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SUPREME COURT
STATE OF WASHINGTON
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No. 95080-6

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

MIKHAIL G. KARPOV,

Petitioner.

BRIEF OF PETITIONER

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A. SUMMARY OF ARGUMENT

In violation of the principles of double jeopardy, the superior court of Spokane ruled to reinstate criminal charges against the petitioner after the district court dismissed these charges based on the State's failure to establish jurisdiction, an essential element of the crime.

Petitioner Mikahil Karpov respectfully asks this Court to reverse the ruling of the superior court on March 15, 2017. CP 278-283. Because the State rested their case and failed to request a motion for reconsideration, the State lost their opportunity to establish jurisdiction as an element of the crime. Therefore, the principle of double jeopardy bars the State from reopening the case.

This Court should reverse the ruling of the superior court and dismiss the criminal charges against Mr. Karpov.

B. ASSIGNMENTS OF ERROR

(1) Assignment of Error

The superior court erred in reinstating criminal charges against the petitioner, Mr. Karpov on March 15, 2017.

(2) Issues Pertaining to Assignments of Error

1. Whether the superior court erred by reinstating criminal charges against Mr. Karpov when the principles of double jeopardy barred the reinstatement of these charges after the State failed to present evidence the crime occurred in Spokane

County and State of Washington after the case was dismissed in district court for failure to prove jurisdiction?

2. Whether the superior court erred in reinstating criminal charges against Mr. Karpov after the State had closed its case and after the State failed to request a continuance or a motion for reconsideration to establish the element of jurisdiction?

C. STATEMENT OF THE CASE

Mr. Karpov was charged with five counts of indecent exposure and the matter proceeded to jury trial held in Spokane County District Court on September 7, 2016. CP 12-16. Various witnesses testified that they saw Mr. Karpov exposing himself in front of them. RP 53; 76; 94; 129; 139. The witnesses were not directly asked, nor did they directly testify, that these events occurred in Spokane County. CP 282. After the State rested, the defense counsel moved to dismiss on the basis that the State failed to prove jurisdiction. RP 218. Defense counsel argued:

Jurisdiction is a necessary element. It has to be proven. If we look at the testimony of the witnesses, count one relating to Hailey Jacobson, the only location evidence we have is a—is North Pines Middle School statement. We have a Bowdish and Broadway statement. We've got no indication that this is in Spokane, Spokane County, Stevens County, Washington, Idaho or nothing. And it's the same throughout. Jesslyn Current testified North Pines Middle school and gave at one point, my notes show, the street of Alki. Hannalora Baldwin, the extent of her testimony was Empire and Nevada. That was it. Rachel Napier, the extent of her testimony was Garland and Maple. That's it. Sierra Frank, the extent of her testimony was Sprague and Green Street. Jennifer Ferry had indicated that she was at 3818 East Joseph and that this occurred at her work. That's it. There's been no indication of any evidence establishing jurisdiction. We've got street names, but

that's insufficient, Your Honor. The court cannot take judicial notice of a necessary element.

RP 218-219. The court granted the motion to dismiss. RP 226.

The court reasoned:

Well, there is no muddling in this particular instance. I have to consider all of the evidence in light most favorable to the nonmoving party. In every instance, here before the court, and even on review of the Ferry matter, on not one occasion was it established or inferred or even indicated that this occurred in Spokane County.

I am a Spokane County District Court judge. What is my jurisdiction, folks? I have considered all of the evidence in the light most favorable to the nonmoving party, the state. I have reviewed my notes. We have reviewed at least one portion of the tape for which I was uncertain, but now I'm quite certain. And under the circumstances, in the matter of State of Washington vs. Mikhail Karpov: Count 1 is dismissed. Count 2 is dismissed. Count 3 is dismissed. Count 4 is dismissed, and Count 5 is dismissed. We're in recess.

RP 225-226. The matter was dismissed with prejudice. RP 231-232. The State appealed the dismissal order to the superior court. CP 1.

