

# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **5th day of May, 2023** are as follows:

**BY Griffin, J.:**

2022-C-01455

WILBERT JONES VS. STATE OF LOUISIANA (Parish of East Baton Rouge)

AFFIRMED. SEE OPINION.

Crain, J., dissents and assigns reasons.

**SUPREME COURT OF LOUISIANA**

**No. 2022-C-01455**

**WILBERT JONES**

**VS.**

**STATE OF LOUISIANA**

*On Writ of Certiorari to the Court of Appeal, First Circuit,  
Parish of East Baton Rouge*

**GRIFFIN, J.**

We granted this writ to clarify the evidentiary burden a petitioner must meet for compensation for wrongful conviction and imprisonment. Because we agree with the court of appeal that the statutory burden under La. R.S. 15:572.8 is distinct from that which is required to support a claim for criminal post-conviction relief, we affirm.

**FACTS AND PROCEDURAL HISTORY**

This matter arises out of Mr. Wilbert Jones’ suit for compensation under La. R.S. 15:572.8 (“Wrongful Conviction Compensation Statute”). In 1971, A.H. was exiting her car in Baton Rouge General Hospital’s parking lot. A man with a firearm pushed her into her vehicle and ordered her to drive to a secluded location. She was raped twice. A.H. contacted police and described the assailant as a slender, dark-skinned male, approximately 5’ 8,” with a smooth voice and a gap between his front teeth.

Police showed A.H. multiple lineups. Three months after the rape, police arrested Mr. Jones. He was nineteen at the time. Mr. Jones volunteered to participate in a lineup. A.H. considered the individuals in the lineup for ten to fifteen minutes before identifying Mr. Jones as her assailant. However, she stated she was not sure and was “mulling over” her identification. A.H. noted that Mr. Jones’ voice was different from that of her assailant. She also stated that her assailant seemed a bit

taller than Mr. Jones. Mr. Jones also had no gap between his front teeth. A.H. would later call the investigating officers and inform them she was not positive of her identification.

Mr. Jones was indicted for the rape of A.H. on April 3, 1972. At trial, he testified that he did not rape A.H. and that he participated in the lineup because he was certain of his innocence. Despite earlier equivocations, A.H. testified that Mr. Jones was her assailant. Mr. Jones was found guilty of rape but his conviction was overturned by this Court due to racially prejudicial comments made by the prosecutor in opening statements. *State v. Jones*, 283 So.2d 476, 477 (La. 1973). He was retried and convicted again, and his conviction was affirmed on appeal. *State v. Jones*, 325 So.2d 235, 241 (La. 1975).

In 2011, Mr. Jones filed a petition for post-conviction relief seeking DNA testing. He also presented additional evidence of similarities between A.H.'s rape and one committed by Arnold Ray O'Conner. The trial court initially denied his request. However, this Court granted supervisory relief and remanded for a hearing to determine whether the State, by not informing Mr. Jones of Mr. O'Conner's crime, withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *Jones v. Vannoy*, 17-0101 (La. 6/16/17), 221 So.3d 850. On remand, Judge Richard Anderson ruled the State had committed a *Brady* violation observing the near-identical *modus operandi* of the rape of Mr. O'Conner's victim and that of A.H. After this Court denied writs, the State dismissed the indictment against Mr. Jones and he was released from prison after nearly fifty years of confinement.

Mr. Jones subsequently filed a petition for compensation for wrongful conviction and imprisonment relying on the factual findings of Judge Anderson<sup>1</sup> and testimony by Dr. Margaret Kovera, an expert in eyewitness identification. The trial

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<sup>1</sup> The record of Mr. Jones' post-conviction hearing was introduced into evidence.

court ruled that Mr. Jones had not proven he was factually innocent by clear and convincing evidence. Specifically, it held that Mr. Jones needed to produce new, material, noncumulative, and conclusive evidence that meets an extraordinary high standard and undermines the prosecution's entire case. Mr. Jones appealed. Reversing, the court of appeal found the trial court legally erred in applying the evidentiary burden for proving factual innocence in a claim for post-conviction relief to a petition for compensation under La. R.S. 15:572.8. *Jones v. State*, 21-1205, p. 11 (La.App. 1 Cir. 8/24/22), 348 So.3d 771, 779. Conducting a *de novo* review of the record, the court of appeal found Mr. Jones met his burden and remanded the matter to the trial court to determine the amount of compensation due. *Id.*, 21-1205, p. 16, 348 So.3d at 783.

The State's writ application to this Court followed, which we granted. *Jones v. State*, 22-1455 (La. 1/11/23), 352 So.3d 556.

### **DISCUSSION**

The issue before this Court is whether Mr. Jones is entitled to compensation under La. R.S. 15:572.8. Statutory interpretation is a question of law subject to *de novo* review. *Benjamin v. Zeichner*, 12-1763, p. 5 (La. 4/5/13), 113 So.3d 197, 201.

A petitioner who has served a sentence of imprisonment for which he was convicted is entitled to compensation under La. R.S. 15:572.8 if (1) the conviction has been reversed or vacated; and (2) he proves by clear and convincing scientific or non-scientific evidence that he is factually innocent of the crime for which he has been convicted. La. R.S. 15:572.8(A). "Factual innocence' means the petitioner did not commit the crime for which he was convicted and incarcerated nor did he commit any crime based upon the same set of facts used in his original conviction." La. R.S. 15:572.8(B). In making this determination, a court "may consider any relevant evidence regardless of whether it was admissible in, or excluded from, the criminal trial in which the petitioner was convicted." La. R.S. 15:572.8(D).

The State argues that existing jurisprudence interpreting La. R.S. 15:572.8 requires a heightened evidentiary burden. *See Burrell v. State*, 50,157, p. 11-12 (La.App. 2d Cir. 1/13/16), 184 So.3d 246, 252-53; *Jones v. State*, 19-1570, p. 4 (La.App. 1st Cir. 9/18/20), 313 So.3d 997, 1000 (“*Darryl Jones*”). Specifically, the State asserts that a petitioner must present new, material, noncumulative, and conclusive evidence that meets an extraordinarily high standard and undermines the prosecution’s entire case. *See Burrell, supra* (citing *State v. Conway*, 01-2808 (La. 4/12/02), 816 So.2d 290 and *State v. Pierre*, 13-0873 (La. 10/15/13), 125 So.3d 403). Mr. Jones counters that the plain language of La. R.S. 15:572.8 contains no such heightened evidentiary burden and that the court of appeal properly conducted a *de novo* review of the record. We agree.

The Wrongful Conviction Compensation Statute “is *sui generis*, and governs a unique situation” such that it is “the only relevant authority governing” petitions for compensation for wrongful conviction and imprisonment. *Burge v. State*, 10-2229, p. 6 (La. 2/11/11), 54 So.3d 1110, 1113. The starting place for the interpretation of a statute is the language of the statute itself. *Pierce Foundations, Inc. v. Jaroy Const., Inc.*, 15-0785, p. 7 (La. 5/3/16), 190 So.3d 298, 303). Furthermore, under La. C.C. art. 9, “[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” The language of La. R.S. 15:572.8 is plain on its face. The evidentiary burden therein requires only that a petitioner show his conviction was reversed or vacated; and, by clear and convincing evidence, that he is factually innocent. La. R.S. 15:572.8(A). Factual innocence, as defined by the statute, means the petitioner did not commit the crime for which he was convicted or any other crimes from the same set of facts. La. R.S. 15:572.8(B). A petitioner therefore has the burden of proving it is highly probable or much more probable than not that he did not commit the

crime for which he was convicted or any other crime from the same set of facts. *Jones*, 21-1205, p. 11, 348 So.3d at 780. In meeting this burden, a petitioner is aided by liberal evidentiary rules allowing the presentation of any relevant scientific or non-scientific evidence regardless of whether it was admissible in the criminal trial wherein the petitioner was convicted. La. R.S. 15:572.8(A)(2) and (D); *In re Williams*, 07-1380, p. 6 (La.App. 1 Cir. 2/20/08), 984 So.2d 789, 793 (observing this statutory allowance “suggest[s] a legislative intent that little limitation be placed on the introduction of evidence related in any way to the conviction and the proof of factual innocence”). We therefore agree with the court of appeal’s finding that the trial court legally erred in applying the evidentiary burden required for a claim of criminal post-conviction relief to a petition for compensation for wrongful conviction and imprisonment.<sup>2</sup>

Having concluded that legal error interdicted the factual findings of the trial court, the court of appeal properly conducted a *de novo* review of the record. *See Kinnett v. Kinnett*, 20-1134, p. 7 (La. 10/10/21), 332 So.3d 1149, 1154 (“where one or more legal errors interdict the fact-finding process, the manifest error standard is no longer applicable, and, if the record is otherwise complete, the appellate court should make its own independent *de novo* review of the record”). The Wrongful Conviction Compensation Statute requires proof of factual innocence by clear and convincing evidence. La. R.S. 15:572.8(A)(2). To meet the clear and convincing evidence standard, the petitioner must “prove the existence of a contested fact is highly probable, or much more probable than its non-existence.” *Talbot v. Talbot*,

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<sup>2</sup> As astutely observed by the court of appeal, the interpretive result dictated by the plain language of the Wrongful Conviction Compensation Statute is reinforced by the legislature codifying the heightened evidentiary standard articulated in *Burrell*, *Pierre*, and *Conway* in La. C.Cr.P. art. 926.2 defining factual innocence in the context of criminal post-conviction relief. *Jones*, 21-1205, pp. 8-9, 348 So.3d at 777-78 (concluding the legislature intended to create different burdens of proving factual innocence in a claim for criminal post-conviction relief and a claim for compensation under La. R.S. 15:572.8).

03-0814, pp. 9-10 (La. 12/12/03), 864 So.2d 590, 598. Thus, as properly framed by the court of appeal, “Mr. Jones has the burden of proving it is highly probable or much more probable than not that he did not commit the aggravated rape of A.H.” *Jones*, 21-1205, p. 11, 348 So.3d at 780.

The record reflects the near-identical nature in which Mr. O’Conner committed the rape for which he was convicted compared to the rape of A.H.<sup>3</sup> As found by Judge Anderson at the post-conviction hearing, the list of similarities include:<sup>4</sup> (1) each victim was kidnapped at gunpoint in the parking lot of a Baton Rouge hospital; (2) the rapist ordered the women to drive around while he was in the back seat; (3) the rapist ordered the women to hold his hand as they crossed Scenic Highway into a secluded area; (4) the rapist wiped himself clean with the victim’s clothing; (5) the rapist drove the victim to 28th and Slate Street where he left the victim and walked in the direction Mr. O’Conner’s Slate Street residence; and (6) the rapist left behind a pick hair comb at each scene.

Further evidence in favor of Mr. Jones’ factual innocence includes the fact that A.H.’s description of her assailant matches Mr. O’Conner, not Mr. Jones,<sup>5</sup> and the lack of certainty in A.H.’s identification of Mr. Jones. Notably, as there was no forensic or physical evidence linking Mr. Jones to the rape, the State’s case rested entirely on A.H.’s identification. Dr. Kovera gave expert testimony as to various factors that indicate the potential for inaccuracies in identifications including heightened stress when a weapon is involved, prolonged delay between the crime and the identification, and low-confidence identifications where, as here, the witness

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<sup>3</sup> The State presented no opposing evidence nor did it cross-examine Dr. Kovera.

<sup>4</sup> While not a similarity, Judge Anderson noted the rape committed by Mr. O’Conner occurred only twenty-seven days after the rape of A.H.

<sup>5</sup> A.H. described her rapist as approximately 5’8” tall which matches the height of Mr. O’Conner. Mr. Jones is only 5’3”. Mr. O’Conner also had a “smooth” voice and a gap between his front teeth – characteristics which A.H. used to describe her assailant that Mr. Jones does not possess.

expressed uncertainty. The court of appeal credited Dr. Kovera's testimony and noted it undermined the evidentiary value of A.H.'s identification. Based on our *de novo* review of the record, we find no error in the court of appeal's determination that Mr. Jones did not commit the rape of A.H.

**DECREE**

For the foregoing reasons, the judgment of the court of appeal is affirmed.

**AFFIRMED**



**SUPREME COURT OF LOUISIANA**

**No. 2022-C-01455**

**WILBERT JONES**

**VS.**

**STATE OF LOUISIANA**

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of East Baton Rouge

**CRAIN, J., dissents and assigns reasons.**

In this civil, not criminal, proceeding, we answer whether Mr. Jones should be compensated for his imprisonment. The burden of proof is clear and convincing evidence that he is innocent. That is, clear and convincing evidence he did not rape A.H. Specifically, we must determine the character of evidence necessary to meet that burden of proof and determine if Mr. Jones has satisfied it. Here, where this civil case is pursued after A.H.'s death, her identification of Mr. Jones has never been and cannot now be recanted, nor can she defend it. While perhaps unfortunate, I believe this fact prevents civil recovery for Mr. Jones.

A.H. testified Mr. Jones raped her. Two times, her testimony convicted him. She never recanted her identification of Mr. Jones. In fact, an alternative suspect was presented at his first jury trial and A.H.'s identification still convicted Mr. Jones. Now, A.H. is dead. Before she died, she was never confronted with this new evidence of an alternative suspect, so she neither defended, nor recanted, her identification of Mr. Jones as her rapist. Although uncertainty relative to her identification of Mr. Jones has been vetted repeatedly, its strength convicted Mr. Jones twice. If she were alive, would A.H. now recant her identification of Mr. Jones? If not, and if her identification was again persuasive, it could convict him a

third time. Could that conviction withstand judicial scrutiny? I believe so. But, we will never be able to definitively answer these questions because A.H. died. Consequently, I believe Mr. Jones cannot be successful in this civil proceeding.

Louisiana Revised Statutes 15:572.8, enacted in 2005, requires “scientific or non-scientific evidence” to support civil recovery for a wrongful imprisonment. In *Burrell v. State*, 50,157 (La. App.2d Cir. 1/13/16), 184 So. 3d 246, the court determined that evidence must be “new, material, noncumulative, and conclusive,” including “trustworthy eyewitness accounts.” The *Burrell* court relied upon *State v. Conway*, 01-2808 (La. 4/12/02), 816 So.2d 290 and *State v. Pierre*, 13-0873 (La. 10/15/13), 125 So.3d 403, both post conviction relief cases claiming “actual innocence,” to define the evidence necessary for a civil recovery. In *Jones v. State*, 19-1570 (La. App. 1 Cir. 9/18/20), 313 So.3d 997, the court again applied the *Burrell* evidence standard. I believe *Burrell* is correct and remains the applicable law.

The majority finds that a legislative amendment to Louisiana Code of Criminal Procedure article 926.2 changed the *Burrell* standard. That amendment addressed a non-DNA-based post conviction relief claim of actual innocence, not recovery of civil damages. To prove “actual innocence” for post conviction relief, the amended article requires “new, reliable, and non-cumulative evidence” that is either scientific, forensic, physical, or nontestimonial documentary evidence or testimonial evidence corroborated by this type of evidence. In the post conviction relief setting, this codified the jurisprudential standard developed in *Conway* and *Pierre*. But, La. R.S. 15:572.8, applicable only to civil proceedings, was not changed.

I believe the court of appeal and the majority here misinterpret the effect of the amendment to Article 926.2 on La. R.S. 15:572.8. The legislature is presumed to know our decisions and act accordingly. Thus, they legally knew La. R.S.

15:572.8 countenanced the same evidence embraced in *Conway* and *Pierre* and codified in Article 926.2. By not changing La. R.S. 15:572.8, our interpretive rules require that we recognize the legislature's intent to leave La. R.S. 15:572.8 as it was interpreted before Article 926.2 was amended. That is, the term "any relevant evidence" is still interpreted as set forth in *Burrell*. We just recognized this interpretative rule and applied it correctly in *Jameson v. Montgomery*, 22-1784 (La. 5/23), So.3d. I believe the majority's conclusion otherwise here is wrong.

But, whether we apply the *Burrell* standard or the one adopted by the majority, neither supports Mr. Jones' recovery of compensation under La. R.S. 15:572.8. He must clearly and convincingly show he is innocent. Mr. Jones did not get post conviction relief because he is innocent; he got post conviction relief because the State's failure to show evidence of the alternative suspect to Mr. Jones' defense team was a *Brady* violation. Here, I do not believe Mr. Jones can prove by clear and convincing evidence he is factually innocent without A.H. recanting her identification, or at least being able to defend it. Thus, no civil recovery is available. I dissent.