

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHRISTOPHER JAMAL ANDERSON  
WILLIAMS,

Defendant-Appellee.

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UNPUBLISHED

October 23, 2008

No. 278974

Wayne Circuit Court

LC No. 07-005145-01

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

Plaintiff appeals the trial court's directed verdict of acquittal on the charge of third-degree criminal sexual conduct (CSC III), 750.520d(1)(a) (victim between 13 and 16 years of age). Because the principles of double jeopardy bar retrial, we dismiss the appeal.

Plaintiff filed a felony information asserting that on February 22, 2004, defendant engaged in CSC III with the complainant. At the preliminary examination, the complainant, then aged 16, unwaveringly testified that the sexual conduct occurred on February 21, not on February 22. Defendant and the court noted that the complainant's testimony was inconsistent with the charge, and plaintiff moved to amend the information to change the alleged date to February 21. The parties proceeded to trial on the amended charge.

At trial, defendant's theory of the case was that the complainant had fabricated the entire incident, and that her inconsistent testimony about the date of the offense was indicative of her deception. Defense counsel informed the jury during his opening statement that the evidence would show many inconsistencies in the complainant's testimony. During cross-examination, defense counsel questioned the complainant extensively about the date of the offense and other matters. The complainant changed her assertion about the date, testifying that she was now certain that the offense occurred on February 22 rather than on February 21.

At the close of the prosecution's case in chief, the prosecutor moved to again amend the information, this time to charge a two-week range of dates rather than a specific date. Defendant opposed the motion and moved for a directed verdict. The trial court found that the proffered amendment would be prejudicial to defendant and denied the motion to amend. The court then granted the directed verdict of acquittal.

When a trial court enters a directed verdict of acquittal based on insufficient evidence, the constitutional double jeopardy provisions preclude any further proceedings against the defendant on that charge. US Const, Am V; Const 1963, art 1, § 15; *People v Nix*, 453 Mich 619, 626-627; 556 NW2d 866 (1996). The acquittal bars retrial even if the trial court misperceives an element of the charged offense. *Nix, supra* at 628. Here, the trial court based the directed verdict on its conclusion that the prosecution had failed to provide sufficient proof that the offense occurred on the date charged in the amended information. Accordingly, the directed verdict constituted an acquittal for double jeopardy purposes.

Plaintiff maintains that under *People v Mehall*, 454 Mich 1, 5; 557 NW2d 110 (1997), the trial court's decision did not constitute an acquittal on the merits. We disagree. In *Mehall*, our Supreme Court explained that if a trial court directs a verdict based upon the court's assessment of witness credibility, but "fail[s] altogether to rule on the sufficiency of the prosecution's proofs," the verdict does not constitute an acquittal and double jeopardy does not bar retrial. *Id.* at 6-7. The Supreme Court confirmed, however, that when a trial court directs a verdict based upon a determination that the evidence is insufficient, the defendant cannot be retried. *Id.* at 7.

We find instructive this Court's decision in *People v Jakiel*, 92 Mich App 754; 285 NW2d 448 (1979). In *Jakiel*, as in the case at bar, the prosecutor sought reversal of a directed verdict of acquittal, arguing that the trial court had erred by requiring proof that the offense occurred on a specific date. *Id.* at 756-757. This Court concluded that although the trial court had incorrectly found that time was an essential element of the charged offense, double jeopardy barred the prosecutor's appeal, regardless of whether the trial court's ruling on the date issue was erroneous. *Id.* at 757-758.

In the case at bar, the trial court denied plaintiff's motion to amend and then acquitted defendant, operating under the erroneous belief that time was an essential element of the CSC charge. It is true that time is not an essential element in CSC cases involving minor victims. *People v Dobek*, 274 Mich App 58, 83; 732 NW2d 546 (2007). However, the trial court's finding that the prosecution had presented insufficient evidence to sustain a conviction—even if technically incorrect—constituted an acquittal on the merits for double jeopardy purposes. *Jakiel, supra* at 756-758. We accordingly need not address whether the court erred in denying the motion to amend.

The appeal is dismissed.

/s/ Kurtis T. Wilder  
/s/ Kathleen Jansen  
/s/ Donald S. Owens