

ORIGINAL

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COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO 2015 OCT 22 AM 11:22

JACK M. DEMPSEY,
c/o McCarthy, Lebit, Crystal & Liffman
Co., L.P.A.
101 West Prospect Avenue, Suite 1800
Cleveland, Ohio 44115-1088

Plaintiff,

vs.

STATE OF OHIO,
c/o Mike Dewine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215

Defendant.

CASE NO.

JUDGE 2015-00909

COMPLAINT FOR
WRONGFUL IMPRISONMENT
PURSUANT TO ORC §2743.48

WI

Now comes Plaintiff, Jack M. Dempsey, by and through counsel, and submits the following claim:

1. Jack Dempsey is a natural citizen of the United States and the State of Ohio.
2. Plaintiff Dempsey was charged with aggravated arson and burglary under the Ohio Revised Code by indictment on or about March 25, 1996 in the Cuyahoga County Court of Common Pleas, Case No. CR-96-336481. These offenses were aggravated felonies.
3. Plaintiff Dempsey was found guilty of these charges but did not plead guilty to them. Rather, the guilty findings were the result of a jury trial, and the offenses for which he was found guilty were aggravated damages.
4. As a result of the conviction, Dempsey was incarcerated in a state-run correctional facility from September 30, 1996 until August 18, 2003.

5. Meanwhile, on October 24, 2001, Dempsey filed a petition for a Writ of Habeas Corpus with the United States District Court for the Northern District of Ohio.

6. The Court granted Dempsey the Writ on August 15, 2005 and ordered a new trial.

7. As a result, the Court of Common Pleas vacated Dempsey's conviction and sentence on October 4, 2005.

8. At his subsequent retrial, the jury found Dempsey not guilty of all counts against him.

9. Because a jury found Dempsey not guilty of these charges, subsequent prosecution is barred by the Double Jeopardy Clause of the U.S. Constitution. Further, any prosecution of Dempsey based on facts in this case are barred by the applicable statute of limitations.

10. On July 30, 2015, the Common Pleas Court of Cuyahoga County, pursuant to O.R.C. §2743.48 and §2305.02, filed an entry declaring Plaintiff Jack Dempsey a "wrongfully imprisoned individual" under O.R.C. § 2743.48 for the aggravated arson and aggravated burglary charges for which he was convicted of on August 16, 1996 and imprisoned from September 30, 1996 until August 18, 2003. A copy of this Journal Entry with Findings of Fact and Conclusions of Law are attached to this Complaint as Exhibit "A".

11. On October 5, 2015, the Common Pleas Court of Cuyahoga County denied Defendant's motion for a new trial. A copy of this Journal Entry is attached as Exhibit "B".

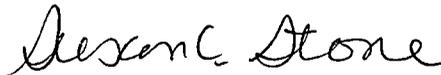
12. Pursuant to the entries referred to in paragraphs 7 and 10 and the jury's not guilty finding in Dempsey's retrial, Jack Dempsey qualifies as a "wrongfully imprisoned individual" under O.R.C. §2743.48.

13. Pursuant to O.R.C. §2743.48, Plaintiff Jack Dempsey is thus irrebuttably presumed to be a wrongfully imprisoned individual, and he is entitled to receive compensation for his wrongful imprisonment pursuant to O.R.C. §2743.48(E)(2).

WHEREFORE, Plaintiff Jack Dempsey, pursuant to O.R.C. § 2743.48(F), demands judgment against Defendant for:

- A. Damages in an amount to be determined by this Court pursuant to O.R.C. §2743.48(E)(2);
- B. Costs and attorneys fees in an amount to be determined by this Court pursuant to O.R.C. §2743.48(F)(2); and
- C. Such other and further relief as this Court shall deem appropriate.

Respectfully submitted,



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Attorneys for Plaintiff, Jack M. Dempsey



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

JACK M. DEMPSEY
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-13-800111

Judge: DEENA R CALABRESE

JOURNAL ENTRY

83 DISP.COURT TRIAL - FINAL

FINDINGS OF FACT AND CONCLUSIONS OF LAW. OSJ. FINAL.
COURT COST ASSESSED TO THE DEFENDANT(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

FILED
2015 JUL 30 P 2: 31
CLERK OF COURTS
CUYAHOGA COUNTY

THE STATE OF OHIO } I, THE CLERK OF THE COURT
Cuyahoga County } SS. WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL J.E.

NOW ON FILE IN MY OFFICE
WITNESS MY HAND AND SEAL OF SAID COURT THIS 20TH
DAY OF OCT. A.D. 2015

CUYAHOGA COUNTY CLERK OF COURTS
By _____, Dep

- 83
07/30/2015

ALL-STATE LEGAL®
EXHIBIT
A

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JACK M. DEMPSEY,

Plaintiff,

v.

STATE OF OHIO,

Defendant.

: CASE NO. CV-13-800111

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Judge Deena R. Calabrese

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This cause came on for trial on 06/23/2014, 06/24/2014, 12/01/2014, and 12/02/2014, upon the Complaint of Plaintiff, Jack M. Dempsey. All parties were in Court and represented by counsel. Upon due consideration of the evidence, arguments of counsel and the law, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In 1995 and prior to then, Plaintiff Jack M. Dempsey ("Dempsey") was friends with a woman named Jean Tomusko ("Tomusko"). (Trial Transcript ("Tr.") at pp. 150-152). Tomusko described Dempsey as a "confidante" and a "trustworthy and honest friend" who was there for her and her family after her husband died. (Tr. at pp. 151-152). They attended church and bible study together. (Tr. at pp. 151-152). Tomusko testified that Dempsey, a "sympathetic" and "caring" man, would stay with her sick son while she had to work and would take him to the Cleveland Clinic for his MRI scans. (Tr. at pp. 150-152).

2. In March 1995, Dempsey was working two part time jobs and studying to become a registered nurse. (Tr. at pp. 202-203). Frank Savel, Dempsey's former study partner, described Dempsey as someone who "worked really hard at some jobs that people would look down on,

and I thought that he was a person trying to make an honest living and trying to improve himself, a guy going to school.” (Tr. at pp. 32-33).

3. During that time, Tomusko was dating an individual by the name of Steve Gallegos (“Gallegos”). (Tr. at pp. 152-153, 204-205).

4. Gallegos worked as a bouncer and bartender at the Dollhouse, a strip club where prostitution and drug use were allegedly common. (Tr. at pp. 94-96, 154).

