

ORIGINAL

IN THE SUPREME COURT OF OHIO

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

APPENDIX TO PLAINTIFF-APPELLEE'S BRIEF

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

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

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

**Counsel for Appellant
State of Ohio**

November 25, 2014

FILED
NOV 25 2014
CLERK OF COURT
SUPREME COURT OF OHIO

1 THURSDAY, JUNE 6, 2013

2 MORNING SESSION

3 - - - -

4 THE COURT: We're here today
5 in the case of [C.K.] versus State of
6 Ohio, case number CV-12-784160.

7 We're here today on the Plaintiff's
8 motion for summary judgement brief in support
9 and the Defendant's motion for summary
10 judgement brief in support. Both of the
11 briefs have been fully briefed and all briefs
12 in opposition have been submitted and replies.
13 And then, on behalf of Plaintiff, there was an
14 additional brief that was filed. I believe
15 that was April, correct?

16 MR. EADIE: Yes, Your Honor,
17 April 30th.

18 THE COURT: Okay. And that
19 was regarding a hearing that was in Judge
20 Matia's room on the underlying criminal case,
21 on an expungement, correct?

22 MR. EADIE: Correct, Your
23 Honor.

24 THE COURT: Judge Matia did
25 grant the motion for the sealing of the

10:55:16AM

10:55:44AM

1 record, expungement.

2 MR. EADIE: Judge Matia,
3 there were two parts in the motion Plaintiff
4 filed. Number one, to have the record sealed
5 via the expungement and number two, invited
6 Judge Matia to dismiss the underlying criminal
7 case with prejudice.

8 Judge Matia concluded the Judge no
9 longer had jurisdiction over the case since it
10 had been dismissed without prejudice.

10:56:18AM

11 Just for clarification, he did not
12 grant the second part of our motion, which was
13 to dismiss the already dismissed case with
14 prejudice.

15 THE COURT: Okay. So now
16 what we have is reversal of the underlying
17 conviction at manifest weight. And the
18 authority that the State has provided is an
19 affidavit from an assistant county prosecutor
20 indicating that the cases, they're not stating
21 that they're not going to reindict them.
22 They're not guaranteeing a no reindictment of
23 this case. The charges are there. It's a
24 nonclassified felony and therefore the statute
25 of limitations doesn't exist. And so the

10:56:56AM

1 affidavit provided by the prosecutor indicates
2 or county prosecutor indicates that the case
3 remains alive, so to speak, correct?

4 MR. EADIE: Yes, Your Honor.

5 MS. GORRELL WEHRLE: Yes, Your Honor,
6 remains open.

7 THE COURT: So first, how
8 about I'll hear from -- also present in court
9 today representing the Plaintiff is Mr.
10 William Eadie. Also, this is Mr. **CK**

11 **██████████** sitting with you?

12 MR. EADIE: Correct, Your
13 Honor.

14 THE COURT: And representing
15 the State is Miss Gorrell Wehrle from the
16 Attorney General's office.

17 MS. GORRELL WEHRLE: Yes, Your Honor.

18 THE COURT: First,
19 Mr. Eadie.

20 MR. EADIE: If I may
21 inquire, does the Court have a preference on
22 time limitations?

23 THE COURT: Not at all. If
24 you want to stay at your table, that's fine,
25 too, whatever you're more comfortable with.

10:57:46AM

10:58:02AM

1 MR. EADIE: It might be
2 easier because I brought a binder.

3 The question today is whether [CK]
4 [REDACTED] meets, by a preponderance of the
5 evidence, the statutory requirements under the
6 wrongful imprisonment statute.

7 If I may suggest that this case boils
8 down to three questions. One, does the
9 statutory language requiring that the
10 prosecutor's authority cannot or will not
11 engage in a criminal proceeding against Mr.
12 [CK] relating to this matter, is that
13 defeated by the fact that murder in this case
14 has no statute of limitations?

15 We would suggest that given that the
16 wrongful imprisonment statute is a remedial
17 statute, given that as a remedial statute, the
18 intention of the legislature in providing this
19 remedial remedy should control, given the fact
20 that the legislature never indicated its
21 intention to exclude anyone who has been
22 wrongfully imprisoned for a murder charge from
23 recovering for wrongful imprisonment, simply
24 because the statute of limitations does not
25 exist, we would suggest the answer to that

10:58:36AM

10:59:04AM

1 question is that Mr. [C.K.] should be
2 entitled to wrongful imprisonment status,
3 given that he has produced evidence,
4 significant evidence that the State has not
5 engaged in any type of investigation and based
6 on the extraordinary statements made by both
7 the 8th District and the Judge in the
8 underlying criminal matter.

9 Second question I would suggest we
10 need to address today is, will the State ever
11 reindict Mr. [C.K.] I think the answer to
12 that is, by a preponderance of the evidence,
13 no, the State will not reindict Mr. [C.K.]
14 There is no evidence from the State that they
15 intend to bring any actions. The Kirvel
16 affidavit admitted, the assistant prosecutor's
17 affidavit only addressed the issue in
18 paragraph 14.

19 The Court invited the State to submit
20 evidence during our discovery dispute as to
21 the State's ongoing investigation in the
22 attempt to reindict or intention to reindict.
23 And then I'll draw the Court's attention to
24 the transcript of the hearing in the motion to
25 seal the record, where Judge Matia

10:59:44AM

11:00:20AM

1 specifically asked, point blank, to the
2 prosecutor, first question, does the State
3 intend to ever reindict Mr. [C.K.] for this
4 offense? Prosecutor Smilanick, who was at the
5 hearing representing the State, indicated, not
6 at this time, but it could in the future.

7 So the prosecutor's position is, at
8 this time, it has no intention of ever
9 reindicting Mr. [C.K.] That's found in the
10 transcript of the April 16th, 2013 proceedings
11 at page 5. That was Exhibit A to Plaintiff's
12 supplemental briefing.

13 Finally, the third question I think
14 this Court should take up and I'm anticipating
15 argument from the State in this regard, is
16 whether Mr. [C.K.] was engaged in underlying
17 criminal conduct related to the offense
18 charged in this case, which was murder. And I
19 would suggest the answer to that is no as
20 well.

21 Specifically, in the State's
22 briefing, State pointed to two pieces of
23 evidence to support the conclusion that the
24 Plaintiff was engaged in underlying criminal
25 conduct at the time of the shooting in this

11:01:04AM

11:01:34AM

1 case. One is a motion in limine filed in the
2 underlying murder case. And the motion in
3 limine, as I'm sure the Court's well aware, is
4 not evidence of wrongdoing by the Plaintiff.

5 It's an evidentiary legal argument
6 that should not be admitted in the
7 proceedings. And, I would just suggest, not
8 only is that incompetent evidence from the
9 State today to suggest Mr. [C.K.] was, in
10 fact, engaged in underlying criminal conduct,
11 but, in fact, the motion, the fact the motion
12 was granted cuts against the State's argument,
13 because in order for that motion to be
14 granted, that underlying conduct, that alleged
15 underlying conduct should not have been
16 relevant to the murder proceedings.

17 It was ruled to be improper character
18 evidence. So, unrelated actions or, at least,
19 alleged actions, they were not part of the
20 proceedings in the murder case.

21 And the second piece of evidence the
22 State has proffered are photos taken from Mr.
23 [C.K.] home, which was shared by his
24 tenant, Valerie McNaughton, who was the victim
25 of Mr. Coleman's assault on the date of the

11:02:20AM

11:02:50AM

1 shooting, who was an admitted crack user. In
2 fact, was not able to attend or attended the
3 first trial in prison because he reoffended on
4 drug charges. In any event, photos of a
5 crackpipe taken from a home has nothing to do
6 with the issue the State advances, which is,
7 was Mr. [C.K.] engaged in criminal conduct
8 relating to the charged offense.

9 And, if I can address the seminal
10 case the State relies on, Gover versus State,
11 67 Ohio State Third, 93. Couple items on
12 Gover. It's a 1993 case dealing with a prior
13 version of the statute. Statute, as the Court
14 is aware, was amended in 2003 to allow for
15 procedural error. However, ignoring that fact
16 that Gover is a questionable precedent, there
17 is no question that subsequent to 2003, Ohio
18 courts have referenced this underlying
19 criminal conduct question. And the clear
20 precedent is, was the Plaintiff engaged in
21 other conduct related to the offense.

22 Gover involved a safecracking charge
23 against an individual who did, in fact, steal
24 the objects that were alleged to have been
25 stolen. The issue in Gover was that Gover was

11:03:44AM

11:04:18AM

1 charged with safecracking, which I don't
2 believe is currently a crime we have. But,
3 safecracking requires a safe as one of the
4 elements. A safe has to be, the objects have
5 to be removed from a safe. In fact, what
6 Gover did was remove objects from and stole
7 objects from a display case.

8 So, his conviction was overturned
9 because, technically, it was not a safe. And,
10 since he was only charged with safecracking,
11 the case was thrown out, the criminal case.

12 Gover then brought an action for
13 wrongful imprisonment, based on the fact that
14 the Court had found no one had, in fact,
15 committed safecracking. At this point, there
16 was no real procedural error. And, the
17 Supreme Court, in Gover, found that because he
18 was engaging in other criminal conduct arising
19 out of the incident for which he was initially
20 charged, public policy dictated that he should
21 not be determined to be wrongfully imprisoned.
22 That's not the issue here today.

23 In Mr. [CK] s case, he was
24 charged with murder for what was later
25 determined by the 8th district to be lawfully

11:05:12AM

11:05:38AM

1 shooting in self defense. There were no
2 charges brought. There were no allegations
3 regarding any drug abuse, which is the
4 underlying criminal conduct the State alleges
5 today should preclude his recovery.

6 As I mentioned, the State has
7 produced no evidence, in any event, to support
8 that allegation. So, whether or not there was
9 underlying drug use doesn't matter. What
10 matters is the shooting, itself, had nothing
11 to do with drugs used by Mr. [C.K.] or lack
12 of drugs used by Mr. [C.K.]

13 The issue in this case had to do with
14 a violent convicted murderer forcibly entering
15 Mr. [C.K.]'s home and attacking his tenant
16 violently. So, we would suggest that the
17 State's argument, number one, that there was
18 underlying drug use, is not supported by
19 evidence, nonetheless, competent evidence.

20 And number two, even if it had been
21 supported, even if they were successful
22 convincing the Court by a preponderance of the
23 evidence, that Mr. [C.K.] was engaged in
24 drug use at the time of the shooting, which he
25 was not, it would have no bearing on the

11:06:20AM

11:06:50AM

1 instant case.

2 That is not the case that Gover
3 encountered, where somebody had done something
4 precisely the same as the crime they were
5 charged with, but were technically exonerated
6 because of, in that case, a lack of a safe.

7 And, I'd like to address, briefly,
8 the Doss decision, which I know both parties
9 have briefed and I'll attempt to be brief in
10 that regard. Doss is only relevant in that it
11 indicates that a Plaintiff, in wrongful
12 imprisonment actions, must meet the five
13 elements of the wrongful imprisonment statute.

14 What's critical to note in Doss is
15 that it actually cuts against the State's
16 argument on underlying criminal conduct and,
17 specifically, the State would like the Court
18 to look at the four prongs of the wrongful
19 imprisonment statute.

20 Four prongs are that the individual's
21 conviction was vacated and reversed on appeal
22 as it was in this case and that the
23 prosecuting attorney in the case cannot or
24 will not seek any appeal and no criminal
25 proceeding can be brought or will be brought

11:07:28AM

11:08:00AM

1 by any prosecuting attorney.

2 Now, the reason the State wants this
3 Court to focus on the fourth prong is that,
4 obviously, the issue we addressed earlier that
5 one reading of that language would suggest
6 that anyone who has a claim, potential
7 criminal matter that does not have a statute
8 of limitations attached or which the statute
9 has not run, can never be declared wrongfully
10 imprisoned. And, I think that's a separate
11 issue from the State's argument in Gover which
12 is that the fourth prong is where the Court
13 should look to determine if there was
14 underlying criminal conduct.

