



1-31-2000

State's Motion to Exclude by Counsel, to Testimony Including Plaintiff's Exhibits 212-221 Relating to Prior Acquittal or Conviction of Samuel H. Sheppard in Criminal Proceedings, and Proceedings and Ruling in Habeas Corpus

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Marilyn B. Cassidy
Cuyahoga County Assistant Prosecutor

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1-31-00

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN DAVIS, Special Administrator
of the Estate of Samuel H. Sheppard,

Plaintiff,

v.
STATE OF OHIO,

Defendant.

: CASE NO. 312322

:
: JUDGE SUSTER

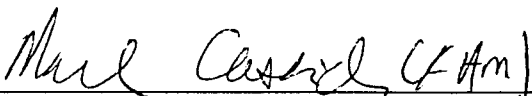
: **STATE'S MOTION TO**
: **EXCLUDE REFERENCE BY**
: **COUNSEL, TO TESTIMONY**
: **INCLUDING PLAINTIFF'S**
: **EXHIBITS 212-221 RELATING TO**
: **PRIOR ACQUITTAL OR**
: **CONVICTION OF SAMUEL H.**
: **SHEPPARD IN CRIMINAL**
: **PROCEEDINGS, AND PROCEEDINGS**
: **AND RULING IN *HABEAS CORPUS*.**

Defendant, State of Ohio, by and through counsel, William D. Mason, Cuyahoga County Prosecutor, and Assistant Prosecutor, Marilyn B. Cassidy, moves this Honorable Court for an order excluding any references by counsel, testimony, and exhibits (and specifically Plaintiff's Exhibits 212-221) which relate to the acquittal or conviction of Samuel Sheppard in prior criminal proceedings. In addition, defendant seeks to exclude reference by counsel, testimony and exhibits to the proceedings and rulings resulting from the proceedings in *habeas corpus*. The grounds for this motion are that a trial de novo constitutes an independent judicial examination of evidence. Such

references and testimony denigrate the nature of a trial de novo and must not be permitted, all as is set forth in the memorandum attached hereto and expressly incorporated herein by reference.

Respectfully submitted,

WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY



Marilyn B. Cassidy (C.A.M.)

MARILYN B. CASSIDY (0014647)
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The Justice Center, Courts Tower
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ATTORNEYS FOR DEFENDANT

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

Ohio law provides that an action seeking a declaration of wrongful imprisonment is a *de novo* proceeding. A *de novo* review contemplates an independent examination of issues. Accordingly, references by counsel, testimony, or exhibits, related to prior rulings in the underlying criminal proceedings, as well as the proceeding in *habeas corpus* are improper and should be excluded.

LAW AND ARGUMENT

PROCEEDINGS UNDER R.C.2743.48 REQUIRE A HEARING *DE NOVO* WHICH IS AN INDEPENDENT DETERMINATION OF EVIDENCE. REFERENCES TO PRIOR COURT DECISIONS ARE IMPROPER.

“Where a person claiming compensation for wrongful imprisonment . . . has obtained a judgment of acquittal, that judgment is not to be given preclusive effect” in a wrongful imprisonment action. *Walden v. State* (1989), 47 Ohio St. 3d 47, syllabus, paragraph 2. In a petition pursuant to RC 2743.48 (A), a claimant must affirmatively prove his innocence by a preponderance of the evidence , at a *de novo* hearing. *Chandler v. State*, (Cuy. App. 1994), Ohio App. 3d 142, citing *Walden v. State* (1989), 47 Ohio St. 3d 47, 49.

The *de novo* trial afforded a worker’s compensation claimant or employer who has been unsuccessful at the administrative level , is instructive to the instant case. In a trial *de novo*, reference to findings of another tribunal in another proceeding invades the right to a new and independent trial. In *Jones v. Keller*, (1996), Ohio App.2d 210, the trial court, in a worker’s compensation case, revealed to the jury the prior determinations of the Administrator and the Board of Review. The

Appeals court determined that the revelation constituted reversible error:

“The Supreme Court of Ohio has held that the appeal of a claimant . . . contemplates a new trial in the Court of Common Pleas. *State ex rel. Federated Department Stores, Inc. v. Brown*, 165 Ohio St. 512, 138 N.E.2d 248. And, as a general rule, any reference at a new trial to the result of a former trial or hearing of the same cause is considered improper, [citation omitted].

The evil sought to be prevented by the application of this rule to civil actions generally is manifest, and there appears to be no valid reason to remove its application from Worker’s Compensation cases. On the contrary, the issue in such cases should be resolved objectively upon the evidence presented in the trial court through the exercise of independent judgment and without the overhanging influence of any previous decision. The parties enter the trial court on equal footing and Section 4123.25 of the Revised Code, does not contemplate that either party should be relegated to the laboriously fatiguing task of trying to overcome two adverse rulings upon the same claim.

In our opinion, the pointed disclosure of the results of previous hearings [before the administrator and the Board of Review in the general charge of the trial court was unnecessary, unrelated to the ultimate issue in the case, and wholly repugnant to the concept of a trial *de novo* in the Court of Common Pleas.”

Id. at 212 (emphasis added).

In the case at bar, the parties could argue *ad nauseam* as to Sheppard’s prior conviction, acquittal, and the habeas proceedings. There are volumes of language to support any argument to be made by either party. Such argument, or presentation of evidence of that nature, countervails the importance of a trial *de novo*. This court, and this jury will make a new examination and a new determination of facts and evidence.

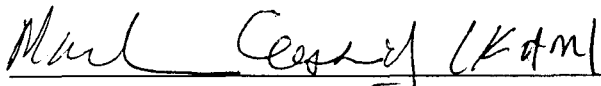
The State of Ohio recognizes that it is naive to believe, in light of the significant level of publicity that has recently and historically attended this matter, that the persons who will serve as jurors in this case have not already received information about prior judicial proceedings. To that

end, the State proposes that the Court provide a preliminary instruction to the jury including a simple statement of the procedural history of the case and an explanation of wrongful imprisonment proceedings. The jury will hear about prior proceedings from the Court and from the court alone. Thereafter, no comment as to prior proceedings should be permitted.

CONCLUSION

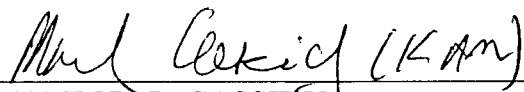
A trial *de novo* is an independent examination and determination of facts and evidence. For that reason, introduction and reiteration to the jury of Sheppard's prior conviction, acquittal, and/or *habeas* proceedings and rulings, either by argument or in evidence, is improper and prejudicial to both parties. Accordingly, the State of Ohio respectfully requests that its motion to exclude reference by counsel to all prior proceedings or rulings be granted.

Respectfully submitted,
WILLIAM D. MASON, CUYAHOGA COUNTY
PROSECUTOR


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A. STEVEN DEVER (0024982)
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Exclude Reference by Counsel, Testimony, Including Plaintiff's Exhibits, Relating to Prior Acquittal or Conviction of Samuel H. Sheppard in Criminal Proceedings and Proceedings and Rulings in Habeas Corpus, was hand delivered this 31st day of January, 2000, upon Terry Gilbert and George Carr, 1370 Ontario Street, Suite 1700, Cleveland, Ohio 44113.



MARILYN B. CASSIDY
Assistant Prosecuting Attorney