The superior court reversed the conviction on the basis that there was sufficient evidence that these acts occurred in Spokane County. CP 282. The superior court also determined that double jeopardy did not apply to Mr. Karpov because the dismissal was not based on factual guilt or innocence. *Id.* The superior court ordered Mr. Karpov would be subjected to trial once again. CP 279-283. Specifically, the superior court noted:

In the case at issue, the State presented sufficient circumstantial evidence as outlined above for a reasonable fact finder to determine beyond a reasonable doubt that the alleged crimes were committed in the State of Washington and more particularly within Spokane County. Several of the witnesses testified that they lived or worked in Spokane AND the Detective that investigated the matter was employed with the Spokane County Sheriff's Department. Detective Streltsoff testified that he investigated matters involving common occurrences which occurred within the City of Spokane and it is reasonable to infer that his investigation involved crimes within Spokane County. There were no factual disputes related to any of the evidence and the trial court made an error of law in dismissing the charges on Defendant's "half-time" motion.

CP 282. Mr. Karpov moved for discretionary review to the Court of Appeals Division III, and such review was denied. CP 294; *See* Ruling Terminating Review. Mr. Karpov made a motion to modify the commissioner's ruling and the motion was denied. *See* Order on Motion. Mr. Karpov appealed to this Court, which accepted review. *See* Order Granting Review.

D. ARGUMENT

- (1) The principles of double jeopardy bar reinstatement of district court criminal charges against Mr. Karpov because the State rested without presenting sufficient evidence to prove the essential element of jurisdiction and the case was dismissed due to the State's failure to establish jurisdiction.

This case was dismissed by the trial court due to the State's failure to establish the essential element of jurisdiction. CP 2. On appeal, the superior court erred by reinstating the criminal charges against Mr.

Karpov, as reinstatement of the charges violated the principles of double jeopardy.

When a trial court dismisses a criminal case for insufficient evidence at the close of the State's case, no matter how erroneous that ruling may be, retrial of the defendant is precluded because a defendant one may not be twice placed in jeopardy for the same offense. *State v. Rhinehart*, 92 Wn.2d 923, 929, 602 P.2d 1188, 1191 (1979).

Acquittal occurs when the ruling of the judge, whatever its label, actually represents a resolution (in the defendant's favor), correct or not, of some or all of the factual elements of the offense charged. *United States v. Scott*, 437 U.S. 82 (1978). Furthermore, the United States Supreme Court, in construing the constitutional bar against double jeopardy held: “ ‘Thus it is one of the elemental principles of our criminal law that the Government cannot secure a new trial by means of an appeal even though an acquittal may appear to be erroneous.’ ” *Green v. United States*, 355 U.S. 184, 188, 78 S.Ct. 221 (1957).

The district court judge ruled that the evidence was insufficient to prove an essential element of the crime. The superior court's reinstatement of the charges was an error which placed Mr. Karpov in double jeopardy.

- a. The principles of double jeopardy bar reinstatement of district court criminal charges against Mr. Karpov because the State closed its case without presenting sufficient evidence of the essential element of jurisdiction, and the case was previously

dismissed by the trial court due to the State's failure to establish jurisdiction.

Proof of jurisdiction beyond a reasonable doubt is an integral component of the State's burden in every criminal prosecution.” *State v. Squally*, 132 Wn.2d 333, 340, 937 P.2d 1069, 1071 (1997) (citing *State v. Svenson*, 104 Wn.2d 533, 542 (1985)). Generally, proof that the crime was committed in the state satisfies the jurisdictional element. *Id.* Here, it is clear the district court determined the essential element of jurisdiction was not proven. CP 2. Specifically, it was never shown that the crime was committed within the State of Washington or even that the crime occurred in Spokane County. RP 223-226.

Proof that the crime occurred in the State of Washington is required under RCW 9A.04.030 and must be proven beyond a reasonable doubt. The statute states:

The following persons are liable to punishment:

- (1) A person who commits in the state any crime, in whole or in part.
- (2) A person who commits out of the state any act which, if committed within it, would be theft and is afterward found in the state with any of the stolen property.
- (3) A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.
- (4) A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.