15 Doss is very clear and Dunbar
16 reiterates and quotes Doss at length, that the
17 Court looks at the five elements. Court never
18 looked, in Doss, to the fourth element, the
19 fourth prong, to determine whether or not
20 there was underlying criminal conduct. And
21 what Doss says, regardless of the gloss the
22 State might want to put on it, the actual
23 language in Doss suggests that a wrongful
24 imprisonment claimant cannot prove a wrongful
25 imprisonment based solely on an appellate

11:08:38AM

11:09:02AM

1 judge vacating a felony conviction due to
2 insufficient evidence, discharging a prisoner
3 without remand for a new trial.

4 THE COURT: Now, I'm sorry
5 to interrupt. Just based on the insufficient
6 evidence, if the case was reversed on
7 insufficient evidence, then that satisfies, in
8 theory, without looking at the facts and
9 without looking at any other part of
10 subsection four of the wrongful imprisonment
11 statute, but that goes to the case cannot or
12 will not be brought back in any way. So, it's
13 reversed on sufficiency. The case is gone.
14 That's saying that there wasn't sufficient
15 evidence for a conviction. But, if it's
16 reversed on manifest weight, the difference
17 being that it can be brought.

18 MR. BEATTY: That's a good
19 point. I would respond, Your Honor, on two
20 separate lines. First is, this was a remedial
21 statute. Any ambiguity in this action must be
22 resolved in favor of the party seeking redress
23 under the statute, number one. As a corollary
24 to that, the Court should look to the intent
25 of the statute. The intent of the statute is

11:10:06AM

11:10:40AM

1 to provide compensation for individuals who
 2 were wrongfully imprisoned, under one of two
 3 theories; that there is a procedural error,
 4 which is an amendment added after Gover.
 5 That's not of much import here.

11:11:32AM

6 Number two, actual innocence. So, I
 7 would suggest to the Court that if the Court
 8 finds that the Plaintiff has proved that he is
 9 actually innocent, then withholding a
 10 determination that he's wrongfully imprisoned,
 11 simply because murder has no statute of
 12 limitations, would be contrary to the intent,
 13 remedial intent of the statute.

11:11:54AM

14 It would essentially be saying even
 15 though the legislation never mentioned statute
 16 of limitations in the prongs of the wrongful
 17 imprisonment statute, even though there is no
 18 case now suggesting that a claimant has to
 19 wait until the end of the statute of
 20 limitations period in order to be wrongfully
 21 imprisoned, the fact that the legislation did
 22 not want to allow individuals the State was
 23 investigating and was going to bring charges
 24 or had some potential to bring these charges
 25 against because, in fact, they have done

1 something wrong that should be charged, would
2 be undercutting the legislature's intent.

3 It would be essentially saying the
4 legislature accidentally carved out a group of
5 people, people who are wrongfully convicted of
6 a crime, that doesn't have a statute of
7 limitations. And, I would suggest there is no
8 basis for that in the statute.

9 Technically reading the language as
10 literally as possible and cutting against the
11 Plaintiff's interests, it's possible to argue
12 that the statute should mean that, certainly.
13 But I would suggest, A, it's ambiguous and B,
14 it's ambiguous. You should rule in favor of
15 the Plaintiff to further the interests of
16 justice.

17 THE COURT: Then I guess
18 that goes also to what is indicated in Dunbar,
19 in that it appears that Dunbar, while the fact
20 pattern is somewhat different in that, that at
21 some point in time, there was a plea of guilty
22 to a charge; that that plea was vacated.
23 However, it seems to me, in reading that case,
24 the Supreme Court still looked at it as, hey,
25 even though that guilty plea was vacated,

11:12:36AM

11:13:02AM

1 there was still, in these proceedings, a
2 guilty plea.

3 So, it appeared to me that the
4 Supreme Court was looking at that precise
5 language of the statute. And so I understand
6 in Doss how the Court is stating that if your
7 case is reversed on sufficiency, that means
8 that there wasn't sufficient evidence to
9 convict you. There is no retrial. There is
10 no resurrecting that case whatsoever,
11 regardless whether its statute of limitations
12 or not. But, you still have to look at the
13 facts, the underlying facts of the case.

14 Even though it was reversed on
15 sufficiency, that's just stating that the
16 State didn't meet beyond a reasonable doubt,
17 whereas a manifest weight, it seems to me, the
18 difference is that that case can be retried.

19 So, an appeal would be somewhat
20 different because you wouldn't necessarily
21 need to argue -- well, you still can look at
22 the fraction and still look to see whether or
23 not, you know, the Defendant was innocent or
24 not or by the preponderance of the evidence.

25 MR. EADIE:

If I could.

11:14:00AM

11:14:30AM

1 THE COURT: Because there is
2 still the opportunity to retry the case. So,
3 that's what I'm looking at in that subsection
4 four.

5 MR. EADIE: If I could
6 address that in two ways. One, in Dunbar,
7 there was no question that the Plaintiff, in
8 Dunbar, had, in fact, beaten up his wife and
9 told her to stay inside the house. It was
10 reversed and on the issue, the Court
11 specifically held that the trial court erred
12 in the exercise of its jurisdiction but did
13 not act without jurisdiction. Therefore, the
14 plea was voidable rather than void.

15 And the fact that the plea was
16 vacated on appeal does not mean that it never
17 existed. So, the trial court had said this
18 plea never existed. So, the basis for the
19 ruling at the lower level and at the appellate
20 level was this never existed at all. There
21 was no plea. So, if that plea is off the
22 table, now you meet the statutory language and
23 we can move forward.

24 So, Dunbar really only addressed the
25 fact that because the plea was just voidable,

11:15:12AM

11:15:42AM

1 not voided, there was no opportunity to create
2 that legal fix. The plea did happen. And, by
3 the way, he really did admit the acts for
4 which he was charged.

5 What I would describe as your second
6 point, this idea of, under manifest weight of
7 the evidence standard, can the Plaintiff,
8 technically, be recharged. And, this goes
9 back to our earlier argument that if you carry
10 that out to its logical conclusion, two things
11 happen. One, anybody who is convicted of a
12 crime of murder, wrongfully, even if you found
13 that Plaintiff proved that it was a wrongful
14 incarceration, that he never should have been
15 convicted, as the 8th District found, he would
16 be denied recovery under the statute merely
17 because of the statute of limitation period
18 involved.

19 And, there is nothing I would
20 suggest in the statute that indicates the
21 legislature's intent to bar an entire class of
22 people from recovery. There is no mention of
23 statute of limitations. No mention of murder
24 charges. They didn't specifically state the
25 reason. What's important is that if you find

11:16:36AM

11:17:02AM

1 there is ambiguity, there is a conflict
2 between the fact that, technically, charges
3 can always be brought, no matter how remote,
4 no matter how unlikely, no matter how many
5 times the prosecutor is forced to submit to
6 the record, they have no intention of
7 reindicting Mr. [C.K.] As it stands,
8 they'll never be entitled to wrongful
9 imprisonment.

11:17:38AM

10 When you're dealing with remedial
11 status, that ambiguity should be resolved in
12 the Plaintiff's favor. And, importantly, this
13 would not open up the door to individuals who
14 are being seriously investigated, who may well
15 be reindicted because the State could have
16 proffered an affidavit if a prosecuting
17 attorney was willing to say, under oath, we're
18 investigating Mr. [C.K.] We think Mr.
19 [C.K.] may well be guilty. We intend to
20 reindict Mr. [C.K.] when we're finished
21 investigating. They failed to do that. They
22 not only failed to provide evidence but the
23 evidence was to the contrary.

11:18:04AM

24 So, the prosecuting attorney says we
25 don't have an intent to retry. So, there

1 would be a small group of people in Mr.
2 [CK.]'s position who have proven that the
3 State, in fact, has no intention to retry
4 them, who should be granted wrongful
5 imprisonment status or maybe, more
6 particularly, should not be denied wrongful
7 imprisonment status just because the
8 particular crime that they were wrongfully
9 convicted of does not have a statute of
10 limitation.

11:18:44AM

11 Number two, I would suggest that
12 another reading of the statute would suggest
13 that anyone could be denied wrongful
14 imprisonment status regardless of the statute
15 of limitations. The State is very quick to
16 point out, no statute of limitations, we could
17 reindict. Technically, they can reindict
18 anyone. They can reindict somebody where the
19 statute of limitations passed. What will
20 happen in that instance? Even if an
21 indictment is handed down, which can happen,
22 the Judge will look at that, will hear
23 arguments on the statute of limitation issues
24 and will dismiss the case.

11:19:10AM

25 Well, that's exactly what would

1 happen to Mr. [C.K.]'s case if they
2 reindicted him, we would suggest. I would
3 suggest you can find only, again, as a matter
4 of preponderance of the evidence, that we're
5 correct in this matter. You don't have to
6 find to a standard of beyond a reasonable
7 doubt, criminal court standard, just
8 preponderance of the evidence; that you could
9 find, based on the 8th District's opinion and
10 based on Judge Matia's statements that Mr.
11 [C.K.] would be basically incapable of being
12 reconvicted; that if charges were brought,
13 they would, in fact, be dismissed.

14 If that's true, if you find that
15 charges against Mr. [C.K.] would have been
16 dismissed, they would not be permitted to go
17 to trial, the statute of limitations has
18 already won because if you read the language
19 of the statute, the language of the statute
20 says, the prosecuting attorney in the case
21 cannot or will not seek any -- I'm sorry, I
22 read the wrong section. The prosecuting
23 attorney in a case no criminal proceedings is
24 pending can be brought or will be brought by
25 any prosecuting attorney.

11:19:44AM

11:20:14AM

1 So, if you read that literally, as
2 the State insists you do and say, I don't know
3 whether the prosecuting attorney can bring an
4 action against them, it would be improper and
5 it would be a travesty and it would get
6 quickly dismissed. There is no reason to say
7 the prosecuting attorney couldn't bring a
8 claim against someone where the statute of
9 limitations has already won.

11:20:58AM

10 We see those speedy trial violations,
11 statute of limitation violations. The State
12 brings the claims outside the statute of
13 limitations and then argues that, for whatever
14 reason they might have, that statute of
15 limitations period doesn't apply.

11:21:22AM

16 So, for example, in a case where the
17 Defendant was out of state for a period of
18 time, prosecuting attorney may bring a claim
19 and they may be unsuccessful in that claim if
20 the Judge determines that, yes, they were out
21 of State, they weren't avoiding justice, that
22 doesn't follow your statute of limitations
23 period.

24 So, there we have a situation where
25 somebody, where the statute of limitations

1 period has run. The prosecuting attorney
2 brings a criminal proceeding against that
3 individual and that is defeated and dismissed
4 by the Court. So, a literal reading of the
5 statute would suggest that individuals never
6 should have been charged.

7 If the prosecuting attorney could
8 bring a charge, again, that would cut against
9 the remedial nature of the statute. Here we
10 have somebody, if the Court should so find,
11 that, lawfully, protected himself and another.
12 And, I would suggest if the Court does find,
13 by a preponderance of the evidence, Mr.

14 [CK] is actually innocent of the crime or
15 even that there was no crime committed, no
16 one's guilty of a crime, that remedial statute
17 would compel a finding that, in this
18 circumstance, given the evidence, that the
19 State will not seek to reindict Mr. [CK]
20 that he go forward under the wrongful
21 imprisonment status.

22 THE COURT: Okay.

23 MR. EADIE: Thank you, Your
24 Honor.

25 MS. GORRELL WEHRLE: Your Honor, I'm

11:22:02AM

11:22:30AM

1 going to stay at my table.

2 I think a good place to start is
3 where Mr. Eadie left off. And that is the
4 direction to all courts in the State of Ohio.
5 Where the language of a statute is ambiguous,
6 it is the duty of the Court to enforce the
7 statute as written. I'm referring to an Ohio
8 Supreme Court case, Heitzelman,
9 H-e-i-t-z-e-l-m-a-n, versus Air Experts, Inc.,
10 et al, 126 Ohio State Third 138 at page 142 in
11 the year 2010, which cited to Hubbard versus
12 Canton City School District Board of
13 Education, Ohio Supreme Court case, 97 Ohio
14 State Third, 451, 2012.

11:23:24AM

15 Next, I would like to turn to the
16 history of this wrongful imprisonment statute,
17 Your Honor, because it's pivotal at this
18 point. In 1986, the statute was created so
19 people no longer had to go before the general
20 assembly in terms of seeking compensation.

11:23:54AM

21 In 1996, the statute created
22 elements. Approximately two and a half years
23 later, pursuant to S.B. 683, the statute was
24 amended by the general assembly to add now the
25 fourth prong, which was a very important prong

1 at the time, but there hasn't been hardly any
2 blowup until the proviso was added to the
3 fifth prong, which are, of course, two
4 distinct prongs.

5 What the Court added now, whether or
6 not a criminal proceeding is not pending, they
7 have to prove is not pending. They have to
8 prove it is not pending, cannot be brought or
9 will not be brought. A criminal proceeding,
10 Your Honor. There is nothing indicating the
11 statute that this general assembly says a
12 successful conviction will be obtained, will
13 be brought. A criminal proceeding.

14 I'm not sure if some malicious
15 prosecutor would intentionally file an
16 indictment where the speedy trial rights had
17 already run. But, verbiage of the statute is,
18 will be brought. And, I think that's
19 important, especially in lieu of the argument
20 that Mr. Eadie brought regarding the statute
21 of limitations.

22 I've been working with the statute
23 now three years, Your Honor. And I have
24 researched all types of law. And if you look
25 at that fourth prong, general assembly's

11:24:58AM

11:25:36AM

1 intent is, a person was supposed to show, had
2 to show their actual innocence. 1986, that
3 was the requirement. 1989, two and a half
4 years later, they added a prong where they
5 also, a person had to show that they were not
6 engaged in any criminal conduct that was
7 pending, could be brought or would be brought.

8 Why would you, when you're already
9 having to prove your actual innocence, why
10 would the general assembly also want you to
11 prove that you were not engaged in any
12 criminal conduct that was pending, could be
13 brought, would be brought. The intent is very
14 clear that the State's coffers were not open
15 to individuals who were engaged in criminal
16 conduct. There is just no other reading of
17 the statute.

18 If you think about narcotics, the
19 statute of limitations for all criminal cases
20 is six years, except for rape cases against
21 children was 20, as well as aggravated murder
22 and murder, which is limitless. Why would the
23 general assembly put that in there? Was it a
24 mistake? Was it inadvertent? I say it was
25 very intentional, Your Honor, because for

11:26:28AM

11:27:06AM

1 every felony except for the murder case,
2 basically, a person prosecutor is authorized,
3 statutorily authorized to consider that case
4 for six years, whether to reindict it.

5 Six years is also the statute of
6 limitations to bring a wrongful imprisonment
7 case. That means for people that had their
8 cases reversed and remanded to a trial court
9 or are going to try it because there was a
10 11:27:58AM doubt in the trial Court's mind whether or not
11 there was evidence that this case is still a
12 pending case. Still, there is enough evidence
13 to show that there is still a criminal case
14 out there against the individual. There is
15 still opportunity for the prosecutor to show
16 that this individual violated the laws of the
17 State of Ohio.

18 And the general assembly, in their
19 wisdom, there can be no other interpretation,
20 11:28:26AM created this statute so that people that were
21 out there had to prove their actual innocence.
22 They had to show they were not engaged in
23 criminal conduct, at the very minimum, not
24 engaged in criminal conduct to survive prong
25 four. And, in fact, the prosecutor has six

1 years to rebring it.

2 At the same time, the statute lists
3 people that are engaging in criminal conduct
4 cannot be paid by the State of Ohio, where
5 there is evidence, I'm saying evidence, where
6 there is evidence of criminal conduct, Your
7 Honor. In Mr. [CK] 's case, evidence
8 found, not somebody coming in after the fact,
9 after the conviction, years down the road,
10 saying, he stole some money out of my wallet,
11 you know, he rammed his car into my car.

11:29:06AM

12 In this case, there is evidence.
13 There was an issued warrant which I believe
14 was Exhibit H to the State's motion for
15 summary judgement, as well as affidavit from
16 the person who procured the evidence pursuant
17 to the warrant; that they were to go back into
18 the home and they were to procure evidence or
19 seize evidence. That was any and all evidence
20 of violations of the laws of the State of
21 Ohio. The evidence seized from Mr. [C.K.] 's
22 bedroom was a crackpipe and enough bank
23 statements showing that he had been, within
24 the last month, he had been going through 10
25 to 30 thousand dollars worth of money. This

11:29:56AM

1 is the evidence the State submitted under a
2 lawfully issued warrant that no one, to date,
3 has ever contested.

4 What's more important is, you know,
5 I'm not sure what Mr. [C.K.] through his
6 attorney, is trying to imply, that he wasn't
7 engaged in crack cocaine use or crack cocaine
8 possession or for whatever reason? Because he
9 never says that. He never says, no, I never
10 did that. This was placed there. This was
11 set there. Miss McNaughton did that. For him
12 to say that it's not -- first of all, the
13 statute says, anything associated with this
14 evidence was procured because of the murder
15 charges, because of the arrest, that's why it
16 was procured.

17 Mr. [C.K.] was engaging in crack
18 cocaine use. That's why his attorney, in his
19 criminal case, didn't want to come forth and,
20 rightfully so, they didn't want it to cloud
21 the issue of whether or not murder was
22 committed. But, that doesn't say this Court
23 can't consider it, that filing a motion in
24 limine that was granted in a criminal
25 proceeding can't be considered by this Court.

11:30:46AM

11:31:22AM

1 There is no case law that says that. To the
2 opposite, the Supreme Court says there is
3 supposed to be a preview, by this Court, of
4 all evidence, not just evidence that the
5 criminal court sent out. That makes no sense.
6 The general assembly did not want to pay
7 people that were engaged in criminal conduct.
8 They wanted to pay people that fit not just --
9 Mr. Eadie says there is really two issues,
10 whether or not somebody who was wrongfully
11 imprisoned, whether or not you meet the
12 procedural error prong of the fifth
13 requirement or the actual innocence prong of
14 the fifth requirement.

15 That's incorrect, Your Honor. That's
16 incorrect by the Supreme Court. Again, for
17 the third time, in Dunbar, you have to meet,
18 you have to satisfy all five prongs. The
19 Court knows that there are five prongs and
20 they're all equal weight. You have to go
21 through all five prongs. The fourth prong is
22 not, has not had that much attention until the
23 procedural error prong, because the people had
24 such difficulty. They had to show their
25 actual innocence. But, they have to survive

11:32:10AM

11:32:40AM

1 the fourth prong.

2 In Gover, in 1993, which focuses
3 exclusively on the fourth prong, it may need
4 some more clarification, but it's still good
5 law, not only does Gover say that a person
6 can't be engaged in criminal conduct for which
7 someone was charged, but they say you can't be
8 engaged in criminal conduct for charges that
9 could have been brought. And Dunbar
10 reinforces this. That part was not reversed
11 in Dunbar. It's not just what you were
12 charged with, but were you engaged in criminal
13 conduct that you could have been charged with.

11:33:48AM

14 And, I set forth, for brevity sake, a
15 number of cases in my motion for summary
16 judgement where courts of common pleas, as
17 well as appellate courts, have followed. That
18 it is the job of the civil court, this Court,
19 in this instance, to go back and also look at
20 the criminal conduct of the individual, of
21 individuals that were associated with this
22 conviction.

11:34:14AM

23 So, not only does the statute of
24 limitations clearly apply in this matter, why
25 would it be put in? Why would we have a

1 statute of limitations and allowing
2 prosecutors to have a six-year time limit for
3 all felonies except for murder and aggravated
4 murder and some rape cases? Why would we put
5 that in there if all we have to do is say,
6 well, it doesn't really matter because this is
7 a remedial statute. You can look past that.
8 It's really more important to pay an
9 individual money. I don't think that's it at
10 all. I don't think the State of Ohio is
11 willing to open up their coffers for people
12 who consider the procedure another loophole.
13 Well, that doesn't matter that maybe I was
14 engaged in criminal activity, maybe I was
15 using crack cocaine, maybe I did some things.
16 But, I still should get paid money because I
17 was able to show that this person was on my
18 premises without authority.

19 And again, I added that into my reply
20 brief, that just because, even if the 8th
21 District could not make findings of fact that
22 found that Mr. [CK] was not guilty, was
23 not guilty because of the self defense
24 mechanism. What they said was the Castle law
25 applies. The Castle doctrine is a self

11:34:54AM

11:35:28AM

1 defense presumption which a person may assert
2 against whom the defensive force is used.
3 But, that does not give them the right to,
4 it's not a license to kill.

5 The appellate court sent it back down
6 so that the prosecutor could redo that, if
7 they elected to do so. The prosecutor elected
8 at that point in time to dismiss it without
9 prejudice. There is nothing in the record
10 that says we probably won't win. We'll
11 dismiss without prejudice. There was nothing
12 to that. It's the prosecutor's prerogative.
13 That's what he elected to do.

14 Mr. [C.K.] said the statute says
15 that all Mr. [C.K.] has to show is the
16 prosecutors aren't going to reindict right
17 now. Right now, they're not going to
18 reindict; therefore, I win and give me any
19 money I should get.

20 That's not what the prosecutor said.
21 They said, at this time, at this time, today,
22 next week, they're not going to. But, it
23 doesn't mean they're not going to in the
24 future. And, why would they? This is an
25 ongoing criminal investigation. Why would

11:36:26AM

11:36:58AM

1 they say we are going to? We have got some
2 new evidence, probably do it in the next month
3 or so, within the next year. Why would they?
4 How could they do that? This is a pending
5 open criminal investigation. Why would they
6 disclose that for purposes of Mr. [C.K.] to
7 satisfy the wrongful imprisonment statute?
8 They have much bigger fish to fry.

9 Looking at it from criminal aspects,
10 why would they share that information? It's
11 really Mr. [C.K.]'s way to preclude future
12 indictments. This is a way for him to force a
13 prosecutor to not reindict him, because once
14 this Court says, well, it doesn't look like
15 I'm going to grant this motion for Mr.
16 [C.K.] because it doesn't appear that the
17 prosecutors are going to reindict him, then
18 does that mean that the statute of limitations
19 has expired?

20 Judge Matia, contrary to the statute
21 for expunging a record, has already sealed the
22 record. So, is this Mr. [C.K.]'s way of
23 maybe preventing his witness to come back into
24 court and, you know, recant her statement?
25 Well, Miss McNaughton never did say she had a

11:37:40AM

11:38:16AM

1 gun. Is this a way of the State not being
2 able to locate any other investigation to show
3 that Mr. [CK] told somebody he
4 intentionally shot this guy, if he had to do
5 it over, he'd do it again? Is that a way to
6 preclude that evidence from coming forward?
7 Is this the way to stop a prosecution? The
8 State of Ohio's opinion is that might have
9 something to do with it.

11:39:00AM

10 The State of Ohio is not closing this
11 case. They're not willing to dismiss it with
12 prejudice. They want it to remain open and
13 there are still ongoing investigations.

11:39:34AM

14 I provided the evidence this Court
15 told me to, to the best of my ability. And,
16 the prosecutor's office has shared, to the
17 best of their ability, what their intent is.
18 There is no way for them to go any further
19 than that without potentially muddying the
20 criminal investigation. If you want to go
21 into the facts of this case, as far as the
22 actual shooting, Mr. [CK] through his
23 attorney, keeps offering these things, why he
24 was not guilty of an execution that day in
25 September, 2009; that he was shooting in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

self-defense of another person who, after protecting her, whatever, then I guess she turned on him and said that wasn't accurate.

But my question to this Court is, it appears from the Plaintiff's motions in this case that Mr. [C.K.] was acting in her defense and he had taken care of her for some time. He provided her shelter for next to no money, if anything. He provided her a cell phone. He obviously provided her food. She didn't have a job. She had a warrant out for her arrest. He was her golden goose.

And her boyfriend, who beat her, according to them, was dead. Why shouldn't she remain loyal to Mr. [C.K.] He's her golden goose. Why wouldn't she say, oh, no, it was horrible. I was being beaten. It was traumatic to me. He saved my life. Why is she, first of all, forced to come into the courtroom and then she testified to what she saw and what she heard. Why is that? Because he wasn't her golden goose anymore. She already has a warrant for her arrest. Already spent time in jail. She was not going to be found guilty of perjury. She told the truth.