5. Stephanie Ann Wyant, now Stephanie Ann Monrean (“Monrean”), who worked at the Dollhouse, testified that Gallegos had a prominent role in organizing the prostitution and had a reputation for being a manipulative and physically abusive womanizer. (Tr. at pp. 94-96). Gallegos was also reportedly known to drug and kidnap unsuspecting individuals and was described as having a talent for framing others for his crimes. (Tr. at pp. 12, 96-97, 106, 138).

6. One evening, when Gallegos was over at Tomusko’s home, he saw a photograph of Dempsey on Tomusko’s refrigerator. (Tr. at p. 154). Gallegos asked about the photograph and Tomusko advised him that it was of her friend, Dempsey. (Tr. at p. 161). The photograph went missing after that night. (Tr. at p. 161).

7. Tomusko now identifies Gallegos as a predator who targeted her because she was a widow. (Tr. at p. 156). While they were dating, Gallegos propositioned Tomusko’s daughter to become a stripper at the Dollhouse. (Tr. at pp. 155-157, 206-207). As a result of Gallegos going after her daughter, Tomusko sought to get Gallegos fired from the Dollhouse and to have him investigated for potential involvement with prostitution. (Tr. at pp. 155-157, 164-165, 207).

8. As Tomusko’s friend, Dempsey agreed to stop by the Dollhouse to see whether Gallegos was still working there. (Tr. at pp. 150-151, 158-159, 207).

9. On March 11, 1995, at around 6:00 p.m., Dempsey went to the Dollhouse, which was closed. (Tr. at p. 210). He then went to the Lion's Pub and drank approximately two beers. (Tr. at p. 210). Prior to going back to the Dollhouse, Dempsey stopped by a Wendy's fast food restaurant to eat. (Tr. at pp. 210-211).

10. At around 8:00 pm, Dempsey went back to the Dollhouse and ordered a non-alcoholic beer from Gallegos. (Tr. at pp. 158-159, 210-212, 252-253). Gallegos knew who Dempsey was from the photograph that was displayed on Tomusko's refrigerator. (Tr. at pp. 154, 161, 208).

11. Gallegos poured the drink and it was served to Dempsey. (Tr. at pp. 98, 135, 212-213). Monrean testified that she saw Gallegos take something out a piece of paper and do something to the drink to make it "foamy" and "frothy" prior to it being served. (Tr. at pp. 135-136, 138-141).

12. Monrean testified that Gallegos was known to drug people with heroin and benzodiazepines (commonly known as "roofies") and it was not unusual for him to "slip [the] drugs in drinks." (Tr. at pp. 12, 96-97, 138). Monrean has seen Gallegos "knock people out" with roofies. (Tr. at p. 97, 99-100). Her testimony was uncontroverted and appeared unbiased, as Monrean has no friendship or loyalty to Dempsey, never met him prior to March 11, 1995, and thus had no discernible reason to lie. (Tr. at pp. 97-98, 138). While the State attempted to impeach Monrean by having her admit that she was a drug abuser and prostitute, Monrean testified that she was not under the influence of drugs or alcohol that night. (Tr. at p. 110). Monrean's prior history has no bearing on her credibility with respect to the incident at issue, as there is no evidence that she was unable to recall the night in question or that she had any motive to lie.

13. Dempsey drank half of the drink and testified that, after a few moments, he felt drugged. (Tr. at pp. 213-215, 253, 255-256). Dempsey testified that his heart began racing, his muscles contracted, he could seemingly feel the blood flowing through his veins, and then he felt paralyzed. (Tr. at pp. 213-215, 253, 255-256).

14. Monrean's testimony supports Dempsey's, in that after having some of the drink, Dempsey quickly became "dizzy, . . . like he's passing out" and then he asked her if someone put something in the drink. (Tr. at pp. 98-99). Monrean further testified that when Gallegos drugged people at the Dollhouse, the drugs took effect very fast. (Tr. at pp. 99-100).

15. Monrean testified that she saw Dempsey become disoriented and unable to walk. (Tr. at p. 99). She stated that, by contrast, when Dempsey arrived at the Dollhouse he was "bright-eyed and actually kind of cheery." (Tr. at pp. 97, 99).

16. When Monrean went to check on Dempsey, Gallegos told her to "get away" and he "shoo'd [her] away after [Dempsey] drank some of the drink." (Tr. at pp. 98-99, 140). Then she watched Gallegos and two other men grab Dempsey from under his arms and physically carry Dempsey out of the Dollhouse while Dempsey struggled to get away from them. (Tr. at pp. 98-100). Gallegos did not return for nearly an hour. (Tr. at pp. 128).

17. When Monrean was asked if there was any doubt in her mind that Dempsey was drugged by Gallegos, she replied: "No doubt in my mind. The physical proof, the, just everything corroborated with everything I heard, about everything I saw about him, and he also, he [Gallegos] was just a really sick, dominating, evil person." (Tr. at p. 105).

18. The atmosphere at the Dollhouse became intense after the fire discussed at ¶¶ 20 and following below. Sometime after that night, Gallegos moved to New Mexico. (Tr. at pp. 105-106; *see also*, Joint Exhibit ("JE") 9). Also, the owner of the Dollhouse found a set of keys

in the basement and nervously questioned the women as to what they knew about the keys and warned them not to tell anyone about the keys' existence. (Tr. at p. 102). Monrean was threatened by the owner of the Dollhouse not to speak to the police and was banned from returning to her job. (Tr. at p. 101).

19. Likewise, after Monrean learned about the fire, she was afraid to speak with the police in fear that she was going to be framed. (Tr. at pp. 122-123). The owner of the Dollhouse was also scared and "didn't even want to go into the bar herself. She didn't want [to be] involved in what happened." (Tr. at p. 107). Three or four other women from the Dollhouse also left after that night. (Tr. at p. 105).

20. At around 11:00 pm on March 11, 1995, a fire occurred in a building owned by Andrew Segedy ("Segedy") located at the northwest corner of the intersection of Lorain Avenue and West 112th Street in Cleveland, Ohio. (Tr. at pp. 327, 331; *see also*, Stipulations of the Parties ("Stip.") at ¶5). The building was a mixed use property, consisting of two upstairs residential apartments and a downstairs suite of three offices. (Tr. at pp. 328-329). Adjacent to these units, the building contained a commercial space used by Segedy for his siding, window, and door company. (Tr. at pp. 327-328).