(5) A person who commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime.

(6) A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury.

(7) A person who commits an act onboard a conveyance within the state of Washington, including the airspace over the state of Washington, that subsequently lands, docks, or stops within the state which, if committed within the state, would be a crime.

RCW 9A.04.030. The State presented insufficient evidence to prove the essential element of jurisdiction, and the district court made a factual determination the required element was proven. The trial court reviewed its notes and replayed the testimony of Ms. Ferry. RP 225-226. The trial court stated that it looked at such evidence in the light most favorable to the nonmoving party and determined the evidence was insufficient. RP 225-226. There was a factual determination by the trial court and the equivalent of an acquittal of all charges.

Both the State, superior court, and the Court of Appeals Commissioner characterized the issue of jurisdiction and venue as one in the same. CP 4-6; 281-282; *See* Ruling Terminating Review. However, jurisdiction and venue are two distinct legal theories. Jurisdiction relates to a court's authority to adjudicate a case before them. *J.A. v. State Dept. of Social and Health Svcs.*, 120 Wn. App. 654, 657 (2004). Venue relates to whether a locality is the proper place for suit to be brought. *Id.*

The State improperly conflated the two legal theories by stating that *Johnson* stands for the proposition that if proof of venue does not relate to the defendant's factual guilt, then proof of jurisdiction must also stand for that proposition. *State v. Johnson*, 45 Wn. App. 794, 727 P.2d 693 (1986). CP 13-14. A judgment entered into by a court lacking jurisdiction is void. *J.A.* 120 Wn.App. at 657. If there is no jurisdiction, then a conviction would be void, as proof of jurisdiction is an essential element of a defendant's factual guilt. *See Squally*, 132 Wn.2d at 340; *Svenson*, 104 Wn.2d at 542. The State closed its case, and the charges were dismissed based on the State's failure to prove the essential element of jurisdiction. The trial court properly dismissed the case.

- b. The principle of double jeopardy bars the subsequent retrial of Mr. Karpov and bars the reinstatement of district court criminal charges.

The Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. Article I, section 9 of the Washington Constitution similarly provides, "[n]o person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense." The constitutional protection against double jeopardy unequivocally prohibits a second trial following an acquittal. The public interest in the finality of criminal judgements is so strong that an acquitted

defendant may not be retried even though “the acquittal was based upon an egregiously erroneous foundation.” *State v. Motycka*, 21 Wn. App. 798, 801, 586 P.2d 913 (1978).

Since a factual resolution was made by the trial court, the order of dismissal is the legal equivalent of an acquittal and the double jeopardy clause of the United States Constitution and the Constitution of the State of Washington bars this appeal under the authority of *United States v. Scott*, 437 U.S. 82 (1978); *State v. Ridgley*, 70 Wn.2d 555, 424 P.2d 632 (1967). Both the superior court and Court of Appeals performed an in-depth fact analysis of the trial transcript to determine whether factual evidence was sufficient to sustain a conviction, confirming that a factual inquiry was made. CP 278-283. The superior court noted that there was no direct evidence that the crime occurred in the State of Washington or Spokane County, but rather “it is reasonable to infer” that the act occurred in the State of Washington or Spokane County, which is not the standard required to prove jurisdiction. It is clear that the reviewing court is second guessing the factual determination the district court already had made with “evidence in the light most favorable to the nonmoving party, the state”. RP 226; CP 282.

Review by the superior court and Court of Appeals is prohibited by Federal and Washington State case law. *See Green v. United States*, 355

U.S. 184, 188, 78 S.Ct. 221 (1957). The superior court's reversal of the trial court's dismissal is not supported by the record or applicable case law. In *State v. Ridgley*, the Supreme Court prohibited a review by an appellate court when the trial court dismissed for insufficient evidence. 70 Wn.2d 555, 424 P.2d 632 (1967).