11:40:38AM

11:41:06AM

1 He came over; he shot the guy.

2 And the evidence he's trying to put
3 in the record is not even plausible. He's
4 trying to say the decedent was armed and on
5 crack and, you know, a violent person who
6 committed murder. He was armed that day;
7 tries to now insert the evidence that he was
8 armed. But, I think and, again, in the wisdom
9 of the legislation and people who promulgate
10 rules, I think that's why the excited
11 utterance is such an important aspect of our
12 proceedings, criminal proceedings. At the
13 time that he was arrested, he says he thought
14 maybe it was deodorant. Doesn't say anything
15 about a gun being drawn anywhere. He doesn't
16 see a gun. He thought he saw maybe a
17 deodorant can.

11:42:06AM

18 Later on, months down the road, if
19 not close to a half year to a year, all of a
20 sudden, he saw a gun that was drawn. And,
21 that runs contrary to the background that they
22 presented in their pleadings. He has an
23 honorable military career. He worked with
24 weapons his whole life. According to the
25 coroner, the decedent was fatally shot, one of

11:42:32AM

1 the first two front wounds, for all practical
2 purposes. He was shot four more times in the
3 back. He was dead. He wasn't moving.

4 Wouldn't a person that they know they
5 shot a person but the person had a gun, that
6 was drunk or months later is what they say,
7 wouldn't you pick up that gun and at least
8 tell the police, hey, there was a fight. I
9 shot him. He's dead, but the gun's in there.
10 By that time even what they purported that
11 Miss McNaughton took the gun, hid it, that
12 comes out months afterwards, not shared with
13 the police, at least would have given a police
14 officer an opportunity to look in the area for
15 the gun. Again, Miss McNaughton was the only
16 other person there. Mr. [C.K.] killed the
17 decedent, unarmed person; at most, armed with
18 a deodorant can, at least at the time of the
19 incident.

20 That being said, he was able to avoid
21 criminal liability. He was able to avoid
22 spending a number of years in prison because
23 the 8th District reversed and remanded his
24 proceedings.

25 Currently today, given the

11:43:28AM

11:44:12AM

1 circumstances, given the law involved, he has
2 not been indicted. Prosecutor's office can
3 and they said that they may. They have not
4 said they won't. I mean, why wouldn't they?
5 Why would they say, Your Honor, for all
6 practical purposes, we're not going to. It
7 just isn't reasonable. Why would the
8 prosecutor's office say that? Why wouldn't
9 they say it's open?

11:45:06AM

10 I submit to you, Your Honor, that the
11 prosecutor's office is still inclined to; that
12 they're waiting for evidence and the law
13 provides them that.

14 Mr. [C.K.] was able to avoid
15 liability. He's out walking now. He's had,
16 according to his attorney, he needed his
17 record to be expunged so he could get a job.
18 He's out. He's a free man. Now he's able to
19 get employment. I think the State of Ohio has
20 done the best they can. That doesn't mean
21 he's entitled to compensation for the time
22 spent there, given the circumstances of this
23 case.

11:45:46AM

24 He doesn't meet the fourth prong. He
25 doesn't meet the fifth prong. There is

1 nothing in here that indicates procedural
2 error that should be reversed and remanded for
3 retrial. There is no procedural error.

4 Judge Matia did state that on the
5 record. The record was clean. There was no
6 suggestion of any type of error in that case.
7 In fact, at one point in time, Judge Matia
8 stopped it because he thought prejudicial
9 information had come forward and he set the
10 matter for a new trial. I think Judge Matia
11 kept this record as clean as possible. There
12 is no procedural error and there is no
13 question that Mr. [C.K.] to date, cannot
14 prove his actual innocence in this matter by a
15 preponderance of the evidence for the fifth
16 prong. And, the prosecutor can show an intent
17 that they may. So, he can't prove that they
18 can't and he can't prove they won't bring a
19 criminal proceeding. So, he can't meet the
20 fourth prong.

21 And the remedial statute, I think the
22 Supreme Court has been abundantly clear, they
23 are looking at the statute as it's written.
24 In fact, during the arguments of both Doss and
25 Dunbar, they asked Plaintiff's counsel, you're

11:46:30AM

11:46:54AM

1 asking us to put in records that aren't there.
2 And, they even put that in the Dunbar
3 decision. That's for the general assembly to
4 do. And, I submit that if Plaintiff's counsel
5 or Plaintiff wants to change the statute, that
6 they begin working it. They wanted to insert
7 the words that all that Plaintiff or
8 Plaintiffs need to show is that, by a
9 preponderance of the evidence, there will be a
10 successful conviction. Those seem to be the
11 words that are being interjected in here in
12 the statute.

11:47:40AM

13 THE COURT: Is that how
14 Dunbar, as far as the guilty plea went, seems
15 that guilty plea that was initially made in
16 that case was vacated. And so I guess, in
17 theory, the parties looked to it as
18 constituting the plea was never made.
19 However, when it went to the Supreme Court, in
20 light of the wrongful imprisonment statute,
21 the Supreme Court looked at the specific
22 language in the statute and said there was a
23 plea made in this case regardless of whether
24 or not it was vacated or not. There is still,
25 initially, the Defendant pled guilty and even

11:48:10AM

1 though later on it was vacated and Defendant
2 went to trial and was convicted, he still,
3 when this case was initiated, pled guilty.

4 MS. GORRELL WEHRLE: Yes, Your Honor.
5 Yes. That's exactly it. He pled guilty.

6 THE COURT: The specific
7 language of the statute?

8 MS. GORRELL WEHRLE: Absolutely.
9 That seems to be the gist of where the Court
10 is going. They're looking at the statute as
11 written.

11:48:56AM

12 But, more importantly, during that
13 oral argument, counsel said he pled guilty to
14 what he did. And counsel said, well, he
15 served time for that. But, he pled guilty to
16 the criminal conduct of the domestic violence.
17 He pled guilty to that. He admitted. And,
18 Plaintiff's counsel came back, well, again, he
19 served his time for that. And Pfeifer says,
20 well, your definition of criminal conduct --
21 or he didn't use the words criminal conduct --
22 of doing a crime is different than mine. So,
23 the person pled guilty to the criminal
24 conduct.

11:49:36AM

25 And, I admit, we were hoping it would

1 make it into the decision, but it did not.
2 That's an important aspect. We don't want,
3 State of Ohio does not want to pay people that
4 are involved in criminal conduct.

5 And, if I may, Your Honor, I'd like
6 to wrap up just with Gover. First of all,
7 Gover, back in 1993, again, people are trying
8 to relate Gover, saying, well, that was
9 decided before the statute was amended. Gover
10 has nothing to do with the fifth prong or
11 procedural error prong.

12 It focuses exclusively on the fourth
13 prong. There are five separate factors. The
14 claimant has to meet each one. The wrongful
15 imprisonment statute demands that claimants
16 seeking compensation for wrongful imprisonment
17 must prove at the time of the instant offense
18 for which they were charged, they were not
19 engaged in any criminal conduct.

20 I want to correct one thing I said in
21 my brief, in my summary judgement brief. I
22 talked about there are two steps to this
23 wrongful imprisonment statute; first, coming
24 to the Court of Common Pleas for declaratory
25 action and thereafter going to the Court of

11:50:36AM

11:51:14AM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Claims for monetary judgement. And, it appears that Plaintiffs have the impression that because the Court of Appeals has reversed and remanded his conviction, that that, in and of itself, is somehow use of a self defense mechanism that then allows him to be considered innocent. But, again, that's contrary to the Ohio Supreme Court.

11:54:44AM

There is no purpose in the statute which would serve as a rule which would allow a person acquitted of any charges, by reason of self defense, to, in effect, skip this step and go directly to the Court of Claims.

With that, I end, Your Honor. Again, [CK.] has not met all prongs of the wrongful imprisonment statute. He needs to meet all five prongs, including prong four.

11:55:24AM

With that, State of Ohio would ask that you take into consideration the affidavits attached, the evidence as shown, trial transcript, pleadings, motion for summary judgement, brief in opposition to Plaintiff's attempt to try to force the criminal trial court to dismiss this case with prejudice, as well as the fact that the

1 Plaintiff, himself, never offered any type of
2 affidavit.

3 Does the Court have any questions?

4 THE COURT: No. Thank you.

5 MR. EADIE: May I have a
6 brief rebuttal?

7 THE COURT: You may.

8 MR. EADIE: I'll try to keep
9 this very brief. Just a few points.

11:56:02AM

10 THE COURT: We have all the
11 time in the world.

12 MR. BEATTY: Okay.

13 First, I think the key here is, in
14 terms of the statutory language, what does
15 justice require in this case? Without being
16 too lengthy, let me suggest that a reading of
17 the criminal transcript which was provided in
18 full, so there is plenty of facts on the
19 record from this Court to make a determination
20 of Mr. [C.K.]'s actual innocence.

11:56:32AM

21 8th District looked at the entire
22 records under manifest weight of the evidence,
23 looked at Judge Matia's decision and, if
24 deemed necessary, Mr. [C.K.] is prepared to
25 testify today about what he did on the day of

1 the shooting. He's already done that. So,
2 it's already on the record what his claims are
3 in this case. And, I won't go into too much
4 detail with Miss McNaughton. That's addressed
5 in our brief at length about her lack of
6 credibility, her changing story.

7 What I would suggest is that the
8 State is quite correct when it reads that
9 line, an ordinary meaning of the statute
10 should be used. I think that's your point in
11 raising Dunbar, unless the State said the
12 intention of the legislature is otherwise.
13 And what this Court I would suggest should do
14 is start with the fact that this is a remedial
15 statute. A remedial statute would be
16 permitted to effect justice. What is justice
17 in a wrongful imprisonment case? Justice is
18 if this Court determines that Mr. [C.K.]
19 demonstrated he was wrongfully imprisoned,
20 that he did not commit the crimes alleged,
21 that he is, in fact, actually innocent; the
22 same determination the 8th District made,
23 although it did not dismiss the charges, the
24 case, on the manifest weight of the evidence
25 standard, if this Court makes that

11:57:14AM

11:57:46AM

1 determination, then Mr. [C.K.] would be
2 deemed a wrongfully imprisoned individual.

3 Now we addressed the fact that
4 strictly reading the fourth element, it would
5 suggest that anyone who the statute of
6 limitations has not passed cannot be
7 determined to be wrongfully imprisoned.

8 THE COURT: And reversed on
9 manifest weight.

10 MR. EADIE: Certainly.
11 Because, as you pointed out, if it's reversed,
12 if they're duly discharged or if Mr.

13 [C.K.]'s trial counsel had asked for
14 dismissal without prejudice or asked for
15 double jeopardy or any number of ways that
16 this case could forever be discharged,
17 certainly. But, the State made one
18 misstatement discussing that it would be
19 prosecutorial misconduct to bring a charge
20 outside of the statute of limitations.

21 Well, I have that case, Jenkins
22 versus State of Ohio. 2010-Ohio-28534. In
23 fact, opposing counsel and I argued that case
24 in the 10th District on appeal. After Miss
25 Jenkins, in that case, was determined to have

11:58:28AM

11:58:54AM

1 been wrongfully imprisoned, without getting
2 into the specifics of this case too much, it's
3 public record, that was a case where charges
4 were brought more than twice. The period of
5 the statute of limitations, six-year statute
6 of limitations in that case, prosecutor
7 brought the charges well outside the statute
8 of limitations. That was reversed. And that
9 case is similar to this case. The appellate
10 court, in that case, was shocked that the
11 prosecutor had brought charges that far
12 outside the statute of limitations. But, it
13 happens. And, we brought a claim for wrongful
14 imprisonment in that case.

15 So, why is that important? Because
16 if you take a strict reading of the fourth
17 element, nobody should be entitled to wrongful
18 imprisonment designation because anybody,
19 regardless of statute of limitations, can, in
20 fact, have criminal proceedings brought.

21 So, the question is, where does that
22 leave this Court if you were to accept the
23 argument that, as written, a literal
24 interpretation would be no one could be or at
25 least, State's argument, it should be no one

11:59:44AM

12:00:12PM

1 could ever be successful because, technically,
2 the State could always bring charges even
3 outside the statute of limitations. Well, I
4 think that leaves you with discretion.