21. After battling the blaze, firefighters discovered Dempsey unconscious in the basement of the building. (Tr. at pp. 184-185, 186, 192; *see also*, Stip. at ¶6). Lt. James Hogan, the firefighter who was the first to find and evaluate Dempsey, testified that Dempsey was wearing a pair of slacks, a jacket, and a t-shirt, which was not covering his face. (Tr. at pp. 184-187). After the fire and during the investigation, however, Lt. Hogan was instructed to say that Dempsey's shirt was covering his face. (Tr. at pp. 186-187). Lt. Hogan would not comply with

this request because he "didn't see that, so [he is] not going to testify to something [he] didn't see." (Tr. at pp. 186-187).

22. As noted in ¶ 21 above, Lt. Hogan found Dempsey in the basement. (Tr. at p. 184). From the inside, the steps to the basement lead to two doors, one on the right and one on the left. (Tr. at pp. 183-184). The one on the right was padlocked and the one on the left, which is where Dempsey was found, had to be forced open "because there was a lot of debris and boxes." (Tr. at pp. 184, 365). The State has argued that boxes against the door acted as a barricade from the inside, but Lt. Hogan testified that it was possible for someone to have put Dempsey in the basement and used the boxes to hide Dempsey's body, and then exit the building through the basement door. (Tr. at pp. 187-188, 193-194, 196).

23. Dempsey was not known to the owner or renters of the Lorain building and was never given a key to access the property. (Tr. at pp. 225, 232, 331, 414-415, 431-432, 447). In fact, no key was found on Dempsey when he was discovered. (Tr. at pp. 222-223; *see also*, JE 15).

24. The evidence shows that it is extremely unlikely, or impossible, for Dempsey to have gotten through any of the entrances to the building without assistance. First, each entrance was intact when the fire department found the building on fire. (JE 1 at p.2). Additionally, the building did not have any openable windows that would have allowed access to the building. (Tr. at p. 418; *see also*, Plaintiff's Exhibit ("PE") 5 at p. 118).

25. The only theory that the State presents as to how Dempsey entered the building is that Dempsey climbed through the window above the rear door and was caught in the basement when he tried to escape. (Tr.. At pp. 366, 423-427, 536-537; *see also*, JE 1 at pp. 2-3). The Fire Division's Report of Investigation states:

After checking with the fire companies on the scene it was determined that both the front and rear exits to the fire storefront were secured and so was the basement door secured. ... At this time in the investigation it is suspected that Dempsey broke into the rear door of the structure entered the structure and set the fires. The front door to the law office is double keyed, so you need a key to open the front door. It is suspected that Dempsey broke the window in the rear door entered the structure set the fires and after trying to get out the front door he chose to go down the basement stairs. ... When you go down the basement stairs there are two doors at the bottom one east one west, both doors are metal. The west door was locked with a hasp. The east door below the law offices [was] not locked. Inside the basement where Dempsey entered there is one door located on the north wall. This metal door was also locked with a hasp cutting off any chance of escape for Dempsey.

(JE 1 at pp. 2-3).

26. However, the evidence refutes the State's theory that Dempsey entered the building through the window over the rear door. The back doorway consisted of a wooden door with a window above it and a wooden storm door with panes of glass in it affixed to the outside. (Tr. at pp. 344-345). Segedy testified that the rear door was locked, sealed shut, and never used. (Tr. at pp. 344-345). Segedy further stated that, with respect to the storm door, "[y]ou couldn't open the door and you couldn't open the inside door." (Tr. at p. 345). To further secure the back door, plywood had been placed over the glass. (Tr. at p. 436).

27. Moreover, Segedy testified that to enter through the rear door without a key "[y]ou would have to break the door to get in, have a big ram like the police department has to get in." (Tr. at p. 357). However, when the firefighters arrived, the rear door was still intact. (JE at p. 2).

28. Additionally, the back door was protected from unauthorized entry by a barricade from the inside. (Tr. at pp. 448-449). Bill Kelly ("Kelly"), an attorney whose office had the interior of the rear door, testified that it was not an obvious door because it was blocked and "everything was smashed up behind it." (Tr. at p. 448-449). Acting Lt. George Bolin, who was in

charge of the crew attempting to gain access to the building, described the process of getting through the barricade of that rear door:

My crew attempted to gain access through the rear door, which was very difficult. **It took us like 10 minutes, and when we did finally gain access, [we] can only push it open maybe two-and-a-half feet, so one person could crawl through.** That was as much as we could get it opened. There were books, law books, whether it was from a book case that had fallen, or whatever, I don't know, but **that was all jammed up against the door.**

(PE 5 at p. 107, 114).

29. Above the rear door was a glass window embedded with wire filament, also known as "chicken wire," that created an extra barrier. (Tr. at pp. 344-345, 448). Segedy testified that the wire was there "so if you broke [the window,] you couldn't reach in," and even if someone could break the glass, it would be difficult, if not impossible, for someone to get their hand through the wire. (Tr. at pp. 344-346). Instead, one would have to actually kick in the entire window frame. (Tr. at pp. 346, 368).

30. The window frame was intact when the firefighters arrived, which was demonstrated by Lt. Bolin's testimony. Bolin stated that he did not "believe that window was large enough" to gain entry. (PE 5 at p. 115). In addition, he stated that "I believe there was some jagged glass on the bottom, that's why I wouldn't let my men go through the window." (PE 5 at p. 124). Anyone attempting to go through the window "**would have gotten cut trying to gain access that way.**" (PE 5 at p. 115).

31. Lt. Bolin's testimony about the broken glass inside the window frame evidences that the frame was still intact, thus refuting Segedy's explanation that the frame was kicked in, and Dempsey's lack of scratches, cuts, or abrasions on his body or clothing, or any other outward sign of trauma tend to confirm that he did not climb through the window. (Tr. at pp. 122, 185, 222, 558; *see also*, JE 14; JE 21).

32. The evidence also establishes that it is not possible for Dempsey to have gotten through any other entrance to the building without someone having a key and letting him in the building.

