. EADIE (0085627)  
*One of Counsel for Appellee*