

Federal Appeals Court Reinstates Lawsuit By Four Of The “Beatrice Six” Defendants

On October 15, 2012 the U.S. Eighth Court of Appeals [reinstated a](#) key claim of the federal civil rights lawsuits filed by four defendant’s exonerated in 2009 of the February 1985 rape and murder of 68-year-old Helen Wilson in Beatrice, Nebraska. The four defendants whose lawsuits were dismissed, Kathy Gonzalez, JoAnn Taylor, Thomas Winslow, and James Dean, were convicted by guilty pleas in 1989 and 1990. Their lawsuits were [dismissed in](#) 2011.

Two other defendants exonerated of the crime, Joseph White and Debra Shelden, filed separate federal civil rights lawsuits.

The media dubbed the six defendants the ‘Beatrice Six.’ White was the only one of the six who did not confess after intense interrogations. While the other five made plea deals in exchange for reduced charges and sentences, White went to trial with the prosecution intending to seek the death penalty if he was convicted. Three of White’s co-defendants testified against him and he was convicted of rape and first-degree murder. The jury recommended a sentence of life in prison instead of a death sentence.

After losing his direct and post-conviction appeals, White pursued DNA testing of the crime scene biological evidence. For years the State of Nebraska opposed his efforts to test the evidence, but in 2007 the Nebraska Supreme Court ordered the DNA testing. The testing was finally conducted on some of the evidence in the summer of 2008 and additional testing followed. The testing proved that neither White nor any of his five co-defendants — who confessed and pled guilty — had anything to do with Ms. Wilson’s rape and murder.

White’s motion for a new trial based on the new exculpatory DNA evidence was granted on October 15, 2008, and he was released on a personal recognizance bond later that day. He had been incarcerated for more than 19-1/2 years since his arrest. The charges against him were subsequently dismissed. The two members of the Beatrice Six still incarcerated, Gonzalez and Winslow, were paroled several weeks after White’s release. The six defendants were wrongly imprisoned for a total of more than 76 years.

In November 2008 Nebraska Attorney General Jon Bruning held a press conference and disclosed that the DNA evidence conclusively linked Bruce Allen Smith to Ms. Wilson’s rape and murder. However, Smith died in 1992 of AIDS.

Nebraska’s State Board of Pardons unanimously voted on January 26, 2009, to pardon the five defendants who confessed based on their actual innocence of Helen Wilson’s rape and murder. AG Bruning said, [They are 100 percent innocent.](#)”

In July 2009 Gonzalez, Taylor, Winslow and Dean filed their [federal lawsuit against](#) Gage County Attorneys Office, Gage County Sheriff’s Office, Gage County and seven law enforcement officers for violating their constitutional rights by fabricating evidence, coercing them to falsely confess, and falsely prosecuting them. They alleged that they falsely confessed after prolonged interrogations during which they were threatened with the death penalty if they didn’t admit their guilt. Gonzalez was listed as the lead plaintiff.

U.S. District Court Judge Richard Kopf [wrote in his](#) 178-page ruling granting the defendant’s motion for summary judgment to dismiss the lawsuit, “After considering Gonzalez’s argument, as well as the arguments of the other plaintiffs, and viewing the evidence in the light most favorable to Gonzalez, I find as a matter of law that she is unable to prove a claim that the defendants’ behavior shocks the conscience.” Judge Kopf also ruled that the Beatrice Six were considered suspects, so the police couldn’t be faulted for focusing on them and wanting to interrogate them. He also wrote:

“In sum, while it is surely regrettable that ... the ... plaintiffs served time in prison for crimes they evidently did not commit, their constitutional rights were not violated. And, of course, the question of whether the defendants were negligent or committed some other tort under Nebraska law is not before me and I express no opinion about such matters. Nor do I approve or disapprove of the acts or omissions of the defen-



dants. I conclude only that plaintiffs’ constitutional rights were not violated and that each of the defendants has qualified immunity from suit.”

In dismissing the lawsuit and ruling that Gonzalez’s constitutional rights weren’t violated, Kopf didn’t consider the lawsuit’s claim that the police had coerced false confessions to the rape and murder, because he had earlier ruled the statute of limitations to raise that claim expired prior to when the lawsuit was filed in July 2009.

Publicity about the exoneration of the Beatrice Six resulted in Nebraska’s passage of a law in 2009 that provides for the payment of up to \$500,000 to a wrongly convicted person.

White filed a claim, and on October 1, 2010 he became the first person to be awarded compensation under Nebraska’s compensation law when he [settled his claim](#) for the \$500,000 maximum. White was paid \$25,000 prior to his death on March 27, 2011 in an industrial accident at the factory where he worked in Tarrant, Alabama. [White’s estate](#) will be paid the balance of the settlement. White, 48 at the time of his death, also filed a federal civil rights lawsuit against Gage County and several officials. That lawsuit is now being pursued by his estate, and it is pending.

On November 4, 2010, a judge approved settlement of [Gonzalez’s claim](#) for \$350,000 for her 19-1/2 years of imprisonment.

On February 3, 2011 a judge approved settlement of [Winslow’s claim](#) for \$180,000 for his 19-1/2 years of imprisonment.

Debra Shelden, the sixth Beatrice defendant, [filed a federal](#) civil rights lawsuit on July 1, 2011 that named Gage County and several officials as defendants. The [judge denied](#) a motion to dismiss the lawsuit, ruling their was evidence the defendants “abused their power in a shocking fashion.” Her lawsuit is pending.

On October 15, 2012 the U.S. Eighth Cir-

Beatrice Six cont. on p. 8

Susan Finkelstein's Sex For World Series Tickets Conviction Overturned

Susan Finkelstein's March 2010 conviction of attempted prostitution related to her [Craigslist.org](http://craigslist.org) advertisement for 2009 World Series tickets has been overturned.

The Philadelphia Phillies were playing the New York Yankees in the World Series scheduled to begin on October 28. Finkelstein placed an advertisement on Craigslist on October 26, 2009 that read:

"Diehard Phillies fan – gorgeous tall buxom blonde – in desperate need of two World Series tickets. Price negotiable – I'm the creative type! Maybe we can help each other!"

Her ad was seen that same day a Bensalem Township Police Department officer monitoring Craigslist.org ads for possible prostitution advertisements. He emailed Finkelstein claiming to have World Series tickets and requested her photograph. After she sent him three topless photographs of herself the officer started up a highly sexual-

Beatrice Six cont. from p. 7

cuit Court of Appeals [reinstated the claim](#) of Gonzalez, Taylor, Winslow and Dean that their rights to a fair criminal proceeding were violated by the reckless investigation and manufactured evidence that resulted in their convictions. The Court upheld the dismissal of their claim their guilty pleas were unconstitutionally coerced, and upheld dismissal of their claim against the county prosecutor on the basis he is entitled to absolute immunity.

White was the first person exonerated by DNA evidence in Nebraska, and the Beatrice Six are the largest number of defendants exonerated by DNA evidence in one case in the United States.

Read Justice Denied's article in [Issue 41 about the Beatrice Six](#).

Sources:

[Judge dismisses lawsuit over](#) wrongful Beatrice convictions, *Lincoln Journal Star*, August 4, 2011

[Judge dismisses lawsuit](#) against Gage County over wrongful convictions, *Beatrice Daily Sun*, August 4, 2011

[8th Circuit says Beatrice 6 lawsuits can go forward](#), *Beatrice Daily Sun*, October 15, 2012

[Thomas Winslow v. Richard Smith](#), et al., Case Nos. 11-2882, 11-2883, 11-2884 and No: 11-2903 (8th Cir. 10-15-2012)



Susan Finkelstein
(Rikard Larma, Metro
Philadelphia)

ly charged email exchange with her. He told her he only wanted to sell one of the tickets and [she responded](#). "So we would be going together? How cute." They agreed to meet that night at a local bar to discuss the tickets.

When she met the officer at the bar she allegedly told him she was married but had an open relationship with her husband. She was arrested based on the officer's claim she offered to have sex in exchange for one or both of the tickets he told her he had. She was charged with Prostitution and Criminal Attempt.

During Finkelstein's two day trial in March 2010 she denied offering sex for the tickets. She was acquitted of prostitution, but found guilty of attempted prostitution. She was sentenced to one year probation, 100 hours of community service, and to pay for the costs of her prosecution.

She appealed and on December 21, 2011 her conviction was overturned and she was acquitted by a panel of Pennsylvania Superior Court judges in, [Pennsylvania v Finkelstein](#), No. 1876 EDA 2010 (Superior Court, 12-20-2011). The Court's ruling states in part:

As we commence our discussion, we acknowledge the unusual cast of the events that underlie this case. ...

Because the proof required for Attempt was the same as that of the Prostitution offense of which she was acquitted, Finkelstein's conviction of Attempt cannot stand. In any event, our cases have made clear that the conduct in which Finkelstein engaged here does not fall within the ambit of Prostitution and, consequently, cannot be the subject of an Attempt conviction.

We have recognized accordingly that "the gravamen of the offense is not the sexual activity itself but the business of engaging in such activity for hire." *Commonwealth v. Danko*, 421 A.2d 1165, 1170 (Pa. Super. 1980). Thus, neither promiscuity and its moral implications, nor the sex act itself offer grounds for arrest and conviction.

As the foregoing commentary recognizes, the legislative objective in prohibiting prostitution is not to criminalize "private illicit sexual relations," but rather to curtail the deleterious effect of an open commercial sex trade on public

health and law enforcement, as well as to avoid the exploitation of women. *Id.* at 1169. None of the evidence in this case implicates these concerns and Finkelstein's conduct did not exceed the ambit of "private illicit sexual relations." Indeed, Susan Finkelstein appears as the embodiment of "a girl not generally engaged in commercial activity [who] nevertheless consents to have intercourse on a particular occasion in exchange for a promised reward." *Id.* at 1170. Under these circumstances, we conclude the Susan Finkelstein's conviction of Attempt exceeds the lawful scope of our statutory prohibition of Prostitution and cannot be sustained.

In other words, acting like a slut doesn't make a woman a prostitute, so even accepting the prosecution's case at face value Finkelstein didn't commit a crime.

During a press conference after Finkelstein's acquittal her lawyer William Brennan [told reporters](#), "I am certainly not referring specifically to Mrs. Finkelstein – she's a lovely lady – but I stand by the proposition that it is not illegal to be a slut. And the Superior Court more eloquently said the same – private, illicit sexual activity is not criminal."

Finkelstein [said about](#) the court's ruling: "It's a good feeling, although it is bitter-sweet. The past couple of years have been costly both financially, professionally and emotionally." She has already served her sentence.

The State has the option to appeal Finkelstein's acquittal to Pennsylvania's Supreme Court, but the appeal court's ruling was based on a detailed analysis of the applicable law so the State may forego an appeal, or if they do, the chances are likely slim that it will be successful.

Sources:

[Pennsylvania v Finkelstein](#), No. 1876 EDA 2010 (Superior Court, 12-20-2011)

[Susan Finkelstein beats sex-for-tickets rap](#), *Philadelphia Metro*, December 21, 2011

[Court overturns woman's sex-for-Phillies-tickets conviction](#), *The Intelligencer* (Philadelphia), December 21, 2011

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