33. For example, the front door was made of steel, was locked, and could not be forced open by firefighters. (Tr. at pp. 341, 424, 450; *see also*, PE 5 at p. 119). Segedy testified that there were "two locks on that door, a dead bolt lock that had a key on both sides of it . . . and a handset lock." (Tr. at p. 341). The lock on this door required a key from either side. (Tr. at pp. 424, 450, 641-642). Mark Knevel ("Knevel"), one of the attorneys who rented the space from Segedy, testified that the "fire department had to crowbar off the door." (Tr. at p. 424). Therefore, it is clear that Dempsey did not enter through the front door (at least not to his knowledge and not voluntarily), because (1) the door was found intact; (2) no one gave Dempsey a key; (3) no keys were found on him or in the building; and (4) had he unlocked the door to get in, he could have then exited the building with a key.

34. It is also extremely improbable that Dempsey came through Segedy's adjacent workshop. Segedy testified that the front door to his business "was an aluminum commercial bar [that] had one piece of glass in it with a bar going across" and there was a double cylinder dead bolt in it so that if it was locked, a person would need a key to get in or out. (Tr. at p. 337). The back door to his shop was a solid wood door that had a dead bolt and required a key to get in. (Tr. at p. 355). Both of these doors were found intact by the fire department. (JE 1 at p. 2). Thus, again, it is clear that Dempsey did not enter through the workshop (at least not to his knowledge and not voluntarily), because (1) the entry points were found intact; (2) no one gave Dempsey a key; (3) no keys were found on him or in the building; and (4) had he unlocked the various doors to enter, he could have easily left the same way.

35. There are also two entrances into the basement from the outside. (Tr. at p. 350). Before getting to the stairs to enter the basement, one must first make it through a "steel security door [with] two standard locksets on it" on the ground level. (Tr. at p. 348). Then, a downward staircase leads to two doors, one on the left and one straight ahead, both locked so that a person cannot enter without a key. (Tr. at p. 350). These doors revealed no signs of tampering when the firefighters arrived. (JE 1 at p. 2). Segedy testified that the door straight ahead "went to an area where the hot water tanks were. And then you can make a little right-hand turn, there was a like a little hall, you could get to the circuit breaker boxes." (Tr. at p. 350-351). Knevel testified that the specific door "would have taken you into the landlord's part of the basement from which there was no exit to come over." (Tr. at p. 425-426). The door on the left went to the laundry room. (Tr. at p. 350-351). Segedy testified that a person would not be able to get from the laundry room to other parts of the building because the internal door was blocked by a refrigerator, which was specifically in front of the door to prevent entrance. (Tr. at pp. 353-354). Therefore, once again, it is clear that Dempsey did not enter through the basement (at least not to his knowledge and not voluntarily), because (1) the entry points were found intact; (2) no one gave Dempsey a key; (3) no keys were found on him or in the building; and (4) had he unlocked the door and gate to get in, he could have exited the same way.

36. After discovering Dempsey unconscious, Emergency Medical Services bagged Dempsey with oxygen and gave him IV fluids, described as "salt water" by Nurse Frank Savel, before bringing him to Fairview Hospital ("Fairview"). (Tr. at pp. 76, 90-92, 163-164; *see also*, JE 19, JE 27).

37. The initial toxicology screen at Fairview taken at 12:20 a.m. revealed that Dempsey tested positive for benzodiazepines, and a subsequent toxicology screen at 12:24 a.m.

revealed that Dempsey had a blood alcohol level of .167%. (Tr. at p. 78; *see also*, JE 16; JE 20; PE 1 at p. 3-4). Medical records and testimony confirm that Dempsey was not administered any drugs *prior* to these initial drug screenings. (Tr. at pp. 77-80; 91-92; 163-167, 186; *see also*, JE 19; JE 27). *After* the initial toxicology screens were drawn, Dempsey was given certain medications: (1) sodium bicarbonate at 12:26 a.m., 12:28 a.m., and 1:10 a.m.; (2) Valium at 12:32 a.m., 12:59 a.m., and 1:35 a.m.; (3) Versed at 1:40 a.m. and 1:45 a.m.; and (4) Norcuron at 1:47 a.m. (Tr. at pp. 80; *see also*, JE 19).

38. Dempsey was then picked up by Life Flight and was given another dose of Versed at 2:40 a.m. prior to admission to MetroHealth Hospital ("Metro"). (Tr. at pp. 81-82; 454; JE 21 at p. 3).

39. Upon admission to Metro, a subsequent toxicology screen was performed at 11:34 a.m. which revealed that Dempsey had morphine in his system, despite never having been administered morphine by medical staff. (Tr. at pp. 36-38, 79-81; *see also*, JE 17; JE 19; *see also*, PE 1 at p. 3-4).

40. Even though Dempsey tested positive for morphine at 11:34 a.m., his morphine levels were designated as non-detectable eleven hours earlier at Fairview. (Tr. at pp. 78-79; *see also*, JE 16). This does not necessarily mean that morphine was not in his system while he was at Fairview. (Tr. at p. 79). The discrepancy can be due to different toxicology assessment machines being more sensitive to detecting certain substances in a person's system, or because some people metabolize morphine more quickly than others. (Tr. at pp. 51, 78-79).

41. Dr. Richard Stripp, who received a bachelor's degree, a master's degree, and a doctorate in toxicology, which is the "study of the adverse effects of drugs and chemicals . . . on humans[,]," testified that benzodiazepine and alcohol are both central nervous system depressant

drugs and morphine also “causes certain types of depressant effects on the nervous system as well.” (Stripp Dep. at pp. 14-15, 19). Putting a high quantity of benzodiazepine in someone’s drink can render that person unconscious. (Stripp Dep. at pp. 16-17). Taken in high enough quantities and mixed with another central nervous system depressant drug, such as alcohol, would intensify these effects. (Stripp Dep. at p. 17). Dr. Stripp testified that “one of the effects of central nervous system depressants . . . at high doses is they have amnesic effects and they cause blackouts and memory loss.” (Stripp Dep. at p. 17). Dr. Stripp testified that “whenever these types of drugs are taken in combination, the effects are at least additive and in many cases they’re even synergistic with one another so that it would exacerbate the effects that would typically be seen by taking these drugs alone.” (Stripp Dep. at p. 20). If the levels were high enough, it can incapacitate a person, impair their fine motor skills, and create difficulty in staying awake and walking. (Stripp Dep. at p. 20).

