

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEVEN MICHAEL WEEMS,

Defendant-Appellee.

UNPUBLISHED

September 23, 2004

No. 247435

Wayne Circuit Court

LC No. 02-014465-01

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's decision granting a directed verdict of acquittal on the charge of felon in possession of a firearm, MCL 750.224f(2). We affirm.

Defendant was charged with assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court granted a directed verdict on the charge of felon in possession of a firearm on the grounds that the prosecution failed to present evidence that (1) less than five years had passed since all fines were paid, all imprisonment was served, and all terms of probation were complete, and (2) defendant's right to carry a firearm had not been restored. The jury acquitted defendant of assault with intent to commit murder, but convicted him of felony-firearm.

MCL 750.224f(2) provides that a person convicted of a specified felony¹ may not possess a firearm in Michigan until five years have passed since he paid all fines, served all terms of imprisonment, and successfully completed all conditions of probation or parole imposed for the offense, and until his right to possess a firearm has been restored pursuant to MCL 28.424.

Both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15. An acquittal, including a directed verdict based upon the insufficiency of the evidence, bars retrial even if the legal ruling underlying the acquittal was erroneous. *People v Mehall*, 454 Mich 1, 5; 557 NW2d 110

¹ A "specified felony" is defined in MCL 750.224f(6). Defendant's prior conviction of delivery of cocaine qualified as a specified felony. MCL 750.224f(6)(ii).

(1997). A trial court's ruling constitutes an acquittal for double jeopardy purposes if the ruling, regardless of the label given to it, represents a "resolution, correct or not, of some or all of the factual elements of the offense charged." *People v Nix*, 453 Mich 619, 627; 556 NW2d 866 (1996), quoting *United States v Martin Linen Supply Co*, 430 US 564, 571; 97 S Ct 1349; 51 L Ed 2d 642 (1977). The phrase "correct or not" refers to "all aspects of the trial court's ultimate legal decision, including even cases where the trial court is factually wrong with respect to whether a particular factor is an element of the charged offense." *Nix, supra* at 628.

We affirm the trial court's grant of a directed verdict on the charge of felon in possession of a firearm. Given the trial court's decision that the prosecution presented insufficient evidence to support the charge of felon in possession of a firearm, the issue of whether in order to establish that offense the prosecution must prove that the defendant's right to carry a firearm has not been restored, or whether the restoration of rights exemption is an exception on which the defendant must present some evidence before the prosecution has any burden, MCL 776.20, need not be resolved in the context of the instant appeal. The trial court concluded that in order to establish the offense of felon in possession of a firearm, the prosecution was required to show that defendant's right to carry a firearm had not been restored. The trial court evaluated the sufficiency of the evidence and concluded, correctly or not, that the prosecution presented insufficient evidence to support the charge of felon in possession of a firearm because it did not establish that defendant's right to carry a firearm had not been restored. The trial court additionally concluded that the prosecution could not "satisfy element three, that less than five years has passed since all fines were paid, all imprisonment was served, all terms of probation were complete." Pursuant to *Nix, supra*, the trial court's grant of a directed verdict on the charge of felon in possession of a firearm was an acquittal for double jeopardy purposes even if the trial court incorrectly regarded the prosecution as being required to prove an element that it was not required to prove. *Id.* at 626-627.

The prosecution's reliance on *Mehall* as support for its assertion that retrial is not barred in this case is misplaced. In that case, the trial court granted the defendant's motion for a directed verdict, concluding that the prosecution had not presented sufficient proof of the elements of the charged offense. The trial court based its decision on its conclusion that the victim's testimony was not credible. The *Mehall* Court held that retrial was not precluded under the circumstances because by concentrating on the victim's testimony and discarding it as unbelievable, the trial court did not rule on the sufficiency of the prosecution's proofs, and thus did not acquit the defendant for double jeopardy purposes. *Id.* at 7. However, the *Mehall* Court emphasized that retrial is precluded if a trial court evaluated the evidence and determined that it was legally insufficient to sustain a conviction. *Id.* at 6. *Mehall* is consistent with *Nix* in this regard. Here, the trial court evaluated the evidence presented by the prosecution in support of the charge of felon in possession of a firearm, and found it legally insufficient. Defendant was acquitted of that charge for double jeopardy purposes even if the trial court incorrectly concluded that the prosecution was required to prove a factor that was not an element of the offense, i.e., that defendant's right to carry a firearm had not been restored. *Nix, supra* at 626-627.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood