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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**FILED**

IRAN DOSS  
Plaintiff

Case No: CV-08-665993

2016 JUL 26 A 9:57

Judge: JOSE A VILLANUEVA  
CLERK OF COURTS  
CUYAHOGA COUNTY

STATE OF OHIO  
Defendant

**JOURNAL ENTRY**

98 DISPOSED - FINAL

OPINION AND ORDER ENTERING JUDGMENT IN FAVOR OF THE STATE OF OHIO AND AGAINST PLAINTIFF IRAN DOSS ON HIS DECLARATORY ACTION CLAIM FOR WRONGFUL IMPRISONMENT.

FINAL.

O.S.J.

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

7/26/2016

IRAN DOSS,  
Plaintiff

vs.

Defendant

**OPINION AND ORDER**  
**ENTERING JUDGMENT IN FAVOR**  
**OF THE STATE OF OHIO AND**  
**AGAINST PLAINTIFF IRAN DOSS**  
**ON HIS DECLARATORY ACTION**  
**CLAIM FOR WRONGFULL**  
**IMPRISONMENT**

This matter comes before the court for decision on plaintiff Iran Doss' declaratory action requesting a finding that he was wrongfully imprisoned for convictions of rape and kidnapping on April 25, 2006 in *State v. Doss*, CR 465093. Doss' convictions were overturned on appeal by the Eighth District Court of Appeals in Journal Entry and Opinion No. 88443 journalized on February 11, 2008.

The parties have presented sworn testimony, stipulated to the submission of the entire trial transcript from CR 465093 and filed post trial briefs. The court has carefully considered the evidence submitted, counsel's arguments and the substantive law cited by each side.

For the reasons noted below, the court enters judgment in favor of the state of Ohio and against plaintiff Iran Doss.

On April 22, 2005, a three count indictment against Iran Doss was filed by the Cuyahoga County Prosecutor. Count one alleged Rape: that Doss violated R.C. 2907.02 by engaging in sexual conduct by purposely causing the victim to submit by force or threat of force. Count two

also alleged Rape: that Doss violated R.C. 2907.02 by engaging in sexual conduct with the victim when he had reasonable cause to believe that her ability to resist or consent was substantially impaired because of a mental or physical condition. Count three alleged Kidnapping R.C. 2905.01 with a sexual motivation specification.

Doss' case proceeded to trial. On March 27, 2006 a jury returned a guilty verdict as to Count two, Rape; and Count three, Kidnapping.<sup>1</sup> On June 21, 2006 the trial judge imposed a concurrent four year sentence on each count. The court also found the defendant to be a sexually oriented offender subject to registration. Doss was remanded to the custody of the Lorain Correctional Institution to serve his sentence.

Eileen Wiles was also indicted along with Doss in CR 465093. On June 6, 2006 Wiles entered a plea to the reduced charge of Abduction, a violation of R.C. 2905.02. She received a sentence of five years of community control. Ms. Wiles was not presented as a witness during Doss' jury trial.

Doss filed an appeal to the Eighth District Court of Appeals. In the court's February 11, 2008 Journal Entry and Opinion the court vacated defendant's convictions and ordered him discharged. First, the Court, *sua sponte*, found that "there was insufficient evidence to convict appellant of kidnapping." (Court of Appeals Journal Entry and Opinion at page 5.)

The Court also reversed and vacated Doss' rape conviction for insufficient evidence declaring, "In the instant case, the state had the burden to prove that the rape victim was substantially impaired and that the defendant knew or should have known of the substantial impairment. We conclude that the state failed to meet this burden." (Court of Appeals Journal Entry and Opinion at page 13.)

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<sup>1</sup> The trial judge dismissed Count one after the state's case in chief pursuant to Criminal Rule 29.

Thereafter, Doss filed the instant declaratory action on July 25, 2008. The case was stayed on July 23, 2009 pending disposition of the case of *J.P. v. Simpkins*, et al. CV 06-580854.<sup>2</sup> The instant case was reinstated to the active docket on April 29, 2010.

On January 25, 2011 the trial court entered summary judgment for Doss finding him to be a wrongfully imprisoned person as defined under R.C. 2743.48(A). The court did so in reliance on the Eighth District Court of Appeals' February 11, 2008 Journal Entry and Opinion and the record of the trial transcript in CR 465093, the only evidence offered by the state.

The trial court explained as follows:

THROUGHOUT THE CRIMINAL CASE, PLAINTIFF DOSS MAINTAINED THAT THE ALLEGED VICTIM VOLUNTARILY ACCOMPANIED HIM AND ALL SEXUAL ACTS BETWEEN PLAINTIFF DOSS AND THE ALLEGED VICTIM WERE CONSENSUAL. THE COURT OF APPEALS FOUND NO EVIDENCE WAS PRESENTED TO COUNTER PLAINTIFF DOSS'S ACCOUNT OF THE FACTS. THE COURT OF APPEALS' DECISION TO REVERSE AND VACATE PLAINTIFF DOSS'S CONVICTION AND ORDER HIS IMMEDIATE RELEASE CAN ONLY BE INTERPRETTED TO MEAN THAT EITHER PLAINTIFF DOSS WAS INNOCENT OF THE CHARGES UPON WHICH HE WAS CONVICTED, OR THAT NO CRIME WAS COMMITTED BY PLAINTIFF DOSS, OR BOTH.

ACCORDINGLY, AND WITH NONE OF THE OTHER ELEMENTS UNDER R.C. CODE (S/C) 2743.48(A) IN DISPUTE, THIS COURT FINDS PLAINTIFF IRAN DOSS TO BE A WRONGFULLY IMPRISONED PERSON AS DEFINED BY THE OHIO REVISED CODE.

