

# IN FAVOR OF “TRINA’S LAW”: A PROPOSAL TO ALLOW CRIME VICTIMS IN OHIO TO USE THE CRIMINAL CONVICTIONS OF THE PERPETRATORS AS COLLATERAL ESTOPPEL IN SUBSEQUENT CIVIL CASES

THE CENTER FOR LAW AND JUSTICE AT THE  
UNIVERSITY OF CINCINNATI COLLEGE OF LAW \*

## I. INTRODUCTION

Ohio is in the minority of jurisdictions that do not allow the victim of a crime to use the felony conviction of the perpetrator as conclusive evidence that the criminal acts occurred in a subsequent civil case. This law exists in Ohio despite the fact that the benefits of allowing criminal convictions to have estoppel effect in a subsequent civil action outweigh the virtually non-existent risks.

A law allowing criminal convictions to estop relitigation of issues in a civil action would save time and judicial resources by avoiding the relitigation of issues that were conclusively established in a criminal action, as well as prevent the victim from spending time and money relitigating issues that were firmly established in the criminal action. The latter concern is especially clear in the case of Trina Hatchett. Ms. Hatchett was the victim of an attempted murder and is currently embroiled in a civil action with her attacker,<sup>1</sup> who was already convicted of attacking her in a criminal proceeding.<sup>2</sup> Ms. Hatchett, like many Ohio residents in her position, has unfortunately had to bear the burden of Ohio’s minority

---

Copyright © 2003, Center for Law and Justice at the University of Cincinnati College of Law.\*

The authors of this Article are Megan Maag, University of Cincinnati law student, and Adam Tomakich, University of Cincinnati law student. Mark Godsey, Assistant Professor of Law at the University of Cincinnati College of Law and Faculty Director, Center for Law and Justice; John Cranley, Lecturer in Law at the University of Cincinnati College of Law and Administrative Director, Center for Law and Justice; and Gabriel J. Chin, former Rufus King Professor of Law at the University of Cincinnati College of Law, now Professor of Law at the University of Arizona College of Law, supervised the project and edited the Article.

<sup>1</sup> See *Hatchett v. Williams*, No. A0209003 (Ohio Ct. Com. Pls., Hamilton County filed Nov. 22, 2002).

<sup>2</sup> See Randy Tucker, *Man Gets 15 Years in Restaurant Shootings*, THE CINCINNATI ENQUIRER, Jun. 26, 2002, at C2, available at LEXIS, News Library, Ohio News Sources [hereinafter *Man Gets 15 Years*].

position on this issue. She has watched in frustration as her attacker has claimed in the pending civil action that he is not guilty of the offense despite having already been convicted of the offense in a criminal forum, where the burden of proof was higher than in the pending civil case. Ohio's minority position on this issue has forced Ms. Hatchett to bear the burden and expense of relitigating her attacker's guilt—not only adding undue hardship and expense to her physical injuries, but wasting the resources of the judicial system as well.

This Article explores the reasons why Ohio should adopt legislation that would allow criminal convictions to estop litigation of certain issues in a civil action. Part II.A sets up the issue by exploring the facts of Ms. Hatchett's case. Part II.B then discusses the stance of the majority states. Part II.C, in turn, summarizes the stance of the minority states. Part II.D then discusses how Ohio currently uses criminal convictions in subsequent civil actions. Part II.E argues that ratification of legislation that would allow criminal convictions to have estoppel effect in subsequent civil actions would be valid under Ohio law. Part II.F then establishes the reasons why Ohio should adopt a law that would allow criminal convictions to have estoppel effect in a civil action. Finally, Part II.G explores the appropriate scope of the proposed law.

## II. DISCUSSION

### A. *The Facts of Ms. Hatchett's Case*

The facts of Trina Hatchett's case were obtained from *The Cincinnati Post* and *The Cincinnati Enquirer*, and from personal interviews with Trina Hatchett.<sup>3</sup> On November 23, 2001, Danny Williams walked into J. Alexander's restaurant in Cincinnati with a 9mm and a .45 caliber handgun.<sup>4</sup> He sat down in a booth across from his ex-girlfriend, Trina Hatchett, and her dinner companion, Michael Smith.<sup>5</sup> When the pair tried to leave, Williams pulled out the 9mm and shot Ms. Hatchett in the chest, narrowly missing her aorta.<sup>6</sup> Mr. Smith then tackled Williams, knocking the 9mm out of his hand, at which point Williams lifted the .45 caliber

---

<sup>3</sup> *Id.*; Kimball Perry, *Plea Bargain in Shootings; Man Claims Attack was Self Defense*, THE CINCINNATI POST, June 26, 2002, at A14, available at 2002 WL 6533250 [hereinafter *Plea Bargain in Shootings*]; Kimball Perry, *Gunshot to Head Barely Missed*, THE CINCINNATI POST, Dec. 4, 2001, at A10, available at 2001 WL 244535810 [hereinafter *Gunshot to Head*]; Tim O'Neill, *Woman: Shooter Abused Her*, THE CINCINNATI ENQUIRER, Nov. 27, 2001, at B1, available at LEXIS, News Library, Ohio News Sources [hereinafter *Woman: Shooter Abused Her*].

<sup>4</sup> *Gunshot to Head*, *supra* note 3.

<sup>5</sup> *Gunshot to Head*, *supra* note 3.