In *Tibbs v. Florida*, the United States Supreme Court noted that reversal for insufficient evidence is deemed equivalent to an acquittal for double jeopardy purposes because it means "no rational factfinder could have voted to convict" on the evidence presented. 457 U.S. 31, 40-41, 102 S.Ct. 2211 (1982). The double jeopardy clause "imposes no limitations whatever upon the power to retry a defendant who has succeeded in getting his first conviction set aside on any ground other than insufficient evidence because the defendant's appeal continues the initial jeopardy." *State v. Corrado*, 81 Wn. App. 640, 915 P.2d 1121 (1996).

The decision of the superior court and court of appeals conflicts with both state and federal decisions regarding the constitutional double jeopardy clauses. The principle of double jeopardy bars the reinstatement of criminal charges against Mr. Karpov.

(2) The Superior Court was Barred From Re-opening the Case on the Principles of Double Jeopardy When the State Rested their Case and Failed to Seek a Continuance or Request a Motion for Reconsideration

Here, the State also failed to move for a continuance or reconsideration after it rested its case. RP 218, 223, 229-230. The district court issued its ruling based on the evidence presented, and an appeal to the superior court by the State was barred by double jeopardy.

Because the district court issued a ruling based on the evidence presented, the appeal to the superior court by the State was prohibited by the principles of double jeopardy

The Supreme Court of the United States has addressed the issue of double jeopardy after the State rests their case in a criminal matter. In *Smith v. Massachusetts*, the Supreme Court of the United States noted “we must turn to the more difficult question whether the Double Jeopardy Clause permitted her to reconsider that acquittal once petitioner and his codefendant had rested their cases.” 543 U.S. 462, 125 S.Ct. 1129, 160 L.Ed.2d 914, (2005). The Court ruled that:

It is important to note, at the outset, that the facts of this case gave petitioner no reason to doubt the finality of the state court's ruling. *The prosecutor did not make or reserve a motion for reconsideration, or seek a continuance* that would allow him to provide the court with favorable authority. Rather, the sidebar conference concluded, the court asked the prosecutor if he had “any further evidence,” and he replied, “*No. At this point, the Commonwealth rests their case.*”

Id. at. 1135-1136. The Supreme Court made it clear that once the State rests their case without making a motion for

reconsideration or seeking a continuance, the State is barred by the principles of double jeopardy from reconsidering the acquittal. *Id.* at 1138.

The United States Supreme Court could not find an “instance in which a State has done this by statute or rule, but some state courts have held, as a matter of common law or in the exercise of their supervisory power, that a court-directed judgment of acquittal is not effective . . . until a formal order is issued” *Id.* at 1136. (citing to *State v. Collins*, 112 Wn.2d 303, 308-309, 771 P.2d 350, 353 (1989)).

In *State v. Collins*, the Washington Supreme Court was faced with the issue of “whether or not the trial judge's ruling was final when given orally. Only if that finality is established can protections against double jeopardy attach.” 112 Wn.2d 303, 771 P.2d 350 (1989). This Court determined that “[w]e return to the rule long followed in this state that a ruling is final only after it is signed by the trial judge in the journal entry or is issued in formal court orders.” *Id.* at 308. This Court looked specifically to the issue of finality in a judge’s court order and did not address the issue of double jeopardy after the State rests their case.

However, the case *City of Auburn v. Hedlund*, 137 Wn.App. 494, 155 P.3d 149 (2007), addressed the issue of double jeopardy after the trial court makes a final ruling and the State appeals to the superior court. The court in this case stated:

The present case is distinguishable from *Smith*, *Collins*, and the unpublished cases citing *Collins*. Here, the trial court did not reverse its own dismissal of [the defendant]'s DUI and reckless driving charges. ***The dismissal was reversed on review by the superior court***, which adopted the City's depiction of the trial court's action as a dismissal. The application for writ of review the City presented to the superior court sought review of the trial court's decision to grant Hedlund's motion to dismiss. It presented the trial court's ruling as final. The superior court ruled as if the trial court ruling were final: In its order on writ of review, the superior court ordered the ruling reversed, and the charges reinstated. The City returned to trial and prevailed on the basis of that ruling. Having presented the ruling as final in its application for writ of review, the City cannot now claim that the ruling was not final.