42. According to Dr. Stripp, the medical records reflect that this mix of drugs – benzodiazepines, morphine, and alcohol – were ingested and administered to Dempsey *before* the fire. (PE 1 at pp. 5, 9; *see also*, Deposition of Richard Stripp (“Stripp Dep.”) at pp. 5, 19). Moreover, any of these substances taken alone and in sufficient quantities are known to have impairing effects and indeed, taken together, the logical result would be that Dempsey was incoherent and unable to function at the time the fire began. (PE 1 at pp. 3, 5-7, 9). Dr. John Wyman, the State’s expert, even concedes that he “ha[s] no disagreement with the opinion Dr. Stripp offered.” (JE 37). Both Dr. Stripp and Dr. Wyman’s reports are consistent with the testimony of both Dempsey and Monrean that Dempsey could not function after he drank the beverage at the Dollhouse.

43. While the State presents testimony that alcoholism can cause confabulation or Korsakoff syndrome, this testimony cannot dispute the hard evidence that Dempsey had three highly toxic and debilitating substances in his body. (Tr. at p. 458). Dempsey was diagnosed with anoxic brain injury, which occurs after someone sustains severe deprivation of oxygen to the brain. (Tr. at pp. 220, 460). As a result of the anoxic brain injury, Dempsey suffered memory impairment. (Tr. at pp. 171-172, 220, 378, 386-387, 460-461; *see also*, PE 1 at pp. 6-8). Dr. Pi, the attending physician for Dempsey for the last two days he was in Metro Hospital, concedes that memory loss is consistent with an anoxic brain injury. (Tr. at pp. 454, 457, 461). Dr. Wyman also stated that “[t]he high concentration of carbon monoxide in Mr. Dempsey’s blood (31%) may have contributed to his loss of memory as a result of the anoxic injury to the brain.” (JE 37). Therefore, when Dempsey regained consciousness in the hospital, he had little recollection of the events which had brought him there. (Tr. at pp. 171, 220, 378, 386-387).

44. An event that Dempsey does remember was being in an apartment after leaving the Dollhouse where he was hit over the head and then was injected in the right eye by Gallegos with a syringe. (Tr. at pp. 216-217, 263-264, 278).

45. While his left eye remains perfectly normal, examinations of Dempsey’s right eye show evidence of a focal scar and a macular scar above the fovea. (Tr. at pp. 529-530, 587-588; *see also*, PE 15 p.2; PE 8). Dr. Zegarra, whom Dr. Suber Huang, the State’s expert, concedes is a respected “retinal specialist,” found a “posterior vitreous separation of the right eye and a focal area of scarring above the fovea, which is most likely a result of the injury in 1995.” (Tr. at pp. 529-531, *see also*, PE 15 p.2). Additionally, the right retinal examination performed by Dr. Asseff showed a scar in the macular area above the fovea. (Tr. at pp. 570, 581-582, *see also*, PE

8; PE 9). The scar tissue in the right eye was found to be the result of a traumatic event and consistent with Dempsey's recollection of being pierced in the eye. (PE 8).

46. The State's expert, Dr. Suber Huang, has a competing theory that there was no macular scarring, but instead the focal changes in the right eye are related to aging. (Tr. at p. 523). However, Dr. Asseff, a specialist in general ophthalmology, which encompasses all the levels of diseases of the eye, testified that "[a]ging does not show asymmetry to this extent. . . One eye may be worse off in vision than the other, but they both have that break down defect. If you only see macular disease in one eye or macular changes in one yet and nothing in the other eye, you can't say that this is macular degeneration." (Tr. at pp. 570, 581-582, 596). In the Court's view, even an untrained eye can view the OTC scans taken by all three physicians and observe that there appears to be damage to the right eye and no injury to the left eye. Normal aging and degeneration would not be consistent with these scans and findings by Dr. Zegarra.

47. Dr. Asseff also testified that it is possible for a needle to enter in the periorbital area to make a scar defect impression on the retina without penetrating the eye. (Tr. at pp. 590-591, 615). Many types of drugs, including morphine, can be injected into the periorbital area. (Tr. at p. 591). An injection into the periocular area would not show once the injection site is healed. (PE 8). The periocular area is not the eyeball but may be mistaken as such by a layperson. (Tr. at pp. 590-591).

48. Over time, Dempsey has regained much of his memory regarding the events earlier in the evening of the fire; but to this day, Dempsey has no memory of how he actually entered the building. (Tr. at pp. 229, 303-304). There has been no testimony or evidence that suggest that Dempsey was even conscious when he entered the building. (Tr. at pp. 432, 447).

49. Despite Dempsey's lack of intent or physical ability to even function, much less break into a highly secured structure, set a fire, and hide out in the basement, from the beginning of the investigation, the State only seemed to suspect Dempsey, who was arrested while he was still in the hospital. (Tr. at p. 220; *see also*, JE 1 at pp. 2-4). However, Lt. Daniel Kovacic concedes that the fact that an unassociated person is in the building does not make the person guilty. (Tr. at p. 552).

50. The police investigation was rather less than robust. Dempsey gave a statement to the police explaining that prior to the fire, he was at the Dollhouse, where he had been drugged by Gallegos and served by Monrean. (JE 11). The next day, the Fire Investigation Unit took a statement from the owner of the Dollhouse and a dancer, but failed to speak with Gallegos, Monrean, or the other dancers at the bar that evening. (JE 7; JE 8). The police never even contacted Monrean but, instead, she voluntarily went into the police station to give her statement. (Tr. at pp. 134-135). Gallegos was finally interviewed over the telephone on September 13, 1995, six months after the fire, and not surprisingly denied all knowledge of Dempsey or the fire. (JE 9). He gave this statement from New Mexico, which is where he moved immediately after the fire. (JE 9). There is no evidence that Gallegos was questioned regarding the keys found in the basement of the Dollhouse or that he was fingerprinted for investigative purposes. The police could have found evidence that corroborated Dempsey's story, but instead failed to even make a serious effort to interview all of the people who were at the Dollhouse on March 11, 1995.

51. Further, Dempsey's car was found parked illegally across the street from the Lorain building with the passenger's side wheels up on the sidewalk and the driver's side wheels on the street. (Tr. at pp. 232-233, 280; JE 1 at p. 2). Dempsey did not have the car keys on him when he was discovered. (Tr. at pp. 222-223 *see also*, JE 15). Dempsey was never able to locate

his keys, but a pair of keys on a masculine key chain, matching the description of his own, were later found in the basement of the Dollhouse. (Tr. at pp. 101-103, 222-223; *see also*, JE 25 at ¶18). There is no evidence that the police looked into the keys in the basement or fingerprinted them. Despite the lack of investigation into the keys by the police, Lt. Kovacic believes that where Dempsey's car keys were recovered would be highly relevant. (Tr. at p. 560).

52. The State contends that Dempsey climbed through a glass window embedded with wire filament to enter the building. (Tr.. At pp. 366, 423-427, 536-537; *see also*, JE 1 at pp. 2-3). However, there is no explanation how a man could have done that without cutting or injuring himself. Attorney Kelly, whose office was against the rear door, testified that the wire filament would make it much more likely for an intruder to cut themselves if they were attempting to go through the glass. (Tr. at p. 449). Lt. Kovacic confirms that he would expect that if someone tried to sneak through the window without clearing out the whole area of glass, they would have been cut to shreds. (Tr. at p. 557).

53. Furthermore, the evidence pointed to other potential suspects, the most obvious one being Gallegos, yet they were not pursued in the investigation. For example, Segedy, owner of the building, had insurance on the property and received insurance proceeds after the fire, yet was not a suspect. (Tr. at pp. 361-362). Moreover, Segedy had enemies and had been threatened by them. (JE 5). Prior to the fire, two men were angry with Segedy over a job and threatened to shoot him. (JE 5). Additionally, a fired employee threatened that he would retaliate against Segedy with the Mafia and threatened physical harm. (Tr. at pp. 358-359; *see also*, JE 5). After Segedy followed up with the police to see how the investigation into the ex-employee was going, he was told that it "didn't become a big deal." (Tr. at p. 360).

54. Despite all the potential leads, based only on Dempsey's presence in the building, the State charged Dempsey with Aggravated Arson (R.C. § 2909.02) and Burglary (R.C. § 2911.12) by indictment on or about March 25, 1996 in the Cuyahoga County Court of Common Pleas, Case No. CR-96-336481. (Tr. at pp. 223-224; *see also*, JE 29 at p. 1; Stip. at ¶7). Dempsey pled not guilty to said charges. (Tr. at pp. 224-225, 444; *see also*, Stip. at ¶12). On or about August 16, 1996, Dempsey was found guilty of these charges. (Tr. at p. 224; *see also*, JE 26 at *2; Stip. at ¶8).

55. As the result of this conviction and subsequent sentence, Dempsey was incarcerated in a state run correctional facility from September 30, 1996 until August 18, 2003. (Tr. at p. 224; *see also*, JE 26 at *2; JE 28; Stip. at ¶ 9). This period is in addition to at least 45 days he spent imprisoned in a county facility. (JE 28). The State released Dempsey to the supervision of the Parole Board where he served an additional year. (JE 26 at *2). Dempsey was released from the supervision of the Parole Board on August 30, 2004. (JE 26 at *2).

56. Meanwhile, on October 24, 2001, Dempsey filed a Petition for a Writ of Habeas Corpus with the United States District Court for the Northern District of Ohio. (JE 26 at *3).

57. Nearly four years later, on August 15, 2005, that Court granted the Writ vacating the conviction and ordering a new trial – nearly two years *after* Dempsey had already been released from incarceration. (JE 26 at *8; *see also*, Stip. at ¶10). As a result, on October 4, 2005, the Court of Common Pleas vacated Dempsey's conviction and sentence. (JE 29 at p. 6).

58. At his subsequent retrial in the Cuyahoga County Court of Common Pleas, on August 24, 2007, the jury found Dempsey not guilty of all counts brought against him. (Tr. at p. 224; *see also*, JE 29 at pp. 1, 16; Stip. at ¶11). Today, the prosecuting attorney and the State of Ohio cannot seek any further appeal of right or upon leave of court, and no criminal proceeding

is pending, can be brought, or will be brought by any legal authority against Dempsey for any act associated with the subject matter of this case.

59. Dempsey filed the instant action on January 25, 2013 seeking a declaration that he is a wrongfully imprisoned individual under Ohio law.

CONCLUSIONS OF LAW

1. The wrongful imprisonment statute, R.C. § 2743.48, allows a person who constitutes a “wrongfully imprisoned individual” to commence a civil action against the state in the Court of Claims to recover damages due to the person’s wrongful imprisonment. R.C. § 2743.48(D); *Griffith v. Cleveland*, 128 Ohio St. 3d 35, 38, 941 N.E.2d 1157 (2010).

2. Prior to any such relief, a court of common pleas must initially determine whether the person satisfies the definition of a “wrongfully imprisoned individual.” R.C. § 2743.48 (A); *Doss v. State*, 135 Ohio St. 3d 211, 214, 985 N.E.2d 1229 (2012).

3. In order to constitute a “wrongfully imprisoned individual” pursuant to R.C. § 2743.48(A), a person must prove the following five elements:

- (1) The individual was charged with a violation of a section of the Revised Code... and the violation charged was an aggravated felony or felony.
- (2) The individual was found guilty of, but did not plead guilty, to the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.
- (3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.
- (4) The individual’s conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney ... against the individual for any act associated with that conviction.

- (5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

R.C. § 2743.48(A).

4. A person seeking to be declared a wrongfully imprisoned individual must prove each of these requirements by a preponderance of the evidence. *Doss*, 135 Ohio St. 3d at 218. Proving a case by a preponderance of the evidence is "a lower standard than proof beyond a reasonable doubt." *State v. Johnson*, 2011-Ohio-2142, 2011 Ohio App. LEXIS 1825, ¶ 26 (8th Dist.).

5. The parties stipulate that the first three elements of R.C. § 2743.48(A) are satisfied. (Stip. at ¶¶ 8, 9, 12).

6. R.C. § 2743.48(A)(4) requires that Dempsey prove by a preponderance of the evidence that his conviction was vacated, dismissed or reversed on appeal, that the prosecuting attorney cannot or will not seek any further appeal, and that "no criminal proceeding is pending, can be brought, or will be brought by the prosecuting attorney ... for an act associated with that conviction."

7. On August 15, 2005, the United States District Court for the Northern District of Ohio granted Dempsey's Writ of Habeas Corpus, vacating his convictions for aggravated arson and burglary and ordering a new trial. As a result, the Court of Common Pleas vacated Dempsey's conviction and sentence. At Dempsey's retrial in 2007, the jury found Dempsey not guilty of all counts. Thus, this Court finds that Dempsey has satisfied the first part of R.C. § 2743.48(A)(4) requiring vacation, dismissal, or reversal of the convictions.

8. Additionally, this Court finds that the rest of R.C. § 2743.48(A)(4) is satisfied by the legal theories of Double Jeopardy and expired statutes of limitations. Moreover, the parties

stipulate that, as a matter of fact, the County Prosecutor can bring no additional charges against Dempsey for any action or inaction attributable to Dempsey on March 11, 1995 and associated with his original indictment. (Stip. at ¶13),

9. To determine whether a subsequent prosecution is barred by the Double Jeopardy clause, the Supreme Court of Ohio applies the *Blockburger* test. *Blockburger v. United States*, 284 U.S. 299 (1932). Under *Blockburger*, if each offense requires proof of a fact that the other does not, the *Blockburger* test is satisfied and the two offenses are not the same for purposes of barring successive prosecutions. *Brown v. Ohio*, 432 U.S. 161, 166 (1977). However, if application of that test reveals that offenses have identical statutory elements or that one is a lesser-included offense of the other, subsequent prosecution is barred. *See, State v. Tolbert*, 60 Ohio St. 3d 89, 573 N.E.2d 617, 618 (1991).

10. Criminal trespass is a lesser included offense of burglary. *Casino v. State*, 2010-Ohio-5492, 2010 Ohio App. LEXIS 4591, ¶ 31 (8th Dist.). In order to commit burglary, one must also commit criminal trespass. *State v. Benford*, No. 56226, 1989 Ohio App. LEXIS 5247, *11, 1989 WL 142406 (8th Dist. November 22, 1989).

11. Because criminal trespass is a lesser-included offense of burglary, subsequent prosecution is barred in this case by the Double Jeopardy clause of the Fifth Amendment. *State v. Carter*, 89 Ohio St.3d 593, 600, 734 N.E.2d 345 (2000) (“The trial court did grant the defense’s request to instruct on criminal trespass as a lesser-included-offense for aggravated burglary.”).

12. In addition to the Double Jeopardy clause precluding Dempsey from being tried for the lesser-included offense of criminal trespass, prosecution would still be barred due to the running of the two-year limitations period. R.C. § 2901.13(A)(1)(b) (“[A] prosecution shall be

barred unless it is commenced within the following periods after an offense is committed: For a misdemeanor other than a minor misdemeanor, two years.”).

13. The limitations period for criminal trespass, pursuant to R.C. § 2901.13 and R.C. § 2911.21, is two years due to the fact that criminal trespass is a misdemeanor of the fourth degree.

14. The running of the limitations period renders any subsequent criminal proceeding legally impermissible. *See* R.C. § 2743.48(A)(4).

15. The Eighth District Court of Appeals has adopted the Tenth District’s interpretation of the word “can” in the phrase “no criminal proceeding . . . can . . . or will be brought” in R.C. § 2743.48(A)(4) to mean “criminal proceedings [that] are still factually supportable and legally permissible following reversal.” *See, C.K. v. State*, 2014-Ohio-1243, 2014 Ohio App. LEXIS 1169, ¶ 28 (8th Dist.) (*citing LeFever v. State*, 2013-Ohio-4606, 2013 Ohio App. LEXIS 4809, ¶ 26 (10th Dist.)).

16. In *C.K.*, the court noted that, theoretically, the prosecutor can always bring a charge even where the criminal charge may be outside the statutory time in violation of a defendant’s speedy trial right, and thus the literal definition of “can” should be rejected. *Id.* Instead, the court explained that a claimant will only fail to satisfy (A)(4) if a criminal proceeding that is both “factually supportable” and “legally permissible” can be brought. *Id.* Consequently, because Dempsey’s conviction for burglary was entered on March 11, 1995, the statute of limitations to bring an action for criminal trespass has run and thus a criminal proceeding is no longer legally permissible.

17. Moreover, the Tenth District Court of Appeals determined that the trial court erred by granting the state summary judgment on the eligibility requirement of R.C.

§ 2743.48(A)(4) because the limitations period for any other criminal activities had run. *See, McClain v. State*, 2014-Ohio-1711, 2014-Ohio-1711, ¶ 16 (10th Dist.).

18. In *McClain*, the state argued that the appellant failed to satisfy prong (A)(4) due to other alleged criminal acts that occurred almost 20 years earlier. *Id.* The court held that even if appellant had been engaged in other criminal conduct during the incident for which he was initially charged, appellant would still satisfy R.C. § 2743.48(A)(4) because the statute of limitations on other charges had expired and potential charges would violate offender's rights to a speedy trial. *Id.* at ¶ 15. *See also, Jenkins v. State*, 2013-Ohio-5536, 2013 Ohio App. LEXIS 5781, ¶ 18 (10th Dist.) (holding that the trial court did not error in its determination that appellee satisfied R.C. § 2743.48(A)(4) due to the state's failure to bring an appeal following the dismissal of the case and the running of the limitations period on any other potential charges), *reversed on other grounds*, 140 Ohio St. 3d 1449, 2014-Ohio-4414, 17 N.E.3d 596.

19. Likewise, any other criminal offenses committed by Dempsey occurred some 20 years ago in 1995 and are barred by nearly every criminal statute of limitations and, because a criminal proceeding for criminal trespass cannot be brought against Dempsey, this Court finds that Dempsey adequately satisfied R.C. § 2743.48(A)(4).

20. R.C. § 2743.48(A)(5) specifically requires that Dempsey prove by a preponderance of the evidence that "during or subsequent to imprisonment, ... it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses ... was not committed by the individual."

21. For the following reasons, this Court finds that Dempsey did not commit arson, burglary, or criminal trespass.

22. The statute on arson, R.C. § 2909.02 provides, in relevant part: “No person, by means of fire or explosion, shall *knowingly* ... [*c*]ause physical harm to any occupied structure.” R.C. § 2909.02(A)(2) (*emphasis added*).

23. A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist. R.C. § 2901.22(B).

24. Ohio statutory law provides that “[*v*]oluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense.” ORC Ann. 2901.21(D) (*emphasis added*). However, unlike voluntary intoxication, involuntary intoxication is an affirmative defense. *State v. Johnston*, 2015-Ohio-450, 2015 Ohio App. LEXIS 419, ¶ 33 (2d Dist.), citing *State v. Kortz*, 2013-Ohio-121, 2013 Ohio App. LEXIS 85, ¶ 20 (2d Dist.).

25. This Court finds that Dempsey was unwillingly drugged and his almost unconscious state was such as to preclude the formation of the requisite intent to *knowingly* commit arson or any other crime. Monrean has testified that she saw Gallegos, a man who often drugged unsuspecting people, put something in Dempsey’s drink that quickly made Dempsey disoriented, incapacitated, and unable to walk. Monrean’s testimony was not discredited by the State. Additionally, there has been no evidence presented that supports the State’s theory that Dempsey *caused* the fire. In fact, the evidence showing that Dempsey was found in an unconscious state and tested positive for alcohol, benzodiazepines, and morphine proves that Dempsey was more likely discarded in the building and was actually a victim of the aggravated arson. Due to this almost lethal cocktail, Dempsey was unable to walk, much less break into a

building by crawling through a wire-embedded glass window without sustaining any injuries and start a fire. As such, this Court finds that Dempsey did not commit arson.

26. Ohio's statute on burglary, R.C. § 2911.12, provides, in relevant part: "No person, *by force, stealth, or deception*, shall trespass in an occupied structure, or in a separately secured or separately occupied portion of an occupied structure when another person other than an accomplice of the offender is present, *with purpose to commit* in the structure or in the separately secured or separately occupied portion of the structure any criminal offense." R.C. § 2911.12(A)(1) (*emphasis added*).

27. The State contends that Dempsey entered the building by force, as opposed to stealth or deception, but evidence uncovered during trial negates this theory. "'Force' means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. § 2901.01(A)(1).

28. Regarding the requisite intent, R.C. § 2901.22(A) provides: "[a] person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature." R.C. § 2901.22(A).

29. It is undisputed that all four entrances to the building were found intact and locked. Due to the fact that Dempsey was not given a key, nor were keys were found on him or in the building, it is clear that Dempsey did not force entry through any of the doors. Additionally, the absence of any scratches, cuts, or abrasions on Dempsey's body or clothing confirm that he did not break the window above the rear door and climb through the wire filament and jagged glass. Moreover, evidence demonstrates that Dempsey did not act purposely.

Dempsey's involuntary drugging was such as to preclude the formation of the requisite intent to trespass *with purpose to commit* a criminal offense. Additionally, testimony confirms that Dempsey, who did not know any of the building occupants, did not have any motive to commit arson. Therefore, this Court finds that Dempsey did not commit burglary.

30. In relevant part, R.C. § 2911.21 defines criminal trespass as follows: "(A) No person, without privilege to do so, shall do any of the following: (1) *Knowingly* enter or remain on the land or premises of another... [or] (3) *Recklessly* enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access." R.C. § 2911.21(A)(1) & (3) (emphasis added).

31. As noted previously, a person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist. R.C. § 2901.22(B).

32. "A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist." R.C. § 2901.22(C).

33. Dempsey's presence in the building alone does not make him guilty of criminal trespass. The undisputed evidence demonstrates that Dempsey did not act knowingly or recklessly. Dempsey's involuntary drugging precluded his ability to form knowledge that certain

actions would probably cause a certain result, and further preclude the notion that he disregarded a known risk that his conduct was likely to cause a certain result. Moreover, the evidence shows that there was no way for Dempsey to enter the building on his own. This means that someone placed him in the building against his will. The evidence shows that entry to the building was not possible without a key, and the State's theory that Dempsey forced his way, intoxicated, through a door which took firefighters 10 minutes to break through is not supported. As such, this Court finds that Dempsey did not commit burglary's lesser-included offense, criminal trespass.

34. Because the undisputed evidence shows that Dempsey did not commit arson, burglary, or criminal trespass, this Court finds that Dempsey satisfies all the elements of R.C. § 2743.48(A) and was a wrongfully imprisoned individual.

35. In fact, the sad truth appears to be that Dempsey was the victim of an attempted murder, and the individuals who placed him in the building and set the fire that nearly killed him have never been held accountable for their crimes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Jack M. Dempsey is declared innocent as a wrongfully imprisoned individual.

IT IS SO ORDERED.



Judge Deena R. Calabrese

Date: 7-30-2015

THE STATE OF OHIO } I, THE CLERK OF THE COURT
Cuyahoga County } SS. WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL FINDINGS OF
FACT
NOW ON FILE IN MY OFFICE
WITNESS MY HAND AND SEAL OF SAID COURT THIS 20TH
DAY OF OCT A.D. 20 15
CUYAHOGA COUNTY CLERK OF COURTS
By [Signature], Deputy



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

JACK M. DEMPSEY
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-13-800111

Judge: DEENA R CALABRESE

JOURNAL ENTRY

DEFENDANT STATE OF OHIO'S MOTION FOR NEW TRIAL UNDER CIV. RULE 59(A), FILED 08/27/2015, IS DENIED.

Deena Calabrese

Judge Signature

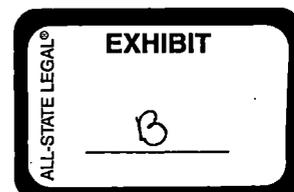
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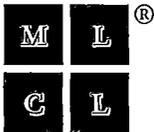
THE STATE OF OHIO } I, THE CLERK OF THE COURT
Cuyahoga County } SS. WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL JE

NOW ON FILE IN MY OFFICE
WITNESS MY HAND AND SEAL OF SAID COURT THIS 20TH
DAY OF OCT A.D. 2015
CUYAHOGA COUNTY CLERK OF COURTS
By [Signature] Deputy

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October 21, 2015

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Ohio Court of Claims
Thomas J. Moyer Ohio Judicial Center
65 South Front Street, 3rd Floor
Columbus, Ohio 43215

Re: **Jack M. Dempsey v. State of Ohio**

Dear Clerk of Courts:

Enclosed please find an original and three (3) copies of the following documents for filing in your Court:

1. *Complaint for Wrongful Imprisonment Pursuant to ORC §2743.48;*
2. *Plaintiff's Motion Pursuant to O.R.C. §2743.48(B)(3) for Preliminary Judgment of 50% of the Sum Described in O.R.C. §2743.48(E)(2)(b); and*
3. Statement of the Existence of Connected Actions.

Please file the same, serve upon the Attorney General and return a time-stamped copy in the enclosed envelope. We have enclosed a check in the amount of \$25.00 as payment of the filing fee. ^{1/2}

Thank you.

Very truly yours,


Susan C. Stone

SCS/ram
Enclosures

cc: Mike Dewine, Ohio Attorney General (w. encl.)
Brian Gutkoski, Esq. (w. encl.)