<sup>6</sup> *Gunshot to Head*, *supra* note 3.

handgun and fired at Mr. Smith, but missed.<sup>7</sup> Williams then pointed the .45 caliber handgun at Ms. Hatchett and fired.<sup>8</sup> Had she not slumped down at that exact moment, Williams would have shot Ms. Hatchett in the head.<sup>9</sup> Williams then shot at Mr. Smith yet again as Smith attempted to flee, this time hitting him in the leg.<sup>10</sup>

Williams was charged with two counts of attempted murder.<sup>11</sup> After a plea agreement was reached, Williams pled guilty to the two counts of attempted murder and was sentenced to fifteen years in prison.<sup>12</sup>

Mr. Smith nearly lost his leg in the attack, and now must have an operation every five years to maintain his ability to walk.<sup>13</sup> Ms. Hatchett suffered a nicked lung and three broken ribs.<sup>14</sup> She has numerous medical bills, suffers from severe anguish and anxiety, and has permanent scarring and disability because of the wounds inflicted by Williams.<sup>15</sup>

Ms. Hatchett has subsequently filed a civil suit in the Court of Common Pleas of Hamilton County, Ohio, which includes counts of assault and battery, intentional infliction of emotional distress, and punitive damages.<sup>16</sup> She seeks actual damages in excess of \$25,000 and punitive damages in excess of \$25,000.<sup>17</sup> Included in the calculation of Ms. Hatchett’s actual damages is payment to recover full title to the house that she and the convicted perpetrator, Williams, jointly own. Williams still reaps the benefits of ownership while in prison. Williams now claims that the shooting was in self-defense in the civil suit,<sup>18</sup> even though he has already pled guilty to attempted murder in the criminal proceeding. Ms. Hatchett is now in the frustrating position of having to reprove issues in her civil suit that were already decided in the criminal proceeding.<sup>19</sup>

---

<sup>7</sup> *Woman: Shooter Abused Her, supra* note 3.

<sup>8</sup> *Gunshot to Head, supra* note 3.

<sup>9</sup> *Gunshot to Head, supra* note 3.

<sup>10</sup> *Gunshot to Head, supra* note 3.

<sup>11</sup> *Woman: Shooter Abused Her, supra* note 3.

<sup>12</sup> *Man Gets 15 Years, supra* note 2.

<sup>13</sup> *Plea Bargain in Shootings, supra* note 3.

<sup>14</sup> *Gunshot to Head, supra* note 3.

<sup>15</sup> Complaint for Monetary Damages in Excess of \$25,000 with Verification and Request for Punitive Damages with Jury Demand Endorsed Herein at 2, *Hatchett v. Williams*, No. A0209003 (Ohio Ct. Com. Pls., Hamilton County filed Nov. 22, 2002) [hereinafter Plaintiff’s Complaint].

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Plea Bargain in Shooting, supra* note 3.

<sup>19</sup> *Gunshot to Head, supra* note 3.

B. *A Majority of States Have Allowed Criminal Convictions to Be Used as Conclusive Evidence That the Criminal Acts Occurred in a Subsequent Civil Action*

Thirty-nine states and the federal government allow criminal convictions to estop the litigation of issues in a subsequent civil action. Twenty-nine states have followed the majority position through case law,<sup>20</sup>

---

<sup>20</sup> *Arkansas*: Zinger v. Terrell, 985 S.W.2d 737, 741 (Ark. 1999) (holding that a murder conviction collaterally estopped the relitigation of guilt in a subsequent civil suit); *California*: Teitelbaum Furs, Inc. v. Dominion Ins. Co., 21 Cal. Rptr. 671 (Cal. Ct. App. 1962) (conviction of corporate president for stealing furs estopped later civil suit by corporation against insurance company to recover loss); *Connecticut*: Aetna Cas. & Sur. Co. v. Jones, 596 A.2d 414, 425 (Conn. 1991) (mutuality of parties is no longer required to invoke collateral estoppel and, since the party was convicted of first-degree manslaughter in a criminal court, the plaintiff could collaterally estop relitigation in a subsequent civil action); *Georgia*: Consolidated Mgmt. Servs., Inc. v. Halligan, 368 S.E.2d 148 (Ga. Ct. App. 1988) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action); *Hawaii*: Tradewind Ins. Co. v. Stout, 938 P.2d 1196 (Haw. Ct. App. 1997) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action); *Idaho*: Anderson v. City of Pocatello, 731 P.2d 171, 179 (Idaho 1986) (collateral estoppel bars relitigation in a civil proceeding of issues determined in a criminal proceeding in which the party sought to be estopped had full and fair opportunity to litigate that issue); *Indiana*: Doe v. Tobias, 700 N.E.2d 796, 799 (Ind. Ct. App. 1998) (a defendant convicted in a criminal proceeding is precluded from denying the essential allegations of the criminal offense in a subsequent civil action); *Kentucky*: Gossage v. Roberts, 904 S.W.2d 246 (Ky. Ct. App. 1995) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal action); *Maine*: Butler v. Mooers, 771 A.2d 1034, 1037 (Me. 2001) (quoting Hanover Ins. Co. v. Hayward, 464 A.2d 156, 160 (Me. 1983)) (prior criminal conviction “conclusively establishes all facts essential to final judgment of conviction”; therefore, final judgment of conviction in criminal case is “preclusive in favor of third party in a subsequent civil action against the defendant in the criminal case”); *Massachusetts*: Aetna Cas. & Sur. Co. v. Niziolek, 481 N.E.2d 1356, 1360 (Mass. 1985) (“a party to a civil action against a former criminal defendant may invoke the doctrine of collateral estoppel to preclude the criminal defendant from relitigating an issue decided in the criminal prosecution”); *Minnesota*: Transamerica Ins. Co. v. Samuels, 369 N.W.2d 587, 588 (Minn. Ct. App. 1985) (criminal convictions may be used as collateral estoppel in subsequent civil litigation where there was an actual conviction and the criminal is trying to profit from his own crime in the subsequent civil litigation); *Mississippi*: Jordan v. McKenna, 573 So. 2d 1371, 1375 (Miss. 1990) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven

*(continued)*

while the federal government<sup>21</sup> and the remaining ten states have adopted formal legislation.<sup>22</sup>

---

in the criminal action); *Missouri*: James v. Paul, 49 S.W.3d 678, 694 (Mo. 2001) (guilty plea collaterally estopped relitigation of whether a stabbing was intentional or willful in a subsequent civil action); *New Hampshire*: Hopps v. Utica Mut. Ins. Co., 506 A.2d 294, 297 (N.H. 1985) (earlier criminal judgment can preclude party to criminal prosecution from relitigating contested issue of fact resolved in such prosecution in a later civil proceeding if party enjoyed full and fair opportunity to, and actually did, litigate issue in criminal prosecution); *New York*: Pahl v. Grenier, 279 A.D.2d 882, 883 (N.Y. App. Div. 2001) (an issue decided in a criminal proceeding may be given preclusive effect in a subsequent civil action); *North Carolina*: Brower v. Killens, 472 S.E.2d 33, 35 (N.C. Ct. App. 1996) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial); *North Dakota*: Ohio Cas. Ins. Co. v. Clark, 583 N.W.2d 377, 382 (N.D. 1998) (“modern rule [gave] *res judicata* effect to criminal convictions to prevent relitigation in a later civil proceeding”); *Oregon*: State Farm Fire & Cas. Co. v. Sallak, 914 P.2d 697, 700 (Or. Ct. App. 1996) (a criminal conviction can have preclusive effect in a subsequent civil action even if the conviction was based on a plea of guilty); *Pennsylvania*: Krystal Jeep Eagle, Inc. v. Bureau of Prof'l and Occupational Affairs, 725 A.2d 846 (Pa. Commw. Ct. 1999) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial); *Rhode Island*: Silveira v. Santos, 490 A.2d 969, 973 (R.I. 1985) (plea of guilty did not prevent collateral estoppel in a subsequent civil action); *South Carolina*: Doe v. Doe, 551 S.E.2d 257, 259 (S.C. 2001) (mutuality of parties is no longer a requirement in asserting collateral estoppel of a criminal conviction in a subsequent civil suit); *Tennessee*: Ali v. Moore, 984 S.W.2d 284 (Tenn. Ct. App. 1998) (criminal conviction by jury is conclusive on issue and, thus, acts as collateral estoppel in subsequent civil trial); *Texas*: Petta v. Rivera, 985 S.W.2d 199 (Tex. App. 1998) (a defendant convicted in a criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial); *West Virginia*: State *ex rel.* Leach v. Schlaegel, 447 S.E.2d 1, 4 (W. Va. 1994) (a plea of guilty is sufficient for allowing criminal judgments to be used as collateral estoppel in subsequent civil litigation); *Wisconsin*: Paige K.B. *ex rel.* Peterson v. Steven G.B., 594 N.W.2d 370, 380 (Wis. 1999) (“an issue fully litigated in a criminal proceeding is not conclusive in a subsequent civil proceeding against the defendant’s parents unless they were in privity with the defendant or had sufficient identity of interests with the defendant so as to have had an opportunity to fully and fairly litigate the issues”); *Wyoming*: Worman v. Carver, 44 P.3d 82, 86 (Wyo. 2002) (collateral estoppel was appropriate because issues in the criminal case were the same issues in the civil case).

<sup>21</sup> 18 U.S.C.A. § 3664(l) (West 2003) (“A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.”).

The states that have followed the majority position through case law have done so for a variety of reasons, with a range of safeguards in place to insure fairness to the defendant. In *Scott v. Robertson*,<sup>23</sup> the Supreme Court of Alaska held that the use of a criminal conviction to estop

---

<sup>22</sup> *Alabama*: ALA. CODE § 15-18-75 (1995) (“If conviction in a criminal trial necessarily decides the issue of a defendant’s liability for pecuniary damages for a victim, that issue is conclusively determined as to the defendant, if it is involved in a subsequent civil action.”); *Arizona*: ARIZ. REV. STAT. ANN. § 13-807 (West 2003) (“A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding . . . the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas.”); *Colorado*: COLO. REV. STAT. ANN. § 18-17-106(8) (West 2003) (“A final judgment or decree rendered in favor of the People in any criminal proceeding under this article shall estop the defendant in any subsequent civil action or proceeding as to all matters as to which such judgment or decree would be an estoppel as between the parties.”); *Delaware*: DEL. SUPER. CT. CIV. R. 71.3(f)(1) (“A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense . . . in any proceeding brought pursuant to this Rule, regardless of the pendency of an appeal from that conviction.”); *Florida*: FLA. STAT. ANN. § 775.089(8) (West 2003) (“The conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent civil proceeding.”); *Louisiana*: LA. REV. STAT. ANN. § 46:1809(2) (West 2003) (“Conviction of an offender of a crime giving rise to the application for reparations under this Chapter shall be conclusive evidence that the crime was committed.”); *Michigan*: MICH. COMP. LAWS ANN. § 750.159(8) (West 2003) (“A defendant convicted in a criminal proceeding is estopped from subsequently denying in a civil action the essential allegations of the criminal offense of which he or she was convicted.”); *Nevada*: NEV. REV. STAT. ANN. 453.5533(2) (Michie 2002) (“A final judgment or decree rendered in favor of the state in any criminal proceeding arising out of the same act, transaction or occurrence estops the defendant in a subsequent civil action from denying the essential allegations of the criminal offense.”); *Utah*: UTAH CODE ANN. § 76-10-1607 (2002) (“A final judgment or decree rendered in favor of the state or a county in any criminal proceeding brought by this state or a county shall preclude the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding.”); *Washington*: WASH. REV. CODE ANN. § 9A.82.100(6) (West 2003) (“A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.”).

<sup>23</sup> 583 P.2d 188 (Alaska 1978).

litigation in a subsequent civil action is justified if three factors are present that protect the defendant from unjust application of the law.<sup>24</sup> The court first required that the defendant be convicted of a “serious criminal offense,” to insure that the defendant had a full incentive to defend himself in the criminal forum.<sup>25</sup> The court’s second condition was that the defendant had a “full and fair hearing” in the criminal forum in order to prevent the introduction of a prior conviction where there was a substantial question of its validity.<sup>26</sup> The final requirement of the court was that “the issue on which judgment is offered was necessarily decided in the previous [criminal action].”<sup>27</sup>

In *Dettmann v. Kruckenberg*,<sup>28</sup> the Supreme Court of Iowa held that the issue of whether a defendant in a civil action was driving a car involved in an accident was precluded from being relitigated, due to the defendant’s criminal conviction of vehicular homicide.<sup>29</sup> In reaching this decision the court reasoned that the defendant was found guilty of vehicular homicide beyond a reasonable doubt, a higher burden of proof than is required in the civil forum, implicit in which was a finding by the jury that the defendant was driving the car.<sup>30</sup> Additionally, the driver issue was raised and litigated in the criminal forum, and the issue was essential to the judgment in the criminal case.<sup>31</sup> Furthermore, the defendant had a full and fair opportunity and incentive to litigate the driver issue in the criminal case due to the seriousness of the criminal offense.<sup>32</sup>

In *American Family Mutual Insurance Co. v. Savickas*,<sup>33</sup> the Supreme Court of Illinois overruled its previous precedent of not allowing criminal convictions to have estoppel effect in subsequent civil actions.<sup>34</sup> The court reasoned that the differences between civil and criminal litigation all favor the criminal defendant.<sup>35</sup> The court illustrated some of these differences, such as the procedural safeguard of guilt beyond a reasonable doubt by a unanimous jury verdict in the criminal forum,<sup>36</sup> the fact that in a criminal trial the defendant has the right to remain silent, and the court cannot

---

<sup>24</sup> *Id.* at 191-92.

<sup>25</sup> *Id.* at 191.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 191-92.

<sup>28</sup> 613 N.W.2d 238 (Iowa 2000).

<sup>29</sup> *Id.* at 248.

<sup>30</sup> *Id.* at 249.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 739 N.E.2d 445 (Ill. 2000).

<sup>34</sup> *Id.* at 450.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

comment on his silence,<sup>37</sup> and that a criminal defendant has the right to counsel and a record paid for by the state on appeal.<sup>38</sup> The court decided that these differences all militate in favor of allowing criminal convictions to have estoppel effect, because the greater safeguards in the criminal forum make criminal convictions more reliable.<sup>39</sup> The court went on to state that “[i]t surely could not inspire faith in our judicial system to hold that a criminal conviction, upon which society may deprive a defendant of his liberty, or indeed very life, is not worthy of the same preclusive effect as may be accorded an ordinary civil judgment.”<sup>40</sup>

The states that have adopted the majority stance through legislation have done so with varying language and guidelines. For example, in Washington the legislation provides that

[a] defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.<sup>41</sup>

In comparison, the Arizona statute on this subject simply states that “[a] defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding . . . the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas.”<sup>42</sup>

C. *A Minority of States Have Taken the Position That Criminal Convictions Cannot Be Used as Collateral Estoppel in a Subsequent Civil Action*

Eleven states, including Ohio, have not yet adopted the majority position that criminal judgments can be used as collateral estoppel in a subsequent civil action. Five of these states, including Ohio, have

---

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> WASH. REV. CODE ANN. § 9A.82.100(6) (West 2003).

<sup>42</sup> ARIZ. REV. STAT. ANN. § 13-1807 (West 2003).

followed the minority position through case law,<sup>43</sup> and the remaining five states have adopted the minority position through legislation.<sup>44</sup>

Those states that have outlined their stance on the issue through case law have done so in a variety of ways. For example, in *Eagan v. Calhoun*,<sup>45</sup> the Supreme Court of Maryland decided not to apply collateral estoppel to the issue of homicide in a civil case involving a wrongful death suit against a defendant previously convicted of the homicide that gave rise to the civil suit.<sup>46</sup> The court stated that “[a] criminal conviction is not conclusive of the facts behind it in a subsequent civil proceeding, and, indeed, the conviction is ordinarily not even admissible in the civil action

