

# Why The Pennsylvania Supreme Court Vacated Bill Cosby's Conviction And Sentence

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July 6, 2021 | by Matthew Troiano

In what can only be described as a stunning, and relatively rare, turn of events, comedian and actor Bill Cosby's sexual assault conviction was [overturned](#) and he was immediately released from prison on Wednesday, June 30, 2021. This is a result of the Pennsylvania Supreme Court's decision to vacate Cosby's sexual assault conviction and sentence. The Court, which is the highest court in the State of Pennsylvania, ruled that Cosby's due process rights had been violated, which necessitated this "rare" and "unique" remedy.

Not only is this decision stunning within the context of the Cosby case, but it is also a reversal of one of the first, if not the first, high-profile celebrity criminal cases that resulted during the [#MeToo movement](#). This decision can be seen as a vindication of a defendant's constitutional right to fairness and due process, but also a failure of the justice system to fully protect the right of victims.

The dramatic decision, which not only vacated Cosby's conviction, but immediately released him, also permanently barred the same prosecution from occurring in the future. In a 79-page decision, the majority panel of the Pennsylvania Supreme Court said a 2005 decision by the then-Montgomery County District Attorney not to prosecute Cosby led directly to Cosby's testimony at a related civil deposition, which was then used against him at a subsequent criminal trial.

## Andrea Constand's Case Against Bill Cosby

By way of brief background, Cosby had been investigated by law enforcement for the alleged drugging and sexual assault of Andrea Constand in 2004 at his home in Montgomery County, Pennsylvania. Constand came forward to police about a year later in 2005.

In 2005, after investigating the allegations, the former Montgomery County District Attorney decided not to criminally prosecute the case, citing in part the inability to prove the case beyond a reasonable doubt. Despite the severity and notoriety of this particular case, this is a standard prosecutorial decision – charge, no charge – that is made on a daily basis.

## **The Prosecutor's Promise to Bill Cosby**

However, what was not necessarily typical was the District Attorney's actions after making this decision. To formalize the decision, the District Attorney signed and issued a formal press release outlining his decision. The District Attorney claimed that his basis for doing this was to ensure that no criminal prosecution would result from the Constand allegations.

By removing the threat of a criminal prosecution, Cosby could then be compelled to testify in a related civil action brought by Constand, under penalty of perjury and without the benefit of his Fifth Amendment privilege against self-incrimination. In short, this was essentially a grant of immunity without actually saying so, and without going through the process to achieve that end.

## **The Civil Lawsuit Concluded, but Cosby's Deposition Testimony was Later Revealed**

After the criminal investigation was concluded, Cosby testified in various civil depositions. Ultimately, Constand and Cosby settled a civil lawsuit for \$3.38 million in 2006.

Cosby's civil deposition testimony was revealed in 2014, leading the then-Montgomery County District Attorney – not the District Attorney from 2005 – to resurrect the criminal investigation, and ultimately arrest Cosby in December 2015 based on the same allegations originally made by Constand in 2004.

Cosby's testimony during the civil deposition, to include that he had provided Quaaludes to women he wanted to have sex with, formed the basis for the new charges and ultimate prosecution.

## **Cosby's Criminal Trials – a Mistrial and a Conviction**

Cosby was tried on two occasions. The first, in 2017, resulted in a hung jury and mistrial after jurors were deadlocked and could not unanimously agree on a verdict.

The second trial, in 2018, resulted in [Cosby's conviction](#). During the trial, the prosecution's case focused on the testimony from Constand, who testified that Cosby drugged her and sexually assaulted her when she visited his home to ask for career advice.

Due to Constand's delayed disclosure of these events, and the significant time lapse between the events and the trial, prosecutors had little to no forensic evidence, and thus, had to rely on the testimony of Constand. This is a common obstacle for sex crimes prosecutors, especially when the disclosure of the allegation is delayed. In order to solidify their case, prosecutors will then look elsewhere for evidence to bolster their case.

## Testimonial Evidence in Cosby's Second Trial

Prosecutors did just that in Cosby's second trial. In an effort to fortify their case, prosecutors called other women to testify that Cosby had drugged and then assaulted them decades ago. Prosecutors used this testimonial evidence to establish that Cosby's actions toward Constand were part of a pattern. This is also another common strategy used by prosecutors, which at times may establish a defendant's pattern or motive but may also be deemed too prejudicial to the defendant as what is referred to as "propensity" evidence.

In April 2018, Cosby was convicted after the second trial and sentenced to 3 to 10 years in a state prison. He remained in state prison up until the Supreme Court's decision on June 30<sup>th</sup>.

## Cosby's Appeal of his Conviction and Sentence

As is his right, and the right of every defendant, Cosby appealed his conviction and sentence to a higher – appellate – court. His appeal was initially denied by the Pennsylvania Supreme Court, an intermediate appellate court.

Ultimately, the case came before the Pennsylvania Supreme Court, the highest court in Pennsylvania. Oral arguments were held in December 2020, and a decision was handed down on June 30<sup>th</sup>.

In rendering its decision, the Court determined that the 2005 decision by the Montgomery County District Attorney not to prosecute Cosby for his alleged sexual assault was conveyed as an unconditional decision not to prosecute him.

The Court further determined that Cosby then relied on that unconditional decision not to prosecute him when he provided deposition testimony in the civil action.

## **The Court's Decision to Bar Future Prosecution of Cosby on These Particular Charges**

The Court found that Cosby's reliance on the District Attorney's decision not to prosecute him was reasonable, and it was also reasonable for the District Attorney to expect Cosby to so rely. Thus, Cosby's subsequent prosecution violated his due process rights.

Because of this violation, the Court determined that the only permissible remedy would be "specific performance" of the District Attorney's initial promise, which would be enforcement of the non-prosecution decision, thus barring Cosby's subsequent prosecution. This would be the only remedy that satisfied due process.

"[Cosby] must be discharged, and any future prosecution on these particular charges must be barred," the judges wrote. "We do not dispute that this remedy is both severe and rare. But it is warranted here, indeed compelled."

## **The Court's Decision is Understandably Hard to Accept**

This case is both fascinating and frustrating. The Court did what was right to vindicate what was wrong. But "wrong" within the context of our justice system and our constitutional rights. In doing so, the Court's decision in effect took away the justice owed to a victim. So she is left with no justice and

the “wrong” done to her through the conduct of Cosby goes unpunished.

This is an example of the court system ultimately working to correct itself. But the resulting damage, not only in the ultimate decision, but also all that is left in its wake, may be difficult for some, if not most, to understand and accept.