

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DENNIS REID,

Defendant-Appellant.

FOR PUBLICATION

June 10, 2010

9:00 a.m.

No. 286784

Wayne Circuit Court

LC No. 07-020203

Before: DONOFRIO, P.J., and SAWYER and OWENS, JJ.

SAWYER, J.

This case presents the question whether the circuit court possesses the jurisdiction to try a defendant on a misdemeanor charge where the accompanying felony charge was dismissed before the beginning of trial. We hold that it does not and that the circuit court erred by trying defendant on the misdemeanor charge rather than remanding the matter to the district court for trial.

This case arises from a traffic stop by the Michigan State Police in Wayne County. The traffic stop resulted in defendant being arrested for operating a motor vehicle while intoxicated (OWI).¹ A search of defendant's vehicle yielded pill bottles and pills, with a label missing from a pill bottle. Defendant was originally charged with a felony drug possession charge and the misdemeanor OWI charge. On the day of trial, however, the prosecutor moved to dismiss the felony drug charge, apparently because it had been determined that defendant did, in fact, have a valid prescription for the pills. Thus, only the misdemeanor charge remained. Defendant was convicted on the misdemeanor OWI charge and sentenced to 93 days in jail.

MCL 767.1 does generally grant the circuit court jurisdiction over all criminal cases, felony and misdemeanor. But MCL 600.8311(a) specifically grants the district court jurisdiction over misdemeanors punishable by not more than one year in jail. In *People v Veling*,² the Supreme Court reviewed the circumstances under which the circuit court may exercise jurisdiction over criminal cases that otherwise belong in other courts. *Veling* itself dealt with juveniles charged as adults under the automatic waiver statute, but convicted of offenses not included within the automatic waiver statute. But in resolving that issue, the Court considered

¹ MCL 257.625(1)

² 443 Mich 23; 504 NW2d 456 (1993).

the historic circumstances under which the circuit court maintains jurisdiction over misdemeanors. The Court identified three such circumstances.

First, relying on *People v Schoeneth*,³ the Court noted that the circuit court maintains jurisdiction to sentence a defendant who had been charged with a felony, but convicted of a lesser included misdemeanor. Second, relying on *People v Loukas*,⁴ where a defendant is charged with multiple counts involving both felony and misdemeanor charges arising out of the same transaction, the circuit court possesses jurisdiction over the misdemeanor as well as the felony