An appeal was taken of the court's ruling and on December 15, 2011 the Eighth District Court of Appeals issued Journal Entry and Opinion No. 96452 affirming the granting of summary judgment. Specifically, the Court of Appeals noted that, "The sole evidence before the trial court on summary judgment consisted of trial transcripts from appellee's criminal trial. This

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<sup>2</sup> [*J.P.*] v. *Tyson Simpkins*, et al. CV 06-580854 involved the victim's civil damages action against the night club and its employees due to a sexual assault that occurred prior to but the same day that Doss and Wiles were alleged to have also assaulted the victim. Based upon the state's unopposed motion at trial, the court ordered that the victim would be referred to as "J.P." throughout this litigation.

court previously reviewed this evidence in *State v. Doss*, Cuyahoga App. No. 88443, 2008-Ohio-449, and concluded not only that the evidence was insufficient to sustain appellee's convictions but that appellee's own statement describing the events was *uncontradicted evidence* in his favor on elements of both the kidnapping and rape charges." (Italics in original.) (Court of Appeals Journal Entry and Opinion at page 5.)

The Court of Appeals held, "Based upon the unique circumstances presented in this case, specifically the uncontradicted evidence in the form of appellee's own statement recounting the events of the night in question, and the fact that the state introduced no further evidence beyond the criminal record discussed above, we find no error in the trial court's conclusion that the state of Ohio failed to raise a genuine issue of fact in regards to any elements under R.C. 2743.48(A)." (Court of Appeals Journal Entry and Opinion at page 7.)

An appeal to the Ohio Supreme Court followed. On December 6, 2012 the Supreme Court reversed the Court of Appeals and remanded the case to the trial court for further proceedings and on January 24, 2013 the case was returned to the trial court. A trial to the bench was had commencing on August 26, 2013.

### **DISCUSSION**

Pursuant to R.C. 2743.48(A) Iran Doss must prove a number of specific elements by a preponderance of the evidence in order to prevail on his claim for wrongful imprisonment. First, he must establish that he was charged with a felony or aggravated felony violation, that he was found guilty and sentenced to a term of imprisonment. Doss must further establish that his conviction was vacated, dismissed, or reversed on appeal, and the prosecuting attorney in the case cannot or will not seek any further appeal.

Finally, he must establish that it was determined by the court of common pleas in the county where the underlying criminal action was initiated that the charged offense, including all lesser-included offenses, either was not committed by Doss or was not committed by any person. Based on the posture of this case, only this final element is at issue.

The court has carefully and thoroughly considered the evidence presented at Doss' criminal trial by reviewing the transcript of those proceedings. The record shows that the following witnesses testified under oath on behalf of the state in the *State of Ohio vs. Iran Doss*, CR 465093: Aaron Reynolds, Shweta Nayak, Katie Hixon, Paul Jesionek, M.D. (emergency room physician), J.P. (victim), Kristen Collins, Shawn Klubnik (Detective, Bedford Police Department), Trent Springer (Deputy Sheriff, Portage County Sheriff's Office), and Elizabeth Hurd (Detective, Portage County Sheriff's Office).

Reynolds and Nayak testified as friends of J.P. who accompanied her to Club Moda for a New Year's Eve celebration in 2004. Hixon dropped J.P. off at a Cleveland downtown hotel that New Year's Eve but did not accompany the group to Club Moda.

Kristen Collins was working as a bartender on December 31, 2004 when J.P. and her friends were at Club Moda. She remembered J.P. from Club Moda that night and that J.P. was highly intoxicated.

Dr. Jesionek testified that he was working as an emergency room physician at Robinson Memorial Hospital in Ravenna, Ohio on January 1, 2005. He examined J.P. on that date. A forensic rape kit examination was also performed. Subsequent testing established the presence of semen.

Detective Klubnik testified that the semen collected from J.P.'s underwear came back as belonging to Tyson Simpkins, a bouncer at Club Moda.<sup>3</sup> He also took written statements from Doss and Simpkins.

Iran Doss did not testify during his criminal trial, nor did he call witnesses or present evidence. However, the written statement Doss gave to Detective Klubnik was substantially read into the record in the state's case in chief.

At the trial of the instant civil case, three witnesses testified. Iran Doss testified in his case in chief. The state of Ohio presented two witnesses, J.P. and Eileen Wiles.

**Review of Certain Relevant Evidence presented in *State v. Doss*, CR 465093**

On December 31, 2004 J.P. traveled with friends to Cleveland, Ohio to ring in the New Year at a place called Club Moda. The group rented hotel rooms for the evening. Before heading to Club Moda they consumed a number of alcoholic drinks in their hotel. Once at Club Moda, the members of the group separated and were not in each other's continuous company. However, throughout the night they all continued to ingest alcoholic beverages.

By her own admission, J. P. had too much to drink. In fact, shortly after midnight she recollects returning to the dance floor but remembers almost nothing more of that evening. When asked about this during the criminal trial she testified that it was "*like a black curtain kind of comes down right there.*" (Criminal trial transcript, page 422) The next thing she remembered was, "*Waking up in the - - center of a bed, with a woman that I didn't know, standing over the top of me.*" (Criminal trial transcript, page 422) "*I was, not wearing my own clothing. And I wasn't wearing any underwear. And - - and I was covered in bruises, from head*

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<sup>3</sup> Tyson Simpkins was separately prosecuted and after entering a plea was convicted of abduction with sexual motivation and sexual battery. On March 3, 2006 he was ordered to serve a three year sentence in CR 470218.

*to toe. And I couldn't remember anything, and I didn't know where I was. Or who she was. Or who she was, or how I got there.*" (Criminal trial transcript, page 424)

Kristen Collins was working as a bartender at Club Moda on December 31, 2004 and into January 1, 2005. Sometime after midnight J.P. approached the bar and asked for water. Collins estimated this was at perhaps 12:45 A.M. When asked if J.P. appeared drunk, Collins described J.P. as follows, *"So, from a one to four, she was pretty drunk, because she was kind of slurring. She was kind of talkative, but she was probably between a one to four, about a three."* (Criminal trial transcript, page 544) J.P.'s eyes were *"Very glassy."* (Criminal trial transcript, page 571) When asked if Collins would have served J.P. another drink if she had asked for one, Collins responded that she would not have done so, *"Because she was, she was drunk."* (Criminal trial transcript, page 545)

Collins remembers seeing Doss talking with J.P. at the bar. She estimated they were at the bar a total of five to ten minutes. (Criminal trial transcript, page 546) Shortly thereafter, Collins saw J.P. first, laying down and then sitting on a bench near the bar. For a period of time Collins observed J.P. from her position behind the bar. At various points she saw Iran Doss, a female (who was identified at the civil trial as Eileen Wiles), and Tyson Simpkins with J.P. Simpkins was working as a bouncer at Club Moda at the time.

Eventually, Simpkins came over to Collins and asked her to bring J.P. another bottle of water. Collins went over to J.P. with the water and attempted to engage her in conversation. Collins spent approximately 10 minutes with J.P. (Criminal trial transcript, page 590) *"She didn't really know what was going on, and she just really didn't - - she looked really out of it."* (Criminal trial transcript, page 552) *"...[S]he seemed like she was going to go to sleep, because she kept leaning over, and slumping."* (Criminal trial transcript, page 554) *"[A]t one point, she*



*did lean over. And Tyson [Simpkins} kind of like pushed her up, like we, we don't go to sleep."*  
(Criminal trial transcript, page 573)

J.P. expressed to Collins that she had lost her purse and that the friends with whom she had come to the club had gone, leaving her behind. Collins asked where J.P. lived. She learned that J.P. lived in Ravenna. During this conversation, Doss was standing by. Collins was surprised when Doss expressed a desire to take J.P. home. (Criminal trial transcript, page 555, 556, 559) She regarded this "*suspicious*" since it was apparent J.P. knew neither Doss nor Wiles. Additionally, Collins testified she had gone to school at Kent State University and knew how far Ravenna was from Bedford where Doss said they lived. Collins testified Simpkins also thought this was "*kind of strange.*" (Criminal trial transcript, page 555, 561)

Eventually, Collins returned to her station behind the bar since the club was busy. She continued to keep an eye on J.P. Collins observed that Simpkins, Doss and Wiles continued to stand by J.P. (Criminal trial transcript, page 563)

Eventually, Collins saw J.P. "*walk out the door with...Doss and Wiles. I saw her (J.P.) walk past the bar, she walked past the bar, and the last I saw of them, they were headed either for the bathrooms, or the side door.*" (Criminal trial transcript, page 564) When asked to approximate the time she saw the three leave the bar area, Collins testified "*So, it was a little bit before closing, maybe a little, like a couple minutes after 2 (A.M.) maybe.*" (Criminal trial transcript, page 570)

In describing J.P.'s condition at the time the three left the bar area Collins stated that from her vantage point, "*Well she was kind of, she was - - it was kind of hard to tell if she was leaning or if she was being like, if she was leaning on him, or if she was walking out on her own.*" (Criminal trial transcript, page 566) At a later point in time, Collins asked Simpkins if he

knew what had happened with J.P. and whether she had found a ride home. Simpkins responded, *"I don't know."* (Criminal trial transcript, page 568)

**Review of Plaintiff's Testimony in *Iran Doss v. State of Ohio*, CV 665993**

Doss testified in his case in chief. As already noted, Doss did not testify in his criminal trial. Any evidence attributed to him during the criminal case was contained in a statement he gave to police.

According to testimony Doss gave for the first time in his civil case, J.P. first came to his attention through Eileen Wiles. *"I was out dancing salsa by myself. Eileen [Wiles] came up and told me, 'Honey, look. There's two men and a guy - - two men and a girl going out the back door.' I said to her, 'So?' Meaning I didn't care. I was just there to have fun with her and enjoy the New Year's. Then she came back and told me again. Then she walked over to where the young lady and the bouncer and the security guard was. They brought her inside. Sat her down on the sofa. So I walked over there."* (Civil trial transcript, pages 19-20)

When asked if she knew J.P., Doss denied it declaring, *"I didn't see her until that particular moment."* (Civil trial transcript, page 20) Doss was asked more specifically if he had previously seen J.P. in the bar that night. He replied, *"No, it was my first time seeing her."* (Civil trial transcript, page 24)

Doss identified the bouncer as someone named "Tyson." When asked if he knew Tyson before that particular day, Doss replied in the negative as follows: *"When we came in the club that particular day, he said, 'I know you from somewhere. Didn't you used to work at a temp agency?' Then I said, 'yeah, I did.' Then he said, 'Oh, I remember you there. I used to work for so-and-so.' He said his name was Tyson. But other than that, no."* (Civil trial transcript, page

20) Asked if he had been to Club Moda prior to December 31, 2004, Doss replied, "Almost every Friday, yes." (Civil trial transcript, page 21)

Further explaining the circumstances that drew his attention to J.P., Doss testified: "*After 2:00 [A.M.] when I went over there, the young lady was sitting down with a group of people, the bouncer, and I guess it was the security guard or the bartender that came over there. There was (sic) a couple other people sitting around. We were just chitchatting. I was telling Eileen it's time to go. Then the young lady stood up and she hugged me all of a sudden. Then I kind of pushed her back because Eileen was standing there and I didn't, you know, I felt that was wrong, so I just pushed her down. Then - -*" (Civil trial transcript, pages 22-23) When asked by his lawyer, "*Did you throw her down?*" Doss responded, "*Well, not push her down but kind of pushed her away from me. Then she sat back down. Then she got back up and hugged me again.*" (Civil trial transcript, page 23)

Asserting that it was Wiles' idea to give J.P. a ride home, Doss testified as follows: "*So we just sat around for a little bit. They couldn't find her a ride. Then Eileen asked her if she needed a ride home. She said, 'Sure.' But I say we can't take her home tonight, you know. I'm not going to drive to Ravenna that night, and if she wanted to go home with us. She said, 'Sure.'* Then the bouncer and the bartender, they knew about it because they took her to the back door, and I told them I was going to go get the vehicle." (Civil trial transcript, pages 23-24)

Doss was asked how J.P. got into the car and whether she was "forced" into the car. Doss testified, "*No, no. She walked - -well, previously- - she said it was okay for us to take her home, if she wanted us to take her home. She said, 'Sure.' We said we're going to my place first because I'm not going to drive to Ravenna at night. Then she said, 'Fine.'*"

Describing J.P.'s condition, Doss described that, "*She was happy, normal. She was just thanking us for taking her.*" (Civil trial transcript, page 26) When asked if J.P. was coherent, Doss testified in the affirmative, "*Yes. We did carry conversation, like, know, 'Where's your friends?' And she was like, 'I don't know. They must have left.'*" (Civil trial transcript, page 26)

Upon arriving at their apartment complex, according to Doss, J.P. was able to walk up the 15 or so steps leading to Doss and Wiles' unit with minimal assistance. "*We all was walking up there together, so I think Eileen had her hand while she was coming up.*" (Civil trial transcript, page 57)

Doss stated he did not assist J.P. in climbing up the stairs even though she appeared "*unsteady.*" He was in back of J.P. and Wiles. He explained this was not necessarily to make sure J.P. did not fall, "*Well, not make sure she doesn't fall down. Just I walk up in the back even when my girlfriend go (sic) up.*" (Civil trial transcript, page 58)

#### **Review of Eileen Wiles' Testimony**

Eileen Wiles was charged in *State vs. Wiles*, CR 465093 along with Iran Doss. She entered a plea to one count of Abduction and was placed on a five year period of community control. Wiles was not called as a witness at Doss' criminal trial.

Wiles would have been a critical witness in the criminal proceedings. She and Doss were the only individuals who had contact with J.P. between the time their encounter commenced at Club Moda and the early morning hours of January 1, 2005. J.P. had no recollection of that time frame.

Wiles was presented as a witness by the state in Doss' civil trial. She was a reluctant witness to say the least and expressed that sentiment during the trial. She expressed bitterness about having been convicted of a felony and the impact that had on her life. Clearly, she felt the

state of Ohio should not have prosecuted her in the criminal case. (Civil trial transcript, pages 164-166; 178; 198; 203-204) At one point she pleaded with the court, "*Can I just be left alone? Let me continue living my life in the miserable way that I have dealing with this. Leave me out of this.*" (Civil trial transcript, pages 178, 204, 210)

Although Wiles clearly placed responsibility on Doss for setting in motion the events of December 31, 2004 into January 1, 2005 that subsequently led to her conviction, Wiles appeared to be a credible witness to the court. (Civil trial transcript, pages 196, 210) She responded to questions in a direct fashion. She was neither argumentative nor evasive. As such, her testimony is entitled to substantial weight.

Wiles' testimony differed significantly from what Doss said at trial as to a number of crucial facts. She acknowledged that the two of them would frequent Club Moda for the purpose of dancing salsa. Sometimes they would go to the club twice in one week. (Civil trial transcript, page 168)

However, she contradicted Doss as to his familiarity with Simpkins. She referred to Simpkins as "*the bouncer*" or "*security guy*" during her testimony. When asked if Doss and Simpkins knew each other, she responded, "*Like I said, I'm not for sure if they really knew each other or not. They always seemed to speak to each other whenever we came in.*" (Civil trial transcript, page 168)

Doss' testimony at trial left the distinct impression that he did not really know Simpkins. He testified that Simpkins made reference that New Year's Eve to the fact he thought he knew Doss from somewhere else. Doss testified it was at that moment he came to the realization that both of them had previously worked for the same temp agency. Doss' testimony on this important issue is highly suspect given the frequent prior encounters between the two men.

Wiles testified that she and Doss arrived at Club Moda at approximately 11:20 P.M. She soon lost contact with Doss. She went to the upstairs balcony portion of the club and was alone for a period of time. During this period she did not know what Doss was doing. (Civil trial transcript, pages 175-177)

As noted above Kristen Collins testified at Doss' criminal trial that she saw Doss alone talking with J.P. at the bar for a total of five to ten minutes. The time interval was consistent with the time when Doss and Wiles were separated. Collins also observed Doss and Simpkins with J.P. during a long stretch of time before closing. She also saw Wiles in their vicinity. This testimony starkly contradicts Doss' civil trial account as to when he first saw J.P., an important fact. Doss pointedly denied seeing J.P. until closing time. (Civil trial transcript, pages 20-24)

Wiles testified it was Doss who insisted on taking J.P. home with the two of them. Wiles strongly denied offering to take J.P. home with her. She testified she first encountered J.P. when they were leaving Club Moda that night. *"Only learned of her when I ran across her when I seen (sic) her outside of the door where there was a back door of the club where it looked like some - - two men or however many men was (sic) kind of manhandling her. Then when they brought her in, all I can recall is I asked her permission is who was she here with? Did she have an ID or anything? She said she had an ID and her phone was in her purse. Her phone was completely dead. She said she had money. I told her - - and I even gave her purse to her so she could look herself. Nothing in her purse but her ID and her phone. That's the only time that I've known her."* (Civil trial transcript, pages 200-201)

The record reveals contradictions in the testimony given by Wiles and Doss concerning who brought J.P. to the other's attention. Doss says it was Wiles. (Civil trial transcript, page 20) Wiles denied this. She also denied the fact that J.P. was coming on to Doss.

Wiles denied seeing J.P. give Doss a hug at Club Moda or at any other point even though Doss testified that J.P. hugged him at least twice in Wiles' presence. The prosecutor specifically asked Doss, "*Did Eileen see J.P. hug you before you left Club Moda?*" Doss responded, "Yes." Doss testified that J.P. was "*Hugging on me*" before and when we got to the apartment" and "*when we got home Eileen gave me an evil look.*" (Civil trial transcript, pages 52-53)

Given Wiles' description of J.P.'s condition when they encountered her near closing, it would appear highly unlikely J.P. was being amorously playful: "*She was in bad shape. Her knees, both her knees was (sic) bloody red. She couldn't even walk.*" (Civil trial transcript, page 179)

In response to the prosecutor's characterization of J.P.'s knees as "*bruised*," Wiles was quick to correct him: "*Her knees was (sic) bloody red, not bruised knees. Bloody red.*" J.P. was "*really, really drunk.*" (Civil trial transcript, page 180) In contrast, Doss testified that J.P. had a "bruise" on her knee but that he had not noticed any "scrape" on her knee at Club Moda. However, he only noticed the scrape when they arrived at the apartment and Wiles gave J.P. a bandage. (Civil trial transcript, page 56)

Wiles' described the circumstances under which she encountered J.P. as follows: "*No one wanted - -the manager [of Club Moda] didn't want to call an ambulance for her or anything. They wanted to leave her there in the club by herself and lock the doors. [Doss] was off on the side talking to whoever works at the club.*" (Civil trial transcript, page 181) In response to a question whether J.P. was hurt badly enough to go to a hospital, Wiles replied, "Yes." (Civil trial transcript, page 182)

Wiles suggested to Doss, "*Why not just take her home or drop her off at a nearby hospital? He said no. It was too late.*" When asked if it was her preference to take J.P. to a

hospital, Wiles responded, *"Yes, very much, or either call for somebody to call for a hospital - - for an ambulance."* (Civil trial transcript, pages 181-182)

Doss testified that Wiles was the one who volunteered to take J.P. home (Civil trial transcript, page 23) and that J.P. responded *"sure"* regarding her willingness to go to Doss' place first. (Civil trial transcript, page 25) Wiles pointedly denied this. Barmaid Kristen Collins, who testified at Doss' criminal trial also remembers Doss offering to take J.P. home with him and that she thought this was unusual. (Criminal Trial, page 555)

Doss described J.P. as *"She was happy, normal. She was just thanking us for taking her."* (Civil trial transcript, page 26) Doss testified that J.P. engaged them in *"conversation"* on the drive to the apartment. (Civil trial transcript, page 43) *"When we got to the apartment we went upstairs, Eileen fixed coffee, we drank coffee and just chitchatted a little bit. Then we all went to bed."* (Civil trial transcript, pages 26, 52 )

Wiles did not testify to any chitchatting or conversation during the drive home or at any point prior to the next morning when everyone got up. Wiles denied making or even having coffee before going to bed after their arrival at their apartment. (Civil trial transcript, page 184) She also did not testify to J.P. engaging in any spontaneous hugging of Doss.

Wiles' description of J.P. can at no point be interpreted as either *"happy"* or *"normal."* It is significant to point out that in the court's careful review of the transcripts, no one who had an opportunity to observe J.P. characterized her behavior as either *"happy"* or *"normal."*

According to Wiles, Doss insisted on not taking J.P. to a hospital and that it was his idea to take her home with them. She expressed her opposition to Doss' decision to take J.P. home to their apartment. Wiles testified, *"I felt very negative towards the whole thing. I felt very - - didn't approve of it."* (Civil trial transcript, pages 182-183)



Wiles and Doss also differed in their recollection of J.P.'s condition at the time she got into their car at Club Moda. Wiles testified that J.P. was so drunk she could not get into their automobile without assistance. She denied helping J.P. get into the car. "*Others*" helped J.P. get into the automobile. (Civil trial transcript, page 62, 186, 187) This directly contradicts Doss' testimony.

According to Wiles, J.P. was "*coherent*" when they arrived at the apartment but could not get up the stairs by herself. "*Iran carried her. . . As soon as we got up [into the apartment] and opened the door she [J.P.] had to throw up. She was sick.*" (Civil trial transcript, page 184, 185)

Regarding sleeping arrangements, Doss' testified that the three of them simply climbed into the same bed together. He said they "*were just laying there*" and that after a period of time "*Eileen fell asleep.*" (Civil trial transcript, page 29) According to Doss, J.P. soon began hugging and fondling him. This aroused him. He and J.P. then went into the living room where they engaged in consensual sex.

Once again, Wiles directly contradicted Doss on when and how sleeping arrangements were set up for the three of them. According to her, J.P. was supposed to sleep on a love seat or pullout bed, not with her and Doss.

Wiles went to bed first. Doss came to bed "*at some point*" but Wiles could not recall how long after she went to bed. Wiles expressed surprise that when she woke up in the morning, J.P. was in bed with the three of them. When asked, she denied approving this or even knowing how J.P. got there. (Civil trial transcript, page 188) "*That was Iran's idea...I would never do something that stupid.*" (Civil trial transcript, page 189)

Doss' description of the sexual relations with J.P. and the timing of them was rather specific. He recalled the evening's events moving rather quickly.

Doss estimated that he, J.P. and Wiles left Club Moda at 2:15 A.M. They arrived at their apartment in Bedford at about 2:35 A.M. A pot of coffee was brewed and after "*chatting*," they were all in bed between 2:45 to 3:00 A.M. (Civil trial transcript, pages 26, 27, 51 and 62)

Soon thereafter, Doss and J.P. left the bed and went into the living room where they engaged in sexual relations for 10 to 12 minutes. (Civil trial transcript, page 30) The sexual activity was over by 3:30 A.M., after which they returned to the bed where Wiles was still asleep. (Civil trial transcript, page 72)

The next morning, Doss once again describes a scene where the three of them are "*chit chatting*." (Civil trial transcript, page 73) "*Everybody was fine. Everybody got up 'perky.'*" Everything seemed normal. (Civil trial transcript, pages 94-95) J.P. was provided with coffee. It was decided that Doss and Wiles would drive J.P. to her home in Ravenna. Doss' narrative of the morning appears casual.

J.P. described matters quite differently. She testified being terrified at the realization of her circumstances that morning. She awoke in an unfamiliar place with two people she did not recognize. She woke up with no underwear and in strange clothing that did not belong to her. She was sick to her stomach and disoriented. She had bruises all over her body and a cut on her head. Her knees were bloodied; one had an unattended laceration that needed sutures. (Civil trial transcript, page 125) She was sore - realizing at once that she had been sexually assaulted. (Civil trial transcript, page 126)

J.P. was frightened and immediately asked that she be taken home. Doss testified he detected no urgency in J.P.'s demeanor, instead describing her "*normal behavior.*" He noted "*nothing unusual*" and that "*everything was fine.*" (Civil trial transcript, page 95)

During the drive to Ravenna, J.P.'s fears for her safety were exacerbated by a statement Wiles made to Doss. J.P. recalls Wiles saying, "*Tyson said we should get her home before she gets reported as a missing person.*"<sup>4</sup> (Civil trial transcript, page 144)

J.P. testified that just before she was dropped off at home she was allowed to make a telephone call. Although there is some dispute in the evidence as to precisely what opportunity she was afforded to contact others, J.P. claimed it was only then that her cell phone was returned to her.<sup>5</sup> She called a friend's mother who she expected would be home to let someone know she was "*still alive.*" (Civil trial transcript, pages 128-129)

Finally, as the automobile approached her apartment and was slowing down she jumped out, running into the open garage door to her unit. She frantically locked every door behind her, fearful of what else Doss and Wiles might do. (Civil trial transcript, page 130)

### Analysis

At the original criminal trial in *State v. Doss*, CR 465093, neither Doss nor Wiles testified. Thus, the record was limited to a statement Doss provided to police as to what

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<sup>4</sup> As is now apparent from the record, this was a reference to Tyson Simpkins who had first sexually assaulted J.P.

<sup>5</sup> During the drive to Ravenna, Doss and Wiles describe a bizarre attempt to make cell phone calls to Cleveland area hotels in an effort to reach J.P.'s friends, presumably to let them know she was safe. Doss and Wiles both testified that both Wiles and J.P. were placing these calls. (Civil trial transcript, Wiles testimony pages 194-195; 208; Doss testimony 79-82; 84-94) Wiles used Doss' cell phone. J.P. was also attempting to use her own phone. J.P. was unsuccessful in placing any calls because her phone went dead. (Civil trial transcript, pages 84-94) Someone, presumably Wiles, did manage to make contact with a couple of hotels. However, they were unsuccessful in identifying the hotel where J.P. had registered. Wiles testified that J.P. was eventually able to make contact with someone using Doss' phone. (Civil trial transcript, Wiles testimony pages 194-195; 208) Doss contradicts this. (Civil trial transcript, page 92-93) J.P. denies making or attempting to make any calls with her cell phone on the ride back to Ravenna because Doss and Wiles kept her phone from her in a bag with the rest of her belongings. Except for providing directions to her home, J.P. also denied actively engaging in conversation during the trip as she was fearful. J.P. did not recall any telephone calls being made during her return home. (Civil trial transcript, pages 152-153)

occurred during the critical hours between the time Doss, Wiles and J.P. left Club Moda and the next morning. J.P. could recall nothing that took place between the hours of 12:15 A.M. and 8:00 A.M. the next day. No one else who may have been present was called to testify.

Of course, Doss had every right not to testify at his criminal trial and this court does not impugn his decision to exercise his Fifth Amendment rights. Nonetheless, there was no opportunity to cross examine him and flesh out additional facts during the criminal trial. On that sparse record, the court of appeals found a lack of factual support for Doss' convictions for rape and kidnapping.

The record is now more developed. Doss testified and was cross examined during his civil trial. More significantly, the testimony of Eileen Wiles provided important details about the evening and the morning hours. Although Wiles fell asleep and did not witness the sexual encounter, several key facts to which she testified, in conjunction with the witness testimony from the criminal trial, call into question Doss' version of the facts. They also serve to impugn his credibility.

For example, Kristen Collins testified during the criminal trial that she attempted to keep an eye on J.P. at the bar because J.P. appeared to be highly intoxicated. She also testified she saw Doss talking to J.P. well before closing. Doss was alone at the time. Doss' testimony was that he first became aware of J.P. as he and Wiles were leaving the club.

Wiles testified that she and Doss went to Club Moda together but that they became separated during the evening. This supports the fact Doss had the opportunity to encounter and/or pursue J.P. prior to closing. This is consistent with the testimony of Ms. Collins.

In his written statement used by the state during the criminal trial Doss suggested it was Wiles' idea to take J.P. home with them. The statement made it seem Doss was indifferent about assisting J.P.

Wiles' testimony on this matter could not have been more different. Indeed, as noted above, Wiles testified that J.P. should instead have been taken to a hospital. She testified it was Doss who insisted on taking J.P. home. He was anxious to do so. This is buttressed by Collins' testimony.

Whether Doss (and perhaps Wiles) knew Tyson Simpkins or had some prior relationship was an important circumstantial fact for a fact finder to have. There is no question that J.P. was sexually assaulted at Club Moda that night before departing in the company of Doss and Wiles. That sexual assault was committed by Simpkins. Simpkins ultimately presented J.P. to Doss and Wiles at closing time.

During the criminal trial the jury did not have any basis to consider a prior relationship among these parties. During the civil trial Doss testified that he did not really know Simpkins until he realized that he knew Simpkins from a previous job that very night.

Wiles' testimony strongly draws Doss' credibility on this issue into question. Her testimony was that she and Doss frequented Club Moda and that she often saw Doss and Simpkins talking. They certainly seemed to know each other. Doss attempted to minimize how well he knew Simpkins during the civil trial. These facts also draw Doss' credibility into question.

Significantly, J.P. recalled hearing Wiles refer to "*Tyson*" in the car when the three of them were on their way to Ravenna. Wiles made the statement that Simpkins had cautioned

them to get J.P. home before she was reported as a "*missing person.*" It was an exceedingly odd thing to say.

Although the comment can be regarded as a harmless admonition among friends, it may also suggest some consciousness of guilt, risk or inappropriateness. Out of context, the statement may make no sense or appear innocuous. In the context of someone who had just sexually assaulted J.P., the statement is frighteningly callous.

These facts support an inference of ulterior intentions. They are certainly ones that a trier of fact would be entitled to consider in evaluating Doss' credibility and claims of innocence.

Wiles and Doss dispute a number of other crucial facts in their testimony. Wiles testified that J.P. was unable to get into their automobile on her own and needed assistance. Wiles denied helping J.P. get into their vehicle at Club Moda. Doss testified Wiles helped. Wiles strongly opposed taking J.P. home. She did not assist in putting J.P. in the car. Wiles wanted to take J.P. to a hospital. Wiles' testimony leaves open the question whether Doss and Simpkins put J.P. in the car. If so, these facts draw into question the motives of these two men, perhaps even suggesting collusion or cooperation.

Doss testified that J.P. was hugging him from their first encounter at Club Moda and telling him that she loved him. He stated this behavior continued after the three of them arrived at the Bedford apartment. He noted that Wiles observed this at the apartment and gave Doss a "*dirty look.*" Wiles denied seeing any such behavior on J.P.'s part.

Wiles also testified that J.P. was so drunk that she could not climb the stairs to their Bedford apartment. Asked how she got into the apartment she said that, "*Iran carried her.*" J.P. immediately threw up. (Civil trial transcript, pages 184 and 185)

Doss testified they gave J.P. coffee and that all three were together at the time, "*chatting.*" Wiles did not testify to any of this. When asked directly, she did not recall making or having coffee that night. Wiles and Doss agreed they all went to bed soon after arriving in Bedford, in part, because Wiles had to go to work the next morning.

Doss' testimony regarding what transpired next is critically important. Once again, he and Wiles parted company as to their recollection of events.

Doss said all three went into the same bedroom. All three got into the same bed. Wiles adamantly disputed this, asserting that she would never do such a "*stupid*" thing. Doss' description of the circumstances was that J.P. just hopped into bed with him and Wiles.

However, Wiles said she went to bed first and that Doss followed her some time later. Wiles did corroborate that when she woke up in the morning J.P. was in the bed. She was quite "*surprised*" to find J.P. in the bed with her and Doss.

Doss described how as the three of them were in the bed together, J.P. began to fondle him. This aroused him. So as not to awaken Wiles, he and J.P. agreed to go into the living room to have sex. Based on Wiles' testimony this did not happen.

Doss' recollection as to the timing of all of this was relatively precise. He said the three arrived at the Bedford apartment by 2:35 A.M. and were in bed between 2:45 to 3:00 A.M. Doss and J.P. engaged in consensual sexual relations in the living room for 10 to 12 minutes. The sexual activity was over by 3:30 A.M. They immediately returned to the bed where Wiles was still asleep.

There is no question that J.P. had been sexually assaulted at Club Moda within the one to two hours prior to arriving in Bedford. She was described by Wiles as being "*really, really drunk.*" According to Wiles, J.P. was physically injured and clearly in need of medical

treatment. J.P. had difficulty walking and had to be helped into a car. Her condition was such that some 20 minutes later J.P. had to be physically carried up a fifteen-step flight of stairs. Arriving in the apartment she immediately and violently threw up. Wiles gave her a bandage for her knee and a change of clothes.

Under these facts it is highly unlikely that J.P. was being playfully flirtatious throughout the time period in question (as Doss casts her behavior). It is highly questionable that someone in J.P.'s condition as described through Wiles' testimony at trial would have the capacity to initiate the sexual conduct and activity as alleged by Doss.

Doss at various points in the record refers to J.P. as "*chatty*." He describes her behavior as "*normal*." He noted "*nothing unusual*" about her. Significantly, not one person whose testimony is contained in the record with reference to J.P.'s demeanor during the times critical to this case (Kristen Collins, Wiles and even Tyson Simpkins, by inference) describes J.P. in this fashion.

Admittedly, the most important witness on this issue aside from Doss was Wiles. She had the greatest opportunity to observe J.P. after they left Club Moda.

At no point before the sexual activity between Doss and J.P., does Wiles characterize J.P. as behaving "*normally*." Quite to the contrary, she recalls J.P. as being really drunk and physically injured. The closest that Wiles came to attributing any semblance of normalcy to J.P. was to note that she was "*coherent*" upon arrival in Bedford.<sup>6</sup>

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<sup>6</sup> Even so, one is left to wonder what Ms. Wiles' understanding of "*coherent*" was given that at the precise juncture she says J.P. was coherent she also testified it was necessary for Doss to carry J.P. up the 15 steps to their apartment.



The next morning, Doss and Wiles drove J.P. to her home in Ravenna. Doss suggests the three were engaged in casual conversation. Once again, Doss suggested all was well.<sup>7</sup> J.P. testified she provided information to Doss and Wiles during the trip so that she could get home and any conversation that took place was motivated to insure her safety and survival.

Finally, as the automobile approached J.P.'s apartment and was slowing down she jumped out, running into the open garage door. J.P. frantically locked every door behind her, fearful of what else Doss and Wiles might do. This behavior, when considered in the context of Wiles' overall testimony further draws into question Doss' credibility.

In terms of the decisions the court is required to make, it must be emphasized that it is not important that the court find Wiles to be telling the truth as to her entire testimony or as to each and every critical fact. There may be some details regarding the facts that can be argued against Ms. Wiles for purposes of assessing her own credibility or recollection. However, the appropriate analysis is whether her testimony in light of all the other known evidence or facts at issue is entitled to be given serious consideration by a fact finder.

The court observed Wiles' demeanor and manner of testifying. On the whole, she appeared to testify with candor and was believable on the critical facts. Wiles did not appear to have a vendetta against Doss. Indeed, if she had an ax to grind it appeared to be with the State of Ohio who, in her eyes, prosecuted her unjustly.

The court does not need to accept completely Wiles' own opinion as to her total lack of culpability regarding J.P.'s fate. Although Wiles' culpability is not totally irrelevant, it is also not necessary that Wiles' testimony serves to completely exonerate her behavior and responsibility

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<sup>7</sup> See footnote 6, at page 18, *supra*. Contrary to some of the testimony given by Doss and Wiles, the one telephone call J.P. was able to make occurred right before she was dropped off at her apartment. That is when her cell phone was returned to her. She called a friend to let someone know she was "*still alive*."

regarding J.P. for her testimony to be accorded significant weight. Nor is it necessary that this court find Wiles committed any specific criminal act or was implicated in the commission of or abetted a criminal act.

Given the totality of facts as discussed above, a jury or judge could very well reach the conclusion that Wiles was to some degree complicit in Doss' criminal activity, if any. However, it is inconceivable that, on this record, and given the manner in which the witnesses presented themselves, a factfinder would be able to find Wiles culpable and Doss not to be.

It is abundantly clear under the circumstances of this case – as augmented by the testimony of both Doss and Eileen Wiles during the civil trial – that any reasonable trier of fact would be able to find any sexual activity between the hours of 2:45 A.M. to 3:30 A.M. on the morning of January 1, 2005 was not consensual on J.P.'s part.

The specific charge of Rape in Count Two of the indictment set forth in CR 465093 was that Doss “engaged in sexual conduct with J.P. knowing that her ability to resist or consent was substantially impaired because of a mental or physical condition.” Intoxication, even when voluntary, satisfies the definition of impairment for purposes of Ohio law in rape cases. *See, State v. Torres*, 2016-Ohio-3061, 2016 Ohio App. LEXIS 1904, 2016 WL 2941092 (Ohio Ct. App., Cuyahoga County May 19, 2016)

In J.P.'s case, her condition was further impacted by obvious physical trauma. Her physical injuries could not have escaped Doss' notice. Doss was not highly intoxicated that morning according to his own testimony and was well in control of his faculties.<sup>8</sup>

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<sup>8</sup> Then there is the prior sexual assault committed against J.P. by Tyson Simpkins the same morning. Doss may or may not have been aware of this. However, the unusual events of this case and Doss' possible prevarication on the issues related to his initial encounter contact with J.P. and the nature of his relationship with Simpkins and how J.P. came to be in his care and control certainly raise circumstantial questions that a trier of fact would be justified in considering. Inferences prejudicial to Doss are not unreasonable.

The rape charge further alleged and required a finding that "Iran Doss knew or had reasonable cause to believe that [J.P.'s] ability to resist or consent was substantially impaired because of a mental or physical condition." The record of the case as set forth in the combined criminal and civil trials, and as comprehensively discussed above, would also support a finding by a trier of fact that Doss was aware of J.P.'s vulnerable state. Thus, it is likely that a verdict finding Doss guilty of rape would have been returned against him.

It is likely that the offense of kidnapping would also be accepted by a jury. The offense of kidnapping could be satisfied if a trier of fact found that "by deception [J.P. was] removed from the place where she was found or restrained of her liberty for the purpose of ... engaging in sexual activity...with [J.P.] against her will."

### **CONCLUSION**

For all the reasons set forth above, the court finds that Doss has not established by a preponderance of evidence that he was innocent of criminal behavior. He has also failed to establish that under the circumstances no crime was committed.

Accordingly, the court enters judgment for the state of Ohio and against plaintiff, at plaintiff's costs.

No just cause for delay.

**IT IS SO ORDERED.**

**DATE: July 26, 2016**

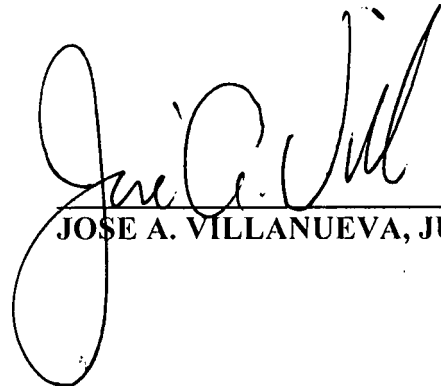
  
**JOSE A. VILLANUEVA, JUDGE**

**CERTIFICATE OF SERVICE**

A copy of the court's **Opinion and Order** has been sent by ordinary U.S. mail this 26th day of July, 2016 to the following:

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JOSE A. VILLANUEVA, JUDGE