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No. 95080-6

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MIKHAIL G. KARPOV

Petitioner.

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PETITIONER'S REPLY BRIEF

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#### A. SUMMARY OF ARGUMENT

The principle of double jeopardy bars the State from reopening the case. The superior court of Spokane, in violation of the principles of double jeopardy, 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. This Court should reverse the ruling of the superior court and dismiss the criminal charges against Mr. Karpov.

#### B. STATEMENT OF THE CASE

Mr. Karpov incorporates and adopts the pervious statement of the case contained in the opening brief.

#### C. ARGUMENT

- (1) 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.” “Both our federal and state constitutions protect persons from being twice put in jeopardy for the same offense.” *State v. Turner*, 169 Wn.2d 448, 238 P.3d 461 (2010).

The constitutional protection against double jeopardy unequivocally prohibits a second trial following an acquittal. The public interest in the finality of criminal judgments 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 Wash App. 798, 801, 586 P.2d 913 (1978).

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, 98 S.Ct. 2187 (1978). 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 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).

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).

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).

Both the superior court and Court of Appeals examined the trial transcripts in-depth 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.

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 and the superior court's reinstatement of the charges was an error which placed Mr. Karpov in double jeopardy.

(2) Proof of jurisdiction Beyond a Reasonable Doubt is an Essential Element that the State failed to establish and the Case Was Dismissed Due to the State's Failure to Establish Jurisdiction

It is critical to recognize that “[v]enue and jurisdiction are distinct concepts.” *Dougherty v. Department of Labor & Industries for State of Washington*, 150 Wn.2d 310, 76 P.3d 1183 (2003). “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. “To convict any defendant in a Washington court of a crime, the State must prove it has subject matter jurisdiction over that crime. RCW 9A.04.030.” *State v. Brown*, 29 Wash.App. 11, 627 P.2d 132 (1981). “It is fundamental that jurisdiction over a crime rests exclusively in the courts of the state in which the crime is committed.” *State v. Lane*, 112 Wn.2d 464, 771 P.2d 1150 (1989). In *State v. Ford*, the court examined venue and jurisdiction and stated that:

Ford was convicted of malicious mischief for kicking a hole in the wall of his bedroom at the Raging River Ranch. Witnesses testified that Ford made the hole, but no one mentioned *the location* of the ranch. On appeal, Ford argues that jurisdiction has not been shown because venue has not been shown. *Although counsel appear to confuse venue and jurisdiction*, we agree that the latter has not been proved.

33 Wash.App. 788, 658 P.2d 36 (1983). (emphasis added). The court went on to examine the testimony of witnesses and determined that:

[f]rom the testimony presented, it is apparent that Raging River Ranch is a group home for boys, that a present resident of Issaquah was a former resident at the ranch and that an employee, who filled in for houseparents on a daily basis, presently lives in Edmonds. However, the trial judge made no finding of fact *that the incident occurred in Washington* and there is no evidence in the record from which this court may so conclude.

*Id.* at 790-791. (emphasis added). The court ruled that “[j]urisdiction has not been shown. There is nothing in the record from which to infer

jurisdiction and no basis on which to take judicial notice of the location of the Raging River Ranch. We therefore reverse and dismiss.” *Id.* at 791.

The State asserts that “[t]here is a long history of case law detailing the requirement that the State prove at trial that the crime occurred within the particular county. However, this required proof relates to the proper venue, and is not an element of the crime nor a jurisdictional question.” (Respondent’s Brief pg. 6). The State has confused venue and jurisdiction.

In the *Ford* case, testimony included the names of Edmonds and Issaquah, two cities located in Washington State. The street names provided by the witnesses in this matter are much less sufficient to establish jurisdiction than the large areas of Washington referred to in *Ford*. However, the court held in *Ford* that “the trial judge made no finding of fact *that the incident occurred in Washington* and there is no evidence in the record from which this court may so conclude.” *Id.* at 791. (emphasis added).

Here, the State was even farther from establishing that the incidents took place in Washington than was the State in the *Ford* case. The State failed to establish that the incidents took place in Washington State or even in Spokane County. The trial court properly dismissed the charges due to the State's failure to prove the essential element of jurisdiction.

#### D. CONCLUSION

The State failed to establish jurisdiction, an essential element of the crime and 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 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 10th day of September, 2018.



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