IN THE COURT OF APPEALS OF IOWA

No. 8-581 / 08-0099
Filed December 31, 2008

STATE OF IOWA,
Plaintiff-Appellant,

vs.

SHARON KAY HANSEN,
Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

The State appeals from the district court's grant of defendant's motion for judgment of acquittal. **APPEAL DISMISSED.**

Thomas J. Miller, Attorney General, Darrel Mullins and Mary Tabor, Assistant Attorneys General, Matthew Wilber, County Attorney, and Shelly Sedlak, Assistant County Attorney, for appellant.

Michael Winter, Council Bluffs, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

The State appeals from the district court's grant of the defendant's motion for judgment of acquittal following her jury conviction of child endangerment causing serious injury. The State contends the court erred in weighing the evidence and seeks reinstatement of the jury's verdict. We dismiss the appeal.

I. Background

The State charged Sharon Hansen with neglect of a dependent person and two counts of child endangerment. At the close of the State's case the defendant moved for judgment of acquittal; the court denied the motion. At the close of the defendant's case the court denied her renewed motion for judgment of acquittal. At the close of the State's rebuttal evidence, the court reserved ruling on the defendant's final motion for judgment of acquittal.

The jury acquitted the defendant on the first two counts, but convicted her on the count of child endangerment by willful deprivation of healthcare. The district court accepted the acquittal verdicts, but refused to accept the conviction, instead granting the motion for judgment of acquittal on which it had reserved ruling. The order provided:

> The evidence in the record is insufficient to sustain a conviction of child endangerment with serious injury in count III.
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> . . . An essential element [of the marshalling instruction] was that the defendant willfully deprived [the child] of necessary health care or supervision appropriate to [his] age. Willfully means acting intentionally or by fixed design or purpose and not accidentally.
>
> The evidence does not prove beyond a reasonable doubt that defendant appreciated the medical circumstances that [the child] presented on June 26, 2007. The evidence does not prove beyond a reasonable doubt that a reasonable person would have fully appreciated the medical circumstances that [the child] presented on June 26, 2007. . . .

> When viewed in the light most favorable to the State, the evidence is not sufficient to sustain a conviction that defendant acted intentionally or by fixed design or purpose and not accidentally to deny [the child] necessary health care or supervision appropriate to his age.

The State appeals, contending the court erred in granting the motion for judgment of acquittal because substantial evidence supports the jury's verdict. The defendant responds that (1) the State's appeal is not permitted by statute; (2) principles of double jeopardy prevent reprosecution; and (3) the district court was correct in concluding the jury's conviction was not supported by substantial evidence.

II. Scope and Standards of Review

Review of a district court's ruling on a motion for judgment of acquittal is for correction of errors at law. *State v. Corsi*, 686 N.W.2d 215, 218 (Iowa 2004). "[W]e apply a sufficiency-of-the-evidence test and view the evidence in the light most favorable to the State." *State v. Shanahan*, 712 N.W.2d 121, 134 (Iowa 2006).

III. Discussion

Before addressing the merits of the State's appeal, we must determine whether either of the potential hurdles raised by the defendant would keep us from reaching the merits. First, the defendant contends the appeal is improper because it does not fit within any of the provisions of Iowa Code section 814.5 (2007). "As an initial matter, we note that the right of appeal is not an inherent or constitutional right; it is a purely statutory right that may be granted or denied by the legislature as it determines." *James v. State*, 479 N.W.2d 287, 290 (Iowa

1991). Iowa Code chapter 814 governs appeals from the district court in criminal cases. Section 814.5 provides:

> 1. Right of appeal is granted the state from:
> a. An order dismissing an indictment, information, or any count thereof.
> b. A judgment for the defendant on a motion to the indictment or the information.
> c. An order arresting judgment or granting a new trial.
> 2. Discretionary review may be available in the following cases:
> a. An order dismissing an arrest or search warrant.
> b. An order suppressing or admitting evidence.
> c. An order granting or denying a motion for a change of venue.
> d. A final judgment or order raising a question of law important to the judiciary and the profession.

This restricted list for criminal appeals contrasts sharply with the general civil rule that "a party may appeal as of right from any final order or judgment." *See In re T.R.*, 705 N.W.2d 6, 10 (Iowa 2005); Iowa R. App. P. 6.1(1).

The State argues its appeal falls under the language in paragraphs (1)(a) or (1)(b). When defense counsel renewed the motion for judgment of acquittal at the close of the State's rebuttal evidence, counsel also reviewed the insufficiency of the State's evidence, then said, "The charges in my opinion should all be dismissed without the necessity of a jury hearing any more." The State asserts, "Because the defendant sought, and the court granted, a dismissal of the charges on the motion for judgment of acquittal, the plain terms of section 814.5 confer a right of appeal." The district court order sustaining the motion for judgment of acquittal did not "dismiss" any charges, so the statutory language, "An order dismissing an indictment, information, or any count thereof" does not appear to encompass the court's order.

The State also argues that sustaining the motion for judgment of acquittal falls within "[a] judgment for the defendant on a motion to the indictment or the information." While the court's action certainly is a judgment for the defendant on a motion, it is a judgment after trial, not pretrial "to the indictment or the information." *See State v. Bullock*, 638 N.W.2d 728, 730 (Iowa 2002) (comparing a pretrial and posttrial decision, noting "[t]his distinction is material because the appeal as of right granted by the legislature is extended to a 'judgment for the defendant on a motion to the indictment or the information'"). We conclude the district court's posttrial grant of defendant's motion for judgment of acquittal does not fall within any of the delineated circumstances in which the State has a right to appeal.

We next examine whether the circumstances before us fall within those listed in which "discretionary review may be available." Iowa Code § 814.5(2). From the language of the statute quoted above, it is clear any discretionary review of the instant case would have to fall under paragraph (d): "A final judgment or order raising a question of law important to the judiciary and the profession." Our supreme court has granted discretionary review "in criminal cases only when it involves questions of law, either substantive or procedural, whose determination will be beneficial to the bench and bar as a guide in the future." *State v. Warren*, 216 N.W.2d 326, 327 (Iowa 1974) (citing examples). In cases such as the instant case, involving the State's claim concerning the sufficiency of the evidence, the supreme court routinely refused to consider the claim because it provided no guidance to the bench and bar. *See State v.*

Kessler, 213 N.W.2d 671, 672 (Iowa 1973) ("It is well established the State is not permitted to appeal every acquittal. An appeal by the State is permitted only where it involves questions of law, either substantive or procedural, whose determination will be beneficial generally to the bench and bar of the State as a guide in the future."); *State v. Kriens*, 255 Iowa 1130, 1131, 125 N.W.2d 263, 264 (1963) ("We do not believe these queries are so vital to the practice that an opinion should be rendered at this time.").

Warren and the cases it cites and the cases the defendant cites all preceded the change in the statute and rules. Prior to 1979 the Iowa Code did not so explicitly set forth the situations in which the State had the right to appeal and those in which the court had discretion to hear the appeal. Section 793.1 (1977) provided that "[e]ither the defendant or state may appeal" from "any judgment, action, or decision of the district court" in a case in which the offense was an indictable offense. By the 1979 code, chapter 793 had been repealed and replaced with chapter 814. The rules of criminal procedure had been codified in chapter 813.

Iowa Rule of Criminal Procedure 18(8)(*b*) (1979) allowed a court to reserve decision on a motion for judgment of acquittal made at the close of all evidence and to decide the motion after a jury verdict. Current rule 2.19(8)(*b*) allows the court the same discretion to reserve ruling on a motion for judgment of acquittal until after the jury's verdict.[1] Iowa Code section 814.5 (1979) set forth

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[1] Federal Rule of Criminal Procedure 29 is similar to our rule 2.19(8), but broadens a defendant's rights by allowing a defendant to "move for a judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury,

explicitly the situations in which the State had a right of appeal and those in which discretionary review might be available. The same list of situations appears in the code quoted above that is applicable to the instant case. *See* Iowa Code § 814.5 (2007). Section 814.5(2)(d) codifies the earlier common law rule of possible discretionary review of a final judgment or order "raising a question of law important to the judiciary and the profession." *See Kessler*, 213 N.W.2d at 672 ("An appeal by the State is permitted only where it involves questions of law, either substantive or procedural, whose determination will be beneficial generally to the bench and bar of the State as a guide in the future."). Our supreme court has applied the discretionary review provisions of 814.5(2) when a court granted the defendant's motion for judgment of acquittal even before the case was submitted to the jury. *State v. Grice*, 515 N.W.2d 20, 22 (Iowa 1994) (granting "discretionary review of the court's ruling for the guidance of the bench and bar").

Based on the foregoing, we conclude discretionary review may be available to the State from the court's grant of a judgment of acquittal in this case. The question then becomes whether the State has raised a substantive or procedural question of law whose determination will provide future guidance to the bench and bar. The court's grant of the motion for judgment of acquittal was based on its determination there was not sufficient evidence on one element necessary to convict the defendant. When the question is the sufficiency of the

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whichever is later." Fed. R. Crim. P. 29(c)(1). It also requires the court to make a conditional ruling on a motion for new trial if the motion for judgment of acquittal is granted after a jury verdict. *Id*. at (d)(1).

evidence, we are guided by the supreme court's reasoning as set forth succinctly in *State v. Wardenburg*, 261 Iowa 1395, 1398, 158 N.W.2d 147, 149 (1968):

> Ordinarily on appeals by the State from a judgment on directed verdict for defendant, involving sufficiency of the evidence to establish the charge, we will not review the record to determine the correctness of the decision. A pronouncement from us on the fact situation in one case rarely serves any good purpose in determination of future cases. Such appeals by the State are useless. While the matter of sufficiency or insufficiency of the evidence is a question of law, this court will refuse to review the record where it will benefit no one. In other words, to review an appeal by the State some general benefit or guide to the trial courts or profession must be shown.

(Citations omitted). This reasoning follows earlier decisions such as *State v. Friend*, 213 Iowa 544, 545, 239 N.W. 132, 133 (1931) ("Nothing could be more useless than appeals by the state from rulings directing verdicts of acquittal unless a question of law other than the mere sufficiency of the evidence to sustain a conviction is involved."); *accord State v. Niehaus*, 209 Iowa 533, 537, 228 N.W. 308, 310 (1929) ("All of these grounds go to the question of the sufficiency of the evidence to warrant the court in its action, and we have quite consistently held that, when the only question is the sufficiency of the evidence to support the court's action, we do not review the record.").[2] Accordingly, we decline discretionary review of the district court's grant of the defendant's motion for judgment of acquittal that was based on the sufficiency of the evidence.

APPEAL DISMISSED.

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[2] Federal courts have held the government cannot appeal the grant of a judgment of acquittal based on insufficient evidence. *See, e.g.*, *U.S. v. Ember*, 726 F.2d 522, 524 (9th Cir. 1984) (barring appeal of insufficient evidence); *U.S. v. Burroughs*, 564 F.2d 1111, 1118 (4th Cir. 1977) ("The foregoing indicates the Court's view that if the ruling of the district judge in entering the judgment of acquittal represents the resolution of a factual rather than a legal question the government cannot appeal.").