Id. at 506 (emphasis added). The court made it clear that review by the superior court was distinguishable from a dismissal by the trial court. The Court stated that "[t]he trial court ruling depicted in the City's application for writ of review and the superior court's subsequent order does not evince the ambiguity the *Collins* holding was meant to alleviate . . . reinstating the charges against [the defendant] placed her in double jeopardy . . . we reverse her conviction for DUI as an accomplice." *Id.* at 506.

Here, the superior court's reinstatement of the charges constituted double jeopardy.

The record is clear: the State failed to request a continuance or request a motion for reconsideration. The State replied "no" when asked if they had made a motion for reconsideration. RP 230. It also acknowledged that the State "had an opportunity to make one" and the State failed to do so. *Id.* There was also no request by the State to reopen the case for additional evidence. The following portions of the transcript may be helpful to this Court:

The Court: Okay. We're back on the record. Let's see, the state has rested. Counsel. RP 218.

Mr. Comi: Yes, Your Honor. *Id.*

The defense then made its motion to dismiss based on insufficient evidence of jurisdiction. RP 218-223. At the conclusion of the both arguments the court asks:

The Court: That's fine. Thank you. Anything further? RP 223.

Mr. Kidd: No, Your Honor. *Id.*

The Court: Counsel. *Id.*

Mr. Comi: Again, your Honor, I would just—I think that the state has presented evidence of locations that are all within Spokane County. There is no evidence that any of these events occurred at any other locations that are listed the same way. The burden of proof is not so high as to require the state to show that there are no other places called North Pines Middle School or the other intersections. RP 223.

The matter is then dismissed. RP 225-226. The next day, the court presides over a presentment hearing. RP 228-235.

Mr. O'Brien: We would have a motion to the court to reconsider its decision, either that or we'll be taking--. RP 229.

Court: There was a motion to dismiss. *Id.*

Mr. O'Brien: At the end of the state's case. RP 230.

Court: At the end of the state's case that was granted. There--the motion to dismiss was granted. The state was afforded an opportunity after that motion to dismiss and had no--nothing else to add to it. *Id.*

Mr. O'Brien: Okay. And that's fine, Your Honor, I mean the other--one other avenue I guess is--is other than trying to correct the --. *Id.*

Mr. Comi: And, Your Honor, I don't believe the state was afforded any opportunity after the motion to dismiss was granted. *Id.*

The Court: Well I think the phrase was, is there anything else, Counsel. *Id.*

Mr. O'Brien: That's plenty of opportunity. *Id.*

Mr. Comi: Is that for a motion for reconsideration? *Id.*

Mr. O'Brien: And did you make one? *Id.*

Mr. Comi: No. *Id.*

Mr. O'Brien: Well then we had an opportunity to make one. *Id.*

The State rested their case and the district court properly ruled on the evidence the State had presented at that point. Because the district court issued a ruling based on the evidence presented, the appeal to the

superior court by the State was prohibited by the principles of double jeopardy. The superior court erroneously reversed the decision of the district court which placed Mr. Karpov in double jeopardy. The charges against Mr. Karpov should be dismissed.

E. CONCLUSION

The State failed to establish jurisdiction, an essential element of the crime. The State also failed to request a continuance or a motion for reconsideration. Because the State failed to do so, the district court was bound to review the evidence presented by the State at that time. The district court correctly ruled that the element of jurisdiction was never established. Appeal on this issue by the State to the superior court was a violation of Mr. Karpov's constitutional right to not be placed in double jeopardy, and reinstatement of the charges against him by the superior court was also a violation of Mr. Karpov's constitutional double jeopardy rights.

Mr. Karpov respectfully requests that this Court reverse the superior court and dismiss the charges.

Dated this 4th day of June, 2018.



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