---

<sup>43</sup> *Kansas*: Patrons Mut. Ins. Ass’n v. Harmon, 732 P.2d. 741, 745 (Kan. 1987) (“When relevant, the plea of guilty to that charge may be admitted into evidence in a subsequent civil action . . . .” Criminal convictions after trial cannot be used as evidence as an admission in a subsequent civil case.); *Maryland*: Eagan v. Calhoun, 698 A. 2d 1097, 1104 (Md. 1997) (“A criminal conviction is not conclusive of the facts behind it in a subsequent civil proceeding, and, indeed, the conviction is ordinarily not even admissible in the civil action as evidence of the underlying facts.”); *Nebraska*: State v. Yelli, 530 N.W.2d. 250, 254 (Neb. 1995) (“[D]octrines of *res judicata* and collateral estoppel are not applicable when the burden of persuasion is different in the subsequent proceeding.”); *New Mexico*: See *In re* Forfeiture of Fourteen Thousand Six Hundred Thirty Nine Dollars (\$14,639) in U.S. Currency in Various Denominations and Two (2) Digital Pagers, 902 P.2d. 563, 569 (N.M. Ct. App. 1995) (A criminal conviction does not establish the truth of facts behind it in a subsequent civil proceeding.); *Virginia*: Godbolt v. Brawley, 463 S.E.2d 657, 658 (Va. 1995) (“As [a] general rule, judgment of conviction or acquittal in criminal prosecution does not establish, in subsequent civil action, the truth of facts on which it was rendered, or constitute bar to subsequent civil lawsuit based on offense of which party stands convicted or acquitted.”).

<sup>44</sup> *Montana*: MONT. CODE ANN. § 46-18-249(2) (2003) (“The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a separate civil action and have no legal effect on the merits of a separate civil action.”); *New Jersey*: N.J. STAT. ANN § 2C:21-28(a) (West 2003) (“A final judgment rendered in favor of the State in any criminal proceedings shall estop the defendant from denying the same conduct in any civil action brought” only by the Attorney General.); *Oklahoma*: OKLA. STAT. ANN. tit. 12 § 2803(22) (West 2003) (Evidence of a final judgment or a plea of guilty by a person convicted of a crime punishable by death or imprisonment in excess of one year is not excluded as hearsay, and that such evidence may as proof of any fact to sustain a judgment, but not as conclusive proof.); *South Dakota*: S.D. CODIFIED LAWS § 41-1-5.2 (Michie 2003) (“Conviction of a criminal offense for the same incident leading to the charges [only of killing or taking of animals] is prima facie evidence of the defendant’s civil liability.”); *Vermont*: VT. R. CRIM. P. 11(e)(5) (2003) (A plea of guilty can be admitted into evidence in civil and criminal trials.).

<sup>45</sup> 698 A.2d 1097 (Md. 1997).

<sup>46</sup> *Id.* at 1104.

as evidence of the underlying facts.”<sup>47</sup> The court reasoned that a conviction in a criminal proceeding is not conclusive to the character of the homicide in a civil proceeding; this is to be decided in the subsequent civil proceeding.<sup>48</sup>

Kansas has interpreted the minority stance differently. In *Patrons Mutual Insurance Ass’n v. Harmon*,<sup>49</sup> the court stated that “[w]hen relevant, the plea of guilty to that charge may be admitted into evidence in a subsequent civil action.”<sup>50</sup> Criminal convictions after trial cannot be used as evidence of an admission in a subsequent civil case.<sup>51</sup> The court reasoned that a plea of guilty is an admission of that charge, and therefore can be used only as evidence in a subsequent civil case; however, a guilty verdict or plea of *nolo contendere* should not be considered an admission and cannot be used in a subsequent civil action.<sup>52</sup>

The states that have codified the minority position through the legislature have also done so in a variety of ways. For example, Montana law states that “[t]he findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a separate civil action and have no legal effect on the merits of a separate civil action.”<sup>53</sup> However, a New Jersey statute states that “[a] final judgment rendered in favor of the State in any criminal proceedings shall estop the defendant from denying the same conduct in any civil action” only if that action is brought by the Attorney General.<sup>54</sup>

#### D. *How Ohio Currently Uses Criminal Convictions in Subsequent Civil Actions*

As discussed above, collateral estoppel is a doctrine that prevents parties from relitigating issues that have already been decided.<sup>55</sup> Its purpose is to promote judicial economy and the finality of judgments. The most important criteria when determining whether collateral estoppel applies in Ohio are as follows: (1) the parties and the issues must be identical; (2) the particular issue must have been actually litigated; and (3)

---

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 732 P.2d. 741 (Kan. 1987).

<sup>50</sup> *Id.* at 745.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> MONT. CODE ANN. § 46-18-249(2) (2003).

<sup>54</sup> N.J. STAT. ANN § 2C:21-28(a) (West 2003).

<sup>55</sup> *See, e.g., Goodson v. McDonough Power Equipment, Inc.*, 443 N.E.2d 978, 981 (Ohio 1983).

the particular issue must have been actually decided.<sup>56</sup> The Supreme Court of Ohio, however, has ruled that the strict mutuality of parties requirement can be relaxed in some situations in the interest of justice.<sup>57</sup>

Bucking the national trend, Ohio remains one of only a handful of jurisdictions that does not allow a prior criminal conviction to estop relitigation of the same issue in a subsequent civil case. A discussion of Ohio law illustrating this principle will follow.

The primary rule in Ohio specifying how a plaintiff can use a criminal conviction in a subsequent action is Ohio Rule of Evidence 803(21), which states that “[e]vidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest or the equivalent plea from another jurisdiction), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year” is admissible in a civil case as a hearsay exception “to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than accused.”<sup>58</sup> In other words, Ohio Rule of Evidence 803(21) provides that evidence of a felony conviction is admissible in a subsequent civil suit, as a hearsay exception. The rule is silent, however, on the issue of whether or not such felony conviction precludes the perpetrator from relitigating guilt in the subsequent civil suit.<sup>59</sup>

Illustrative of how Ohio courts have interpreted Rule 803(21) is the Fourth Appellate District Court of Ohio’s decision in *Phillips v. Rayburn*.<sup>60</sup> In that case, the victim of a shooting and his wife filed an intentional tort action after the defendant was convicted of aggravated assault.<sup>61</sup> The trial

---

<sup>56</sup> See *id.* at 981, 987-88 (setting forth these requirements and holding that issue of reasonableness of design in a civil action arising out of a tractor accident was not sufficiently identical to a similar issue in previous litigation to invoke collateral estoppel).

<sup>57</sup> See *Gilbraith v. Hixson*, 512 N.E.2d 956, 961 (Ohio 1987) (holding that father’s action under parentage statute to establish nonexistence of parent-child relationship was barred by *res judicata* effect of prior legitimation order and dissolution decree establishing paternity).

<sup>58</sup> OHIO R. EVID. 803(21) (2003).

<sup>59</sup> It should be noted that Ohio Rule of Evidence 803(21) is in conflict with Ohio Revised Code section 2307.60, which provides that no record of a criminal conviction, unless obtained by confession in open court, can be used in a civil action to recover damages for injuries to person or property. OHIO REV. CODE ANN. § 2307.60 (West 2003). Ohio Rule of Evidence 803(21), however, would supersede the statute under the provisions of Article IV, § 5(B) of the Ohio Constitution, which state that any rules in conflict with the procedural rules of the Ohio Supreme Court will be of no further effect. OH. CONST. art. IV, § 5(B). See *infra* Part II.C.

<sup>60</sup> 680 N.E.2d 1279 (Ohio Ct. App. 1996).

<sup>61</sup> *Id.*

court entered summary judgment against the defendant because of his criminal conviction, and he appealed.<sup>62</sup> The appellate court agreed with the defendant that under Rule 803(21), the prior criminal conviction acts as evidence of his intent during the commission of the crime, but does not collaterally estop him from rearguing the issue since 803(21) is silent as to what effect the criminal conviction should have in the civil action. In so ruling, the court adhered to the Ohio common law rule that there must be mutuality of parties in order for collateral estoppel to apply.<sup>63</sup> Because the plaintiffs were not parties to the prior criminal litigation (the prosecution rather than the victim in effect acted as the plaintiff in the criminal case), they could not avail themselves of the collateral estoppel doctrine in Ohio.<sup>64</sup>

Likewise, in *Vancamp v. Austintown Twp.*,<sup>65</sup> the Seventh Appellate District Court of Ohio held that a criminal conviction is not conclusive evidence, but only some evidence of the facts to be proven in a subsequent civil proceeding.<sup>66</sup> In yet another case, *Breckler v. Martin*,<sup>67</sup> the United States District Court for the Northern District of Ohio, applying Ohio law, held that an aggravated murder conviction was admissible as evidence in a subsequent civil proceeding, but did not stop the defendant from forcing the plaintiff to relitigate and reprove the issue.<sup>68</sup>

In all of these cases, the plaintiffs were forced to relitigate a convicted defendant's guilt because, in part, the "mutuality of parties" requirement was missing in each of the cases. Because the plaintiffs in the subsequent civil suit were not parties to the prior criminal suit in which guilt/liability was established, the courts believed that collateral estoppel could not be enforced.

As discussed above, however, the Ohio Supreme Court has held that the mutuality of parties requirement can be relaxed where justice so

---

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* The court also expressed concern about the differences in procedure between civil and criminal courts. In addition, the court questioned the defendant's incentive to fully litigate the criminal claim. These two factors weighed in the court's decision not to apply collateral estoppel. *Id.* at 1284.

<sup>65</sup> No. 01-C.A.-17, 2002 WL 925197 (Ohio App. 7 Dist. Mar. 19, 2002) (holding that a masseuse's guilty plea to sexual acts which necessarily determined issue of whether the masseuse was an employee of a massage parlor was not conclusive evidence that the masseuse was an employee in a subsequent action to determine if the massage parlor should be re-licensed).

<sup>66</sup> *Id.* at \*7.

<sup>67</sup> No. 3: 02CV7064, 2002 WL 1465761 (N.D. Ohio Jun. 10, 2002).