5 I'll just correct one point.

6 Opposing counsel indicated that any criminal
7 conduct language is in the statute. I'm sure
8 that was a misstatement. The words underlying
9 criminal conduct do not appear in the statute.
10 That is out of Gover. And earlier, I think
11 out of Walden. That's not based on the
12 statutory language. If we look at this
13 statutory language, no criminal proceeding is
14 pending, can be brought or will be brought. I
15 think we've proved no criminal proceeding is
16 pending. I think we've proved by a
17 preponderance of the evidence the State of
18 Ohio is not going to bring charges against Mr.
19 [C.K.]. And, I would challenge opposing
20 counsel to read the statement that the
21 prosecutor has shown intent to reindict.
22 That's not reflected in the record. The
23 evidence in the record is from the transcript.
24 This is the Judge asking. Do you ever intend
25 to reindict. And their answer was, not at

12:00:54PM

12:01:36PM

1 this time. Not at this time.

2 So, as of today, they don't ever
3 intend to reindict. That's clear on the
4 record and affidavit they submitted doesn't
5 say anything different. So, the third part in
6 this sentence can be brought. I think where
7 the Court is understandably looking, because
8 technically, in murder, it could be brought.
9 Technically, I would suggest that the cases I
10 indicated earlier, it could be brought after
11 the statute of limitations, in a case that's
12 not unlimited statute of limitations, because
13 it was, in that case, he was convicted,
14 wrongfully convicted 14 years after allegedly
15 committing a crime.

12:02:22PM

16 What's key there, I would just
17 suggest briefly, is that gives you the
18 discretion to look at this record, as you've
19 done, briefing facts introduced by the
20 parties, look at this record and say, no, the
21 Plaintiff has to prove nothing.

12:02:48PM

22 This Court shouldn't be bound by the
23 8th District criminal proceedings and it's
24 impossible to suggest a criminal court, later,
25 would be bound by your finding on

1 preponderance of the evidence standard. But
2 if you find by a preponderance of the evidence
3 that the Plaintiff has proved, given the fact
4 in this case that a claim could not be brought
5 because it would be dismissed.

6 But, it would be different, though,
7 in the case of Jenkins, where the State
8 brought a case that had a case indicted that
9 was out of trial time or the statute of
10 limitations had run and then a motion to
11 dismiss would be appropriate. Here, a motion
12 to dismiss may be filed, but it wouldn't be
13 appropriate on the statute of limitations
14 issue. The point being, I would suggest the
15 State is inserting the words statute of
16 limitations into the statute. If you look, I
17 think it's easy to think, can be brought,
18 should logically refer to statute of
19 limitations. That's the position the State
20 has taken. Couldn't they just have said it's
21 outside the statute of limitations, if they
22 really intended that?

23 THE COURT: It also could be
24 that this was reversed automatically, manifest
25 weight, that's sufficiency. So, if this case

12:03:32PM

12:04:02PM

1 was reversed on sufficiency, as I said
2 earlier, then that would be the fourth prong
3 you meet, because it is could not be brought.

4 MR. EADIE: Well --

5 THE COURT: Because there is
6 no legal right to ever have that case
7 indicted. And I believe in Dunbar, it
8 discusses that situation, where it's
9 sufficiency, whether it can ever be brought.

10 Then you look at prong five, whether
11 or not there is actual innocence and then you
12 go to the facts, because where it is
13 sufficiency, it could never be brought.
14 Again, you're not saying that there wasn't
15 evidence. There wasn't enough sufficient
16 evidence to convict the Defendant.

17 But you could still look at what the
18 evidence was, even though you can't bring the
19 case back and you meet prong number four,
20 there is still that prong number five, whether
21 or not he's actually innocent.

22 MR. EADIE: You're right. I
23 would suggest those are two different things.
24 However, I would challenge the Court on this
25 "can be brought" language, because it doesn't

12:04:52PM

12:05:26PM

1 say statute of limitations; although, it
2 should be clear that if the statute of
3 limitations are past, that's the entire
4 State's argument, there is no statute of
5 limitations for murder. Therefore, you could
6 reindict for murder.

7 So, if that's correct, if the statute
8 of limitations means it can never be brought,
9 then Jenkins means and all the cases like it
10 means that a criminal proceeding can be
11 brought, I would suggest. But, it fails on
12 its merits and will necessarily fail on its
13 merits, cannot be wrongful imprisonment. And,
14 that's just not the case.

15 So we can come up with any number of
16 ways where we agree you can't bring charges in
17 that case. You can't start a criminal
18 proceeding in that case. But what we know in
19 reality is you can. You can start a criminal
20 proceeding past the statute of limitations.
21 It happens. And, as you said, this would be
22 motion practice in the Jenkins' case, which
23 you can see from the records, they lost that
24 motion practice. So not only were criminal
25 proceedings brought, initiated, he was

12:06:08PM

12:06:38PM

1 convicted more than twice past the time for
2 the statute of limitations. He was convicted
3 and we got a wrongful imprisonment designation
4 from that conviction.

5 So, if that language is correct, if
6 "can be brought" means is allowed to file and
7 you're technically allowed to file murder
8 cases, so you can never have murder. So,
9 that's inserting language into the statute.
10 That's for the Court to find by a
11 preponderance of the evidence.

12 So, for example, in a case like that
13 where the statute has run but the Defendant
14 now Plaintiff's wrongful imprisonment action
15 has been decided, that's a perfect example.
16 Someone is indicted. They run. They wait six
17 years. They come back and they suggest that
18 after they're convicted they're wrongfully
19 imprisoned. Well, the Court, sitting as you
20 are, Your Honor, could say, well, technically,
21 it's outside the statute of limitations, six
22 years.

23 But, you were going gone. You were
24 gone over that period. So, I don't think that
25 proceedings could be brought. We're asking

12:07:20PM

12:07:54PM

1 you to do the same thing here, to use the
2 facts of the case and to say, as a matter of
3 preponderance of the evidence, I don't think
4 you can bring charges against this guy and I
5 don't think you will. And, that's not going
6 to happen in many murder cases. It's left to
7 your discretion.

8 A section of the Revised Code
9 opposing counsel read regarding legislative
10 interpretation from the 2nd and 8th District
11 case law dealing with remedial statutes, no
12 question, case law is clear this is a remedial
13 statute. And when a remedial statute, Ohio
14 Revised Code 1.11 says remedial statute should
15 be liberally construed in order to assist the
16 parties in obtaining justice.

17 So, that brings me back to my first
18 point on rebuttal. What does justice require?
19 The State would argue for a hypertechanical
20 reading. And, I appreciate the concern about
21 Dunbar saying, gee, you did plead guilty but
22 that was looking at, clearly, language about
23 did not plead guilty to. And, if the State of
24 Ohio general had added clear language like
25 that to the statute, there is no statute of

12:08:48PM

12:09:26PM

1 limitations available. The statute of
2 limitations has run. Then we'd be talking
3 about Dunbar and we'd be arguing public policy
4 grounds on why that shouldn't apply to us.

5 That is not what the general assembly
6 did. They didn't say, statute of limitations
7 has already run. And, it would make sense for
8 them not to do that, understanding that the
9 statute of limitations may have run, but
10 criminal proceedings could still be brought.
11 And, you could sit there as a Judge and look
12 at the record and say, gee, you've been in
13 hiding for ten years. The statute of
14 limitations has run but you've been in hiding
15 ten years. You go to the intent of the
16 legislature, go by the words of the statute,
17 that you have discretion to say, you can't
18 bring criminal proceedings here.

19 It's clear, testimony is unequivocal.
12:10:08PM 20 I draw your attention to the 8th District
21 decision because while I agree the manifest
22 weight of the evidence decision is not
23 dispositive, you are not bound by that to say
24 I must say you're already wrongfully
25 imprisoned. I suggest there is legal argument

1 for that but that point, for purposes of
2 argument, that is not binding on you.

3 They still reviewed the facts and
4 found, paragraph 27, it is undisputed that
5 Coleman entered [C.K.]'s home three times
6 without permission and against protestation
7 and that he ignored all demands to leave.
8 Paragraph 29, [C.K.]'s testimony establishes
9 that he had a bona fide belief that he was in
10 imminent danger of death or great bodily harm
11 at the hands of Coleman and that his only
12 means of escape was use of force.

13 And then finally they noted,
14 paragraph 30, under the Castle doctrine,
15 [C.K.] had no duty to retreat. [C.K.] has
16 established all three elements of his
17 affirmative defense of self defense and the
18 Castle doctrine fully applies to the facts of
19 the instant case.

20 I would suggest that whether it's
21 based on 8th District reading or your own
22 reading of the transcript and contrary to the
23 arguments from opposing counsel, that a
24 reading of the transcript of the trial,
25 reading of the evidence that's actually before

12:11:34PM

12:12:06PM

1 this Court, makes it clear that [C.K.]
2 is actually innocent of murder. And that if
3 you can make that finding by a preponderance
4 of the evidence, I suggest you can also make a
5 finding that he cannot be, criminal
6 proceedings can't be brought against him.

7 So, I think those findings go hand in
8 hand. If you find that, based on the records
9 as the 8th District had, that the Castle
10 doctrine applies, then you can make the civil
11 finding to a preponderance of the evidence
12 that criminal proceedings cannot be brought,
13 the same way you could make that finding if
14 the statute of limitations had run in another
15 case or you could make a finding that charges
16 could be brought in a criminal proceeding, can
17 be brought, even though the statute of
18 limitations has run.

19 If you're confronted with a situation
20 where someone had, for example, avoided
21 justice for ten years, allowed the statute of
22 limitations to run, I suggest that you could
23 find, in that situation, the criminal
24 proceedings can be brought. So, I think the
25 statute of limitations, language from the

12:12:56PM

12:13:20PM

1 State, is a red herring. State of limitations
2 doesn't appear in the statute. It's just not
3 used. If the question is, what do the words,
4 "can be brought" mean, it can't mean statute
5 of limitations, because we do charge people
6 with crimes and we do convict them after the
7 statute of limitations period has run.

8 So, what does it mean? It means you
9 have the discretion to look at the records and
10 say, can they bring criminal proceedings or
11 not. And, one reason you might say they
12 cannot is statute of limitations. One reason
13 you may say they can, despite statute of
14 limitations is that someone fled. And one
15 reason in this case that you can find that
16 they can't bring criminal proceedings is
17 because the evidence goes as the 8th District
18 said. Reviewing the whole record, clearly,
19 the Castle doctrine applies to Mr. [C.K.]'s
20 case. And, if you make that finding that the
21 Castle doctrine applies, by a preponderance of
22 the evidence, then justice for remedial
23 statute requires, I would suggest, finding
24 that Mr. [C.K.] is wrongfully imprisoned.
25 That's not inserting language. Inserting

12:13:54PM

12:14:22PM

1 language is the State's invitation to put the
2 words, statute of limitations has run, as a
3 substitute for criminal proceedings can be
4 brought.

5 THE COURT: In looking at
6 the 8th District, in using manifest weight and
7 evidence that was supplied by the State, which
8 you responded to as well, there is nothing
9 that indicates that this case will never be
10 brought back.

11 MR. BEATTY: Might I suggest,
12 that's a very valid point. The reason for my
13 argument, assume you find you're not bound by
14 factual findings that have been remanded, I
15 would suggest you could make the same factual
16 findings, you ought to make the same factual
17 findings as the 8th District did from the
18 record. They reviewed that entire record
19 before this Court.

20 It is undisputed that Coleman entered
21 his home three times without permission and
22 against protestations and that he ignored all
23 demands to leave. That's a factual finding
24 you can make from the record. If you make the
25 factual finding, [C.K.] 's testimony

12:16:14PM

12:16:54PM

1 establishes that he had a bona fide belief
2 that he was in imminent danger of death or
3 great bodily harm at the hands of Coleman and
4 that his only means of escape was the use of
5 force.

6 If you make that factual finding from
7 the records and if you make the factual
8 finding and maybe this is a legal finding,
9 that under the Castle doctrine, Mr. [C.K.]
10 had no duty to retreat inside his own home and
11 the subsequent finding, [C.K.] established
12 all three elements of the affirmative defense
13 of self defense.

14 If you were to make those findings
15 from the records, same way 8th District did,
16 that you can determine on the record, as a
17 matter of law, looking at what's before you,
18 that there is no way criminal proceedings can
19 be brought. And, I would suggest "can be
20 brought" cannot mean a reindictment is
21 available. If it means a reindictment is
22 available, an indictment's always available.
23 And the Jenkins' decision is clear, six years,
24 statute of limitations, charged and convicted
25 at 14 years, 13 or 14, but more than twice the

12:17:28PM

12:18:00PM

1 amount of the statute of limitations, the
2 appellate court said. So, it can be brought
3 outside the statute of limitations, because
4 there is the case to prove that it happens.
5 It has to have something to do with the merits
6 of the cases. And, that's what the general
7 assembly wanted in that section, that
8 nothing's pending, nothing can be brought or
9 will be brought.

12:18:42PM 10 They want the Judge to be able to
11 call a bad case for what it is. They want the
12 Judge to look at this and say, look, I know
13 that was reversed and I know you didn't do
14 what they charged you with, but give me a
15 break. They can charge you. They can bring
16 criminal proceedings against you. There is no
17 reason they can't. And, if your explanation
18 for that was because the statute of
19 limitations passed and the State said, hold
12:19:08PM 20 on, Your Honor, they were out of the
21 jurisdiction, we should be able to charge him,
22 then you might change your finding and say,
23 okay, they can't be brought. But, it can't
24 only mean beyond the statute of limitations.

25 And the final corollary, if it did,

1 nobody who was wrongfully convicted of murder
2 would ever be entitled to a wrongful
3 imprisonment designation. And that language
4 is certainly not the intent of the statute.

5 If I may, I'll just end on one point.
6 This whole question of drug use can be
7 resolved. We heard, at length, this question
8 about criminal behavior. And, I won't revisit
9 it. The arguments we made on brief, they're
10 sufficient. I would just say that entire
11 issue, number one, no competent evidence of
12 criminal conduct has been submitted by the
13 State. She referred to two things, that a
14 warrant was issued and affidavit was sworn
15 out. That's not competent evidence of a
16 crime.

17 More to the point, the language out
18 of Gover, it's not in the statute, the
19 language out of Gover is engaging in other
20 criminal conduct arising out of the incident
21 for which they were initially charged. I
22 don't think there is credible evidence that
23 the Plaintiff was engaged in any criminal
24 conduct, period. But, even if you looked at a
25 photo of drug paraphernalia, well, that's some

12:19:52PM

12:20:36PM

1 evidence of some criminal conduct going on.
2 But, there is no evidence that it's arising
3 out of the incident, the shooting death that
4 was charged in the case. There is just
5 nothing and that's why the Court granted the
6 motion in limine in the criminal case. If it
7 related to the shooting, they would have let
8 that evidence in. That's the basis of 404.
9 That can't be used against you as to whether
10 or not you did this crime. So, I would just
11 like to say that.

12 We're not going to address the
13 unsupported allegations raised in arguments.
14 I would just suggest none of that matters.
15 There is no competent evidence that any of
16 this arises out of the shooting death of Mr.
17 Coleman.

18 Thank you.

19 THE COURT: Okay. Thank
20 you.

21 MR. EADIE: Unless you have
22 any questions.

23 THE COURT: No. Thanks, so
24 much.

25 MS. GORRELL WEHRLE: Your Honor, I

12:21:32PM

12:21:52PM

1 have a few things, if I may.

2 Thank you for the opportunity. For
3 whatever reason, Mr. Eadie left out the rest
4 of the sentence. Judge Matia inquired of Miss
5 Smilanick about whether or not she planned to
6 reindict. Specifically she said, at this
7 point, we're not doing it right now -- that's
8 page 6 of 14 of the transcript -- but that
9 doesn't mean in the future we aren't.

12:23:16PM

10 In fact, she says, the State's
11 objecting to both the application to seal all
12 official records and the motion to dismiss
13 with prejudice. The State already dismissed
14 it without prejudice.

15 Again, this is the prosecutor
16 speaking, Your Honor. And the State argues
17 that that should stand because the statute of
18 limitations is that murder never expires and
19 that we have the right to bring this case
20 back.

12:23:36PM

21 That goes hand in hand with the
22 verbiage of the statute. Mr. [C.K.] needs
23 to prove by a preponderance of the evidence
24 that there is no criminal proceedings that
25 cannot be brought or won't be brought. That's

1 what he needs to prove, not that there is a
2 statute of limitations problem. Mr. [C.K.]
3 as is anybody whose case has been reversed and
4 remanded to trial and who seeks wrongful
5 imprisonment compensation has a right to go to
6 the prosecutors, just as his attorney said and
7 say, what is your intent. I mean, if the
8 prosecutor is not going to bring it back, then
9 there is no criminal proceedings. That's why
10 the general assembly put the onerous on the
11 claimant to show that there is nothing
12 pending, there is nothing that would be
13 brought or can be brought.

14 That can be proved very easily if the
15 prosecutor is not intending to bring something
16 back. In the same sense, the statute doesn't
17 say that the Court can usurp the prosecutor's
18 authority to do that when they were showing
19 clear intent that there is a possibility and
20 they're entitled to do so.

21 So, that's why I would suggest the
22 general assembly didn't say if there is a
23 statute of limitations in place then you can't
24 satisfy the statute.

25 The reason the general assembly did

12:24:24PM

12:24:48PM

1 that was to give the claimant the opportunity
2 to prove that. If it couldn't be proved, it
3 can't be proved, he's not entitled to be
4 declared wrongfully imprisoned.

5 For some reason, I'm not sure, Mr.
6 Eadie keeps quoting a finding of fact by the
7 8th District as to Mr. [CK] 's innocence.
8 They can't find a finding of fact. They
9 couldn't. They were sitting as a 13th juror
10 in a manifest weight of the evidence ruling
11 in which an individual seeking remuneration
12 for wrongful imprisonment may not simply rely
13 on an appellate court reversing anything, but
14 affirmatively demonstrate he did not commit
15 the crime for which he was convicted. Page
16 versus State, 1999, State of Ohio, Lexis 3116.

17 The 8th District disagrees with the
18 factfinders' resolution of the testimony and
19 remanded the matter to the lower court for new
20 trial and to cure any potential error. There
21 is no finding of facts. The 8th District
22 found that the Castle doctrine applied. That
23 means that there was a rebuttable presumption
24 that he could utilize a self defense mechanism
25 in this case. Accordingly then, reluctantly

12:25:30PM

12:26:06PM

1 or not, it reversed it back, entitling the
2 prosecutor to bring forth the evidence that
3 could rebut the same. That's what happened.

4 The 8th District found the Castle
5 doctrine applied and they reversed and
6 remanded it back so that the prosecutor could
7 address that self defense presumption.
8 That's what was reversed back. There wasn't a
9 finding of fact. That's for this Court to
10 find from the evidence submitted. And, I'm
11 not sure why Mr. Eadie says that the only
12 thing I have supplied was a warrant and
13 affidavit, which is evidence. Sworn testimony
14 is evidence as to what was found and where it
15 was found. And, again, there was a criminal
16 trial. Whether or not it was a part of the
17 criminal trial, it meant enough that Mr.
18 [C.K.] didn't want it there to sway the
19 prosecutors, because he was engaged in that.
20 That's what the statute says.

21 The statute says any criminal
22 conduct. And, that was again brought up by
23 Gover as well as in Dunbar. And, in talking
24 about the Jenkins' case, the statute runs,
25 prosecutor is not eligible to bring a criminal

12:27:00PM

12:27:40PM

1 action because the statute has run. Mr.
2 Jenkins fled to Texas for 14 years and the
3 only testimony was his own testimony that he
4 lived home, that he lived with his mother.

5 He said that the drug enforcement
6 agents that he promised to help, cooperate
7 with to find the kingpin in California, that
8 he went up to them and said, after they said,
9 will you help? We won't charge you if you
10 cooperate. They were wanting him to
11 cooperate. He said, sure, I'll help. I'll
12 help. After Mr. Jenkins said he's going to
13 help these people find the kingpin out in
14 California, his testimony was he went up to
15 some drug enforcement agent and said, well,
16 I'm leaving for Texas.

17 During the Jenkins' criminal trial,
18 the drug enforcement agent went to his
19 mother's home to find him. If he truly told
20 somebody that he's going to Texas, I don't
21 think they said, oh, go ahead, have a good
22 life, I guess we really don't need you.
23 You're obviously linked to some drug kingpin
24 in California. Have a good life. Don't
25 bother giving us a forwarding address. For

12:28:34PM

12:29:06PM

1 whatever reason, I guess they still needed
2 him. They went to his mother's home in search
3 of him. And so the prosecutors then did bring
4 an action once they found him back in Ohio
5 some years later. But, the appellate court
6 did reverse and the decision is readily
7 available to this Court, that the appellate
8 court said that the State had not, county
9 prosecutor had not shown sufficient evidence
10 that they made any deliberate intent in
11 locating him and therefore they weren't going
12 to allow the statute of limitations to toll.

13 So, again, general assembly was not
14 saying once the statute of limitations -- and
15 I, in no way, argued that; if I did, I
16 withdraw it -- goes outside there, then you
17 can't. The general assembly verbiage is,
18 can't bring it. So, therefore, they're giving
19 the claimant an opportunity to show and in
20 this case, the prosecutor in this case is
21 saying that they can and foreseeably will
22 bring a prosecution against Mr. [CK]

23 Thank you.

24 THE COURT: All right.

25 Okay. Thank you. So, I will have a decision

12:29:48PM

12:30:30PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for you in the next couple of weeks.

(Thereupon, Court was adjourned.)

- - -

C E R T I F I C A T E

I, Jeniffer L. Tokar, Official
 Court Reporter for the Court of Common
 Pleas, Cuyahoga County, Ohio, do hereby
 certify that as such reporter I took down
 in stenotype all of the proceedings had in
 said Court of Common Pleas in the
 above-entitled cause; that I have
 transcribed my said stenotype notes into
 typewritten form, as appears in the
 foregoing Transcript of Proceedings; that
 said transcript is a complete record of the
 proceedings had in the trial of said cause
 and constitutes a true and correct
 Transcript of Proceedings had therein.

Jeniffer L. Tokar

 Jeniffer L. Tokar, RMR
 Official Court Reporter
 Cuyahoga County, Ohio

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUN 02 2014

FILED

The Supreme Court of Ohio

MAY 28 2014

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2014-0276

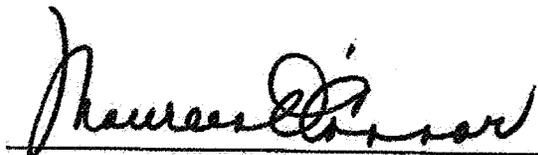
v.

ENTRY

C.K.

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Cuyahoga County Court of Appeals; No. 99886)



Maureen O'Connor
Chief Justice

SEALED
Court of Appeals of Ohio

RECEIVED
NOV 22 2013

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99886

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

C.K.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED; REMANDED FOR
CORRECTION OF JOURNAL ENTRY

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-529206

BEFORE: Celebrezze, P.J., E.A. Gallagher, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: November 21, 2013

ATTORNEYS FOR APPELLANT

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Diane Smilanick
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Nicholas A. DiCello
William B. Eadie
Spangenberg Shibley & Liber, L.L.P.
1001 Lakeside Avenue, East
Suite 1700
Cleveland, Ohio 44114

FILED AND JOURNALIZED
PER APP.R. 22(C)

NOV 21 2013

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By [Signature] Deputy

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} This is an appeal by the state regarding the trial court's granting of appellee's motion to seal all official records of his arrest. For the reasons stated below, we affirm the judgment of the trial court.

I. Factual and Procedural History

{¶2} On October 13, 2009, defendant-appellee, C.K.,¹ was indicted by the Cuyahoga County Grand Jury for murder in violation of R.C. 2903.02(A), with one- and three-year firearm specifications. A jury trial commenced on March 1, 2010.

{¶3} At the close of the state's questioning of its primary witness, Valerie McNaughton, the prosecutor asked her, "did [C.K.] ever express a willingness or desire to kill Andre prior to killing him?" Immediately, the defense objected, but before the judge could respond to the objection, Valerie responded, "yeah." The court offered a curative instruction and dismissed the jury. The court then asked the defense whether they were moving for a mistrial. The defense responded in the affirmative, the judge declared a mistrial, and a new trial date was scheduled for June 7, 2010. On March 17, 2010, appellee filed a motion to dismiss the case because of double jeopardy. On April 22, 2010, the trial court denied appellee's motion, and a second trial commenced in August 2010.

¹ The anonymity of the defendant is preserved in accordance with this court's established Guidelines for Sealing Records on Criminal Appeals.

{¶4} At the conclusion of trial, the jury convicted appellee of murder in violation of R.C. 2903.02(A), with one- and three-year firearm specifications. Appellee was sentenced to a prison term of 15 years to life on the murder charge and to a mandatory three years on the firearm specification. However, on appeal, this court reversed and remanded the case for a new trial, finding that C.K.'s murder conviction was against the manifest weight of the evidence. *State v. [C.K.]*, 195 Ohio App.3d 343, 2011-Ohio-4814, 959 N.E.2d 1097, ¶ 26-31 (8th Dist.). On February 26, 2012, the state dismissed the case without prejudice.

{¶5} On February 5, 2013, appellee filed an application to seal all official records and a motion to dismiss the underlying criminal charges with prejudice. The state filed a brief in opposition to the application for sealing records of conviction on March 22, 2013. The state also opposed the motion to dismiss. On April 16, 2013, the trial court held a hearing on the pending motions.

{¶6} At the hearing, appellee argued that he had a legitimate interest in sealing the records so that he could obtain gainful employment. In opposing the motion, the state argued that it has a legitimate governmental interest in maintaining criminal records such as appellee's so that the public is aware of who has an arrest record or has been convicted of certain crimes.

{¶7} At the conclusion of the hearing, the trial court determined that appellee's interest in sealing the official record of his criminal proceedings outweighed any legitimate government interest the state had in keeping them

open. Accordingly, the trial court granted appellee's application to seal all official records, but denied his motion to dismiss the underlying criminal charges with prejudice.

{¶8} The state now brings this timely appeal, raising one assignment of error for review.

II. Law and Analysis

{¶9} In its sole assignment of error, the state argues that the trial court abused its discretion when it granted appellee's application to seal all official records. Specifically, the state contends that appellee was not eligible to have his records sealed because there is no statute of limitations for the crime of murder. For the foregoing reasons, we find no merit to the state's argument.

{¶10} In general, a trial court's decision to grant or deny a request to seal records is reviewed under an abuse of discretion standard. *In re Fuller*, 10th Dist. Franklin No. 11AP-579, 2011-Ohio-6673, ¶ 7. An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable. *State ex rel. Nese v. State Teachers Retirement Bd. of Ohio*, 136 Ohio St.3d 103, 2013-Ohio-1777, 991 N.E.2d 218, ¶ 25.

{¶11} R.C. 2953.52 sets forth the procedure by which trial courts may seal a defendant's record following a dismissal of the charges. Once the defendant files an application to seal the record,

the court shall set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons the prosecutor believes justify a denial of the application.

R.C. 2953.52(B)(1).

{¶12} In considering the application pursuant to R.C. 2953.52(B)(2), the trial court shall:

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed * * *; (ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

R.C. 2953.52(B)(2)(a)-(d).

{¶13} If the court determines, after complying with division (B)(2), that (1) the complaint, indictment, or information in the case was dismissed, (2) that no criminal proceedings are pending against the person, and (3) that the interest of the person having the records pertaining to the case are not outweighed by

any legitimate governmental needs to maintain such records, then "the court shall issue an order directing that all official records pertaining to the case be sealed and that * * * the proceedings in the case be deemed not to have occurred." R.C. 2953.52(B)(4).

{¶14} In the case at hand, it is undisputed that the underlying criminal complaint was dismissed and that no charges were pending against appellee at the time he filed his application to seal his criminal record. Moreover, the record reflects that the trial court adequately balanced the competing interests of the parties before determining that appellee's interest in obtaining gainful employment was not outweighed by the legitimate needs of the government to maintain the records.

{¶15} Because the trial court properly weighed the relevant factors delineated under R.C. 2953.52(B)(2) and (B)(4), we are unable to conclude that the trial court abused its discretion.

{¶16} Finally, we find no merit to the state's argument that the trial court's judgment was improper based on the fact that the statute of limitations on the dismissed murder charge has not, and can not, expire. While a trial court must determine pursuant to R.C. 2953.52(B)(2)(a)(ii) whether the relevant statute of limitations has expired if the complaint, indictment, or information in the case was dismissed without prejudice, such a determination only becomes

relevant if R.C. 2953.52(B)(3) applies.² In the case at hand, R.C. 2953.52(B)(3), which involves the sealing of official records of DNA specimens, samples, and profiles, was not at issue. Accordingly, the statute of limitations period on the dismissed murder charge was not a relevant factor to be considered by the trial court during its R.C. 2953.52(B)(4) analysis. *See* R.C. 2953.52(B)(4) (noting that the determinations described in (B)(4) are separate from the determinations described in division (B)(3) of the section).

{¶17} Based on the foregoing, we overrule the state's sole assignment of error. However, we note that the court's journal entry incorrectly refers to the expungement of appellee's "conviction," and incorrectly cites R.C. 2953.32 rather than R.C. 2953.52. We therefore remand this matter to the trial court, pursuant to App.R. 9(E), with instructions to correct the journal entry to delete the reference to "conviction" and amend its order to reflect that it is sealing the record of appellee's arrest pursuant to R.C. 2953.52.

²R.C. 2953.52 states: "If the court determines after complying with division (B)(2)(a) of this section that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed with prejudice, or that the complaint, indictment, or information in the case was dismissed without prejudice and that the relevant statute of limitations has expired, the court shall issue an order to the superintendent of the bureau of criminal identification and investigation directing that the superintendent seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of the bureau and all DNA records and DNA profiles. The determinations and considerations described in divisions (B)(2)(b), (c), and (d) of this section do not apply with respect to a determination of the court described in this division."

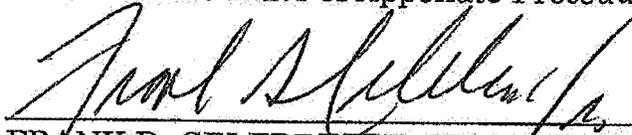
{¶18} Judgment affirmed and case remanded. The clerk of the court of appeals is instructed to reseal the trial court record and to seal the court of appeals record in this case.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
EILEEN T. GALLAGHER, J., CONCUR

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95861

THE STATE OF OHIO,

APPELLEE,

v.

[CK]

APPELLANT.

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-529206

BEFORE: BLACKMON, P.J., ROCCO, J., and E. GALLAGHER, J.

RELEASED AND JOURNALIZED: September 22, 2011

William D. Mason, Cuyahoga County Prosecuting Attorney, and
John R. Kosko, Assistant Prosecuting Attorney, for appellee.

Timothy F. Sweeney, for appellant.

PATRICIA ANN BLACKMON, Presiding Judge.

{¶ 1} Appellant, [C.K.] appeals his convictions and assigns ten errors for our review.¹ Having reviewed the record and pertinent law, we reverse the convictions and remand for a new trial. The apposite facts follow.

{¶ 2} [C.K.] admitted shooting Andre Coleman in self-defense. The first trial was scheduled in March 2010. At the close of the state's questioning of its primary witness, Valerie McNaughton, the prosecutor asked her, "[D]id [C.] ever express a willingness or desire to kill Andre prior to killing him?" Immediately, the defense objected; but before the judge could respond to the objection, Valerie responded, "Yeah." The court offered a curative instruction and dismissed the jury. The court then asked the defense whether it was moving for a mistrial. The defense responded in the affirmative, and the judge declared a mistrial.

{¶ 3} The defense later moved to dismiss the case because of double jeopardy, arguing that this case was obviously weak and that the prosecutor had goaded the defense into seeking a mistrial. The trial court denied the motion, and a second trial commenced in

¹See appendix.

August 2010. The state again pursued its premise “that [C.K.] killed Andre Coleman without justification” and called several witnesses to substantiate that fact. However, the evidence showed otherwise.

Jury Trial

{¶ 4} McNaughton testified again and described her eight-year on-and-off tumultuous relationship with Coleman, which was fraught with physical abuse. About two months prior to the shooting, she began renting the upstairs of [C.K.]’s home, and about a week later, she asked [C.K.] to allow Coleman to move into the house, and [C.K.] consented. However, because of the constant fights between her and Coleman, [C.K.] ultimately evicted Coleman.

{¶ 5} McNaughton testified that around 4 a.m., on September 20, 2009, Nicki, a woman she casually knew, Doug Kapel, and Coleman arrived in a red truck. Nicki invited McNaughton to party with them, and she accepted. They stopped to buy crack cocaine and proceeded to a motel, where they remained for several hours abusing drugs.

{¶ 6} McNaughton testified that after consuming all the crack cocaine they had purchased, they bought more, returned to the motel, and consumed more crack cocaine. McNaughton stated that once they had consumed all of the crack cocaine, Coleman encouraged her to make sexual advances towards Kapel in an effort to influence Kapel to buy more drugs. McNaughton refused, and Coleman became angry. As a ruse to leave the motel,

McNaughton told Coleman that she needed to meet someone who had agreed to advance her drugs.

{¶ 7} McNaughton testified that the foursome drove to the parking lot of a Save-A-Lot supermarket located near [C.K.]'s home. McNaughton exited the truck while the others remained inside; she then surreptitiously slipped away and made her way back home. Once home, McNaughton told [C.K.] that she had left Coleman a few streets away, that he was very upset, and that he would be there shortly looking for her.

{¶ 8} A short time later, McNaughton observed Coleman exiting the red truck driven by Kapel, via a computer-operated security camera that monitors [C.K.]'s driveway. McNaughton hysterically began yelling that Coleman had arrived and that they should lock the doors. Coleman immediately began banging on the locked back door; he kicked out the bottom panel and entered the house.

{¶ 9} McNaughton stated that [C.K.] told Coleman he was not allowed on the property, but Coleman pushed past him and came towards her in the living room. McNaughton yelled that the police had been called and that Kapel was pulling out of the driveway, which prompted Coleman to retreat and exit [C.K.]'s house.

{¶ 10} McNaughton hid in the garage until Coleman left; she stayed for about 10 minutes, and reentered the house when she thought it was safe. When she entered the house, McNaughton found Coleman standing in the kitchen. Coleman immediately started yelling at McNaughton to give him money, followed her into the living room, grabbed her by the hair,

threw her to the ground, and began hitting her. McNaughton testified that as Coleman was beating her, [C.K.] fired two shots, hitting Coleman, who spun around and fell to the ground. McNaughton testified that [C.K.] proceeded to shoot Coleman several times as he lay on the floor.

{¶ 11} At trial, 54-year-old [C.K.] a laid-off engineer and part-time community college professor, as well as a United States Air Force veteran, took the stand in his own defense. [C.K.] testified that in June 2009, after being laid off from his job with Sprint in 2008, he rented the upstairs unit of his house to Carolyn Walker. McNaughton occasionally visited Walker and later sought [C.K.]'s permission to share the unit with Walker. [C.K.] consented, and McNaughton moved in July 2009.

{¶ 12} Walker moved out of the house at the end of July 2009, and McNaughton sought permission from [C.K.] for Coleman to move in, which he granted. From the very beginning, Coleman and McNaughton argued and fought constantly, with Coleman violently beating McNaughton, especially when he was coming down from a crack-cocaine high. [C.K.] testified that by the end of August 2009, the fighting between Coleman and McNaughton had become so frequent and disruptive to himself and his neighbors that he had ordered him to leave his house. [C.K.] escorted Coleman off his property and told him not to return. But Coleman was uncooperative. A loud argument ensued, and neighbors summoned the police. Coleman eventually left, and [C.K.] was cited for disorderly

conduct. [C.K.] wore a leather pocket holster with a gun. He had a concealed carry permit; however, the police took the weapon and told him he could pick it up the next week.

{¶ 13} After Coleman's departure, McNaughton warned him about Coleman's violent past. McNaughton showed [C.K.] information on Cuyahoga County's website regarding Coleman's 1990 conviction for shooting a man to death, a conviction for carrying a concealed weapon, and numerous drug-related offenses.

{¶ 14} [C.K.] testified that on September 20, 2009, Coleman, despite protests, entered his house three separate times. First, Coleman began banging on the locked door shortly after McNaughton had arrived home. [C.K.] and McNaughton shouted that Coleman was not allowed inside, but he ignored them, kicked out the bottom panel of the door, and crawled through into the kitchen. Coleman finally left when McNaughton told him that the police had been called.

{¶ 15} While [C.K.] was repairing the door that Coleman had kicked in, Coleman returned. [C.K.] demanded that he leave, but Coleman brushed passed him, asked if [C.K.] wanted to "shoot it out," and proceeded to search for McNaughton. While [C.K.] was in the house, Coleman held one hand behind his back signaling that he had a gun. Coleman left after his attempts to locate McNaughton proved unsuccessful.

{¶ 16} Coleman returned a third time while [C.K.] was still repairing the broken door. Again, [C.K.] demanded that Coleman leave, at which time McNaughton entered the house. Coleman immediately grabbed McNaughton by her hair and began beating her.

[C.K.] protested, as McNaughton yelled for help. [C.K.] demanded that Coleman stop the assault, but when Coleman reached behind his back for his gun, [C.K.] pulled his revolver and shot Coleman. [C.K.] testified that when he shot Coleman, Coleman spun around, fell to the ground, and began to twitch, a scenario that prompted [C.K.] to fire several more times.

{¶ 17} [C.K.] described his thoughts at the moment of the shooting: “I thought I was dead. I thought, I was panicking, I thought it just about, I thought he was going to shoot me. My gun was brand new, I never tried it. I didn’t even know if it would work. I was afraid it would fail me and he was going to shoot me. I was pretty much panicking at the time.” [C.K.] maintained, “I thought he was going to shoot me.”

{¶ 18} The jury found [C.K.] guilty of murder and the attached one- and three-year firearm specifications. The trial court sentenced [C.K.] to a prison term of 15 years to life for the murder conviction and three years for the firearm specifications. [C.K.] now appeals.

Manifest Weight of Evidence

{¶ 19} We begin our analysis with the tenth assigned error, which we find dispositive of the instant appeal. [C.K.] argues that his convictions are against the manifest weight of the evidence. We agree.

{¶ 20} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, the Ohio Supreme Court addressed the standard of review for a criminal manifest-weight challenge, as follows:

The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive—the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.” *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.

{¶ 21} [C.K.] argues that the jury lost its way in convicting him of murder. Specifically, he argues that he was acting in self-defense when he shot and killed Coleman.

{¶ 22} Self-defense is an affirmative defense that, if proved, relieves a defendant of criminal liability for the force that the defendant used. “The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.” *State v. Suarez*, 2d Dist. No. 10CA0008, 2011-Ohio-1438, ¶ 10, quoting R.C. 2901.05(A).

{¶ 23} The accused must show each of three elements in order to establish self-defense: (1) the accused was not at fault in creating the situation; (2) the accused had a bona fide belief that he or she was in imminent danger of death or great bodily harm and that the only means of escape was the use of force; (3) the accused did not violate any duty to retreat or avoid the danger. *State v. Clellan*, 10th Dist. No. 09AP-1043, 2010-Ohio-3841. See also *State v. Melchior* (1978), 56 Ohio St.2d 15, 20-21, 381 N.E.2d 195; *State v. Ward*, 168 Ohio App.3d 701, 2006-Ohio-4847, 861 N.E.2d 823, ¶ 30; *State v. Ludt*, 180 Ohio App.3d 672, 2009-Ohio-416, 906 N.E.2d 1182, ¶ 21.

{¶ 24} R.C. 2901.09(B) codifies a form of self-defense known as the “Castle Doctrine” and provides:

For purposes of any section of the Revised Code that sets forth a criminal offense, a person who lawfully is in that person’s residence has no duty to retreat before using force in self-defense, defense of another, or defense of that person’s residence, and a person who lawfully is an occupant of that person’s vehicle or who lawfully is an occupant in a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self-defense or defense of another.

{¶ 25} This statute creates a rebuttable presumption, and the burden to prove that the charged individual was not acting in self-defense falls on the state. See Senate Bill 184 (“S.B. 184”). “Under the Castle Doctrine [S.B. 184], a person is presumed to have acted in self-defense when attempting to expel or expelling another from [his] home who is unlawfully present. Further, under the Castle Doctrine, a person attempting to expel or expelling another is allowed to use deadly force or force great enough to cause serious bodily

harm. There is also no duty to retreat inside one's home anymore." *State v. Johnson*, Cuyahoga App. No. 92310, 2010-Ohio-145, ¶ 18.

{¶ 26} In the instant case, nothing in the record indicates that [C.K.] was at fault in creating the incident that led to Coleman's death. To the contrary, at trial, the evidence unequivocally established that Coleman, who had previously been evicted from the residence, was unlawfully in the house on the day he was shot and killed by [C.K.]

{¶ 27} It is undisputed that Coleman entered [C.K.]'s home three times without permission and against protestations and that he ignored all demands to leave. In his first unlawful entry, Coleman kicked out the bottom panel of the back door, crawled through, and, with impunity, remained in the house until McNaughton yelled that the police had been summoned. Coleman returned a second time within minutes after going next door to search for McNaughton. He then menacingly searched throughout the house for McNaughton, despite [C.K.]'s repeated demands that he leave.

{¶ 28} In his third unlawful entry, Coleman immediately attacked McNaughton and began beating her. [C.K.] testified:

Q. What happens next?

A. She yelled out to me, yelled out my name. So I say "Stop that, you can't be doing that." He turns to her, looks over at me and he goes to pull his gun out from behind his back. When he does that, as soon as his arms starts to move, I draw my gun and hold it. I watched his hand come out from behind his back. As soon as I see he had something in it, I begin to fire and pulled the trigger as fast as I can.

Q. How many times did you shoot, do you remember?

A. I can't remember, but I - - I looked down at my gun to make sure it was pointing in this direction. * * * He turned like this until his back was facing me. When I saw that, that's when I stopped. Then he fell forward like that, with his feet out here and his head between the two couches.

Q. After you fired the shots, at some point, what did you do?

A. After I fired and he fell, I walked over to see if he was moving or if I hit him. I tried to see if he was moving or if I hit him. I tried to see if I had actually hit him or if I missed or what * * *.

Q. At some point, what did you do after you were looking over him?

A. Well I am looking over close. I did have my gun there pointing, holding it right next to him just to make sure, in case I just grazed him or he's about to jump back up at me. I saw movement and I panicked and pulled the trigger again, and I don't know if the gun actually went off or if I had shot all the rounds already or if I did fire again.

* * *

Q. Now, Mr. [C.K.] what is going through your mind at the time in which this is occurring?

A. I thought I was dead, I thought, I was panicking, I thought it just about, I thought he was going to shoot me. My gun was brand new, I never tried it. I didn't even know if it would work. I was afraid it would fail me and he was going to shoot me. I was pretty much panicking at the time.

{¶ 29} Here, [C.K.]'s testimony establishes that he had a bona fide belief that he was in imminent danger of death or great bodily harm at the hands of Coleman and that the only means of escape was the use of force. [C.K.] had recently learned from McNaughton that Coleman had killed a man in 1990 and had been convicted of carrying a concealed weapon, and he had personally observed Coleman's violent behavior towards McNaughton.

Given this knowledge and Coleman's actions of unlawfully entering the house three separate times that day, as well as Coleman's statement about "shooting it out," [C.K.]'s belief that he was in imminent danger was well founded.

{¶ 30} Finally, under the Castle Doctrine, [C.K.] had no duty to retreat inside his own home. *Johnson*, 2010-Ohio-145. Therefore, we find that [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. We also find that the jury appeared confused about the jury instruction, as evidenced by questions regarding the definition of "unlawful entry" and "Castle Doctrine." Further, the jurors queried whether the Castle Doctrine applied to both self-defense of the owner of the home and anyone in the home.

{¶ 31} Finally, the record indicates that two of the jurors did independent research on the Castle Doctrine and discussed it with the other jurors. We conclude that the jury lost its way in the instant case, and [C.K.]'s convictions are against the manifest weight of the evidence. Accordingly, we sustain the tenth assigned error and reverse his convictions. We reluctantly remand the matter for a new trial because we are restrained by the standard of review under the manifest weight of the evidence and cannot discharge [C.K.] *Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541. *Tibbs*, 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652.

{¶ 32} Our disposition of the tenth assigned error renders the remaining errors moot. See App.R. 12(A)(1)(c).

Judgment reversed
and cause remanded.

ROCCO and GALLAGHER, JJ., concur.

APPENDIX

Assignments of Error

“I. Because the prosecutor in the first trial intended to provoke the defendant into moving for a mistrial, the trial court erred in denying [C.K.]’s pretrial motion to dismiss the indictment as barred by the double jeopardy clauses in the State and Federal Constitutions.”

“II. [C.K.] was denied due process of law when the trial court failed to properly instruct the jury on the affirmative defense of self-defense as applicable to a shooting that occurs in the defendant’s own home against a victim claimed by defendant to be an intruder in the home.”

“III. [C.K.] was denied due process of law and a fair trial when the trial court failed to instruct the jury on the affirmative defense of ‘defense of another’ and failed to include ‘defense of another’ within its instruction on the castle doctrine.”

“IV. [C.K.] was denied due process of law and a fair trial when the trial court erroneously instructed the jury that [C.K.] had a duty to retreat in his own home.”

“V. [C.K.] was denied due process of law and a fair trial when the trial court failed to affirmatively instruct the jury that Coleman’s entry into [C.K.]’s home was, for all purposes relevant to the affirmative defense of under R.C. 2901.05(B), unlawful and without privilege to do so.”

“VI. The trial court erred in denying the defendant’s motion for judgment of acquittal made at the conclusion of all the evidence because the evidence

established the affirmative defense of self-defense and/or defense of another by a preponderance of the evidence and the presumption of self-defense was never rebutted by the state.”

“VII. The misconduct of two jurors during deliberation in conducting their own research concerning the castle doctrine, and sharing their findings with the rest of the jury, required that the court declare a mistrial, and the court’s failure to do so was prejudicial error which denied [C.K.] a fair trial before an impartial jury.”

“VIII. When the jury reported its inability to reach a verdict after many hours of deliberation over two days, the jury was deadlocked and the court should have declared a mistrial at that time. The court’s failure to do so, and to instead give the jury a Howard Charge, was prejudicial error that denied [C.K.] his rights to a fair trial before an impartial and uncoerced jury.”

“IX. The trial court erred in denying [C.K.]’s post-trial motions for a new trial and for judgment of acquittal.”

“X. [C.K.]’s convictions are against the manifest weight of the evidence.”

NO. 2011-1838 | February 01, 2012

131 Ohio St.3d 1439
(The decision of the Court is referenced in the
North Eastern Reporter in a table captioned
"Supreme Court of Ohio Motion Tables".)
Supreme Court of Ohio

APPEALS NOT ACCEPTED FOR REVIEW

Opinion

Cuyahoga App. No. 95861, 2011-Ohio-4814.

Parallel Citations

960 N.E.2d 988 (Table), 2012 -Ohio- 331

State

v.

[C.K.]

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

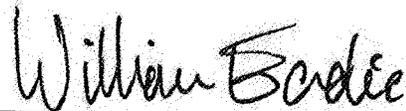
CERTIFICATE OF SERVICE

On November 25, 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, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Counsel for Defendant-Appellant

VICTOR V. VIGUICCI (0012579)
Portage County Prosecuting Attorney
PAMELA J. HOLDER (0072427)
Assistant Prosecuting Attorney
466 South Chestnut Street
Ravenna, Ohio 44266

***Counsel for Amicus Curiae
Ohio Prosecuting Attorneys Association***



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