<sup>68</sup> *Id.* at \*2.

requires.<sup>69</sup> Indeed, this requirement has already been relaxed by the Ninth Appellate District Court of Ohio in the context of a subsequent civil case involving an intentional acts exclusion in an insurance policy.<sup>70</sup> In *Allstate Insurance Company v. Cole*, the defendant shot one of his friends while playing with a gun.<sup>71</sup> He was convicted of involuntary manslaughter for his reckless conduct that led to the death.<sup>72</sup> The parents of the victim then filed a wrongful death suit against him.<sup>73</sup> At the time of the shooting, the defendant was covered under a homeowner’s insurance policy that might have applied since the death occurred at the defendant’s home.<sup>74</sup> The insurance company, Allstate, then filed a declaratory judgment action against the defendant seeking to be excluded from liability because the defendant’s insurance policy with Allstate had a clause excluding the insurance company from liability for damages caused by criminal acts of the policy holder.<sup>75</sup> Relying on this clause, Allstate moved for summary judgment on the ground that the defendant’s involuntary manslaughter conviction estopped him from relitigating whether the death occurred as a result of his criminal act.<sup>76</sup> The trial court agreed, despite the fact that Allstate was not a party to the prior criminal action, and granted summary judgment.<sup>77</sup> On appeal, the Ninth Appellate District Court of Ohio held that the defendant’s conviction of involuntary manslaughter was enough to establish the recklessness required to trigger the exclusion clause.<sup>78</sup>

E. *Legislation Allowing a Criminal Conviction to Have Estoppel Effect in a Civil Action Would Be Valid*

Article IV, section 5(B) of the Ohio Constitution states that any rules that conflict with the procedural rules of the Ohio Supreme Court will be of no further effect.<sup>79</sup> In *State v. Heyden*,<sup>80</sup> the Ninth Appellate District Court of Ohio interpreted this constitutional provision to mean that when a court is faced with deciding whether a procedural rule of the Supreme Court or a legislative statute is applicable, it must first decide whether the two are in conflict. If no conflict exists, then both the rule and statute are

---

<sup>69</sup> See *supra* note 57 and accompanying text.

<sup>70</sup> See *Allstate Ins. Co. v. Cole*, 717 N.E.2d 816 (Ohio Ct. App. 1998).

<sup>71</sup> *Id.* at 817.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 818.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> OH. CONST. art. IV, § 5(B).

<sup>80</sup> 610 N.E.2d 1067 (Ohio Ct. App. 1992).

applicable, but if a conflict exists, then the statute would be of no further effect if the conflict were over a procedural matter.<sup>81</sup> Therefore, if the Ohio General Assembly were to pass legislation bringing Ohio in line with the majority of states on this issue, it would need to first make sure that such a statute would not conflict with Ohio Rule of Evidence 803(21). As set forth below, such a statute would be valid and enforceable because it would not conflict with Rule 803(21).

Instructive on the issue of when a statute conflicts with a procedural rule of the Ohio Supreme Court, such as a rule of evidence, are the cases of *State v. Heyden* and *State v. Tate*.<sup>82</sup> The Ninth Appellate District Court of Ohio in *Heyden* was faced with a rule of criminal procedure which stated that arraignment might immediately follow service of an indictment on the one hand, and on the other hand, a statute which mandated that one day must pass between service on an indictment and arraignment on that indictment.<sup>83</sup> Obviously, a statute which commands that one day must pass after service on an indictment before the defendant can be arraigned on that indictment is in direct conflict with a rule of the Ohio Supreme Court that allows for immediate arraignment after service. The two simply cannot co-exist together, as they would mandate diametrically opposing results in a case where arraignment occurred, for example, eight hours following service. Therefore, because the statute in question conflicted with a rule of the Ohio Supreme Court, it was invalid under Article IV, section 5(B) of the Ohio Constitution.<sup>84</sup>

In *State v. Tate*, on the other hand, the Supreme Court of Ohio decided that a statute and a procedural rule of the Ohio Supreme Court were not in conflict.<sup>85</sup> The procedural rule in question required the waiver of the right to a trial by jury in serious offense cases to be in writing.<sup>86</sup> The statute, however, required a waiver of a trial by jury to be in writing in all criminal cases, including both serious and petty offenses.<sup>87</sup> The court decided that the two provisions were not in conflict, since the statute merely granted additional protection and went beyond the requirements of the procedural rule without conflicting with the procedural rule's mission, effect, or purpose.<sup>88</sup>

---

<sup>81</sup> *Id.* at 1069.

<sup>82</sup> 391 N.E.2d 738 (Ohio 1979).

<sup>83</sup> *Heyden*, 610 N.E.2d at 170.

<sup>84</sup> *Id.*

<sup>85</sup> *Tate*, 391 N.E.2d at 740.

<sup>86</sup> *Id.* (citing OH. CRIM. R. 23(A)).

<sup>87</sup> *Id.* (citing OHIO REV. CODE ANN. § 2945.05 (West 1979)).

<sup>88</sup> *Id.*

Legislation for “Trina’s Law” promulgated by the General Assembly would have to be drafted in such a way as to not conflict with Ohio Rule of Evidence 803(21). This could be accomplished easily. Rule 803(21) states merely that a prior criminal conviction is admissible in a subsequent civil case; it simply does not speak to the issue of whether it should have preclusive effect in that subsequent civil litigation.<sup>89</sup> Trina’s Law, therefore, like the statute in *Tate*, would go beyond Rule 803(21), and would provide additional uses for a prior criminal conviction in a subsequent civil case without in any way undermining or conflicting with Rule 803(21). As a result, the matter would be controlled by the *Tate* decision, and Trina’s Law would be valid and enforceable. Trina’s Law would peacefully co-exist with Rule 803(21), and the two provisions, as in *Tate*, would never mandate conflicting results in application.

F. *The Reasons for Adopting a Law That Would Give Criminal Convictions Estoppel Effect*

There are compelling reasons to allow criminal convictions after trial and pleas of guilty to estop a convicted party from relitigating issues in a subsequent civil action. The primary reason is that preclusion can save time and judicial resources by avoiding the relitigation of issues that were conclusively established in a preceding criminal trial.<sup>90</sup> Furthermore, the federal government and thirty-nine states,<sup>91</sup> as well as the Restatement (Second) of Judgments,<sup>92</sup> allow criminal convictions to collaterally estop relitigation of issues decided in a previous criminal action. The same law in Ohio would bring Ohio in line with this trend. In addition, precluding litigation of an issue proven in a criminal trial should not raise concerns of fairness or equity, because of the immense safeguards that are provided to the defendant in a criminal trial, including proof beyond a reasonable doubt and a unanimous jury verdict.<sup>93</sup>

Another issue to consider is that it is simply unfair and unreasonable to make the victim/plaintiff spend time and money to relitigate issues that have already been decided in a court with a higher burden of proof. This is especially clear in Ms. Hatchett’s case. There is a limited amount of pecuniary compensation that Ms. Hatchett can receive for the financial and emotional losses she has suffered, and the extra time and cost of re-

---

<sup>89</sup> OHIO R. EVID. 803(21).

<sup>90</sup> Allan D. Vestal, *Issue Preclusion and Criminal Prosecutions*, 65 IOWA L. REV. 281, 341 (1980).

<sup>91</sup> See *supra* notes 20-22 and accompanying text.

<sup>92</sup> RESTATEMENT (SECOND) OF JUDGMENTS § 85 (1982); see also David L. Shapiro, *Should a Guilty Plea Have Preclusive Effect?*, 70 IOWA L. REV. 27, 28-29 (1984).

<sup>93</sup> *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 248 (Iowa 2000).

litigating issues that have already been decided in the criminal forum is one extra burden that she should not have to bear.

G. *The Appropriate Scope of the Proposed Law*

In order to maintain fairness to the criminal defendant, the scope of criminal convictions that have a collateral estoppel effect in subsequent civil litigation should be limited to serious offenses. Misdemeanor and minor convictions, such as traffic violations, should not have a preclusive effect because the incentive for the defendant to fully litigate during the criminal proceedings may be little to none. In those situations, it may be more efficient to plead guilty rather than incur the costs of litigation and spend the time involved in a trial. However, it is generally thought that those charged with a felony have substantial incentive to fully litigate the claim during the criminal trial such that a civil trial based on that conviction would not deprive them of any opportunities.<sup>94</sup> Thus, the scope of the offenses covered by a statute allowing collateral estoppel should be limited to felonies, provided that all of the general elements of collateral estoppel are met.<sup>95</sup>

A plea of guilty, as opposed to a conviction after trial, creates unique problems that must be addressed. When a criminal defendant is proven guilty of a felony after a trial, there is little question that he had the incentive to litigate in the criminal proceeding. However, when a defendant pleads guilty to a felony, it is more difficult to determine if he had the incentive to litigate.

In his article *Should a Guilty Plea Have Preclusive Effect?*, Professor David L. Shapiro presents the split of authority regarding whether a guilty plea should estop relitigation of issues in a subsequent civil action.<sup>96</sup> Many courts see a guilty plea as an admission of the facts of the crime in a courtroom setting. A defendant is afforded many procedural safeguards to ensure that a plea of guilty is made voluntarily and intelligently. One can easily understand that with all the procedural protections that our system enjoys, a guilty plea is in many instances more reliable than a jury verdict after a controversial trial.

However, when considering the weight a guilty plea should receive, it is proper to take into account the effect of the plea bargaining process. A defendant “may well choose the relative certainty of a mild penalty over the uncertain range of outcomes from, say, acquittal to capital

---

<sup>94</sup> See Ray B. Schlegel, *Zinger v. Terrell: The Collateral Estoppel Effect of Criminal Judgments in Subsequent Civil Litigation; New Law in Arkansas and the Questions Unanswered*, 54 ARK. L. REV. 127, 144 (2001).

<sup>95</sup> *Id.*

<sup>96</sup> Shapiro, *supra* note 92, at 28.

punishment.”<sup>97</sup> The likelihood of an innocent person pleading guilty can significantly increase if the defendant feels that he or she has no other favorable options.<sup>98</sup> In cases where the defendant is trying to protect others from prosecution or avoid the costs of litigation, an innocent person might have an incentive to plead guilty.<sup>99</sup> A civil court will only further aggrieve a defendant that finds himself in such a position if it holds him liable in a subsequent civil action for choosing the best alternative available to him.

The Restatement (Second) of Judgments provides that a criminal defendant should be precluded from relitigating an issue in a subsequent civil action with a third party<sup>100</sup> “unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.”<sup>101</sup> This rule could safely bring guilty pleas into the realm of issue preclusion while maintaining an out for those who may have been wronged by the system if they can show that they lacked a full opportunity or incentive to litigate.<sup>102</sup> This rule would also serve the overriding public policies of judicial economy and the finality of judgments.

### III. CONCLUSION

Ohio is in the minority of jurisdictions that do not allow a criminal conviction to act as collateral estoppel in a subsequent civil case. As illustrated by the predicament of Trina Hatchett, sound public policy reasons suggest that Ohio should now join the majority of states on this issue. The General Assembly of the State of Ohio should resoundly pass “Trina’s Law,” currently pending before it.

---

<sup>97</sup> *Id.* at 40.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> RESTATEMENT (SECOND) OF JUDGMENTS § 85 (1982).

<sup>101</sup> *Id.* § 29.

<sup>102</sup> *See Vestal, supra* note 90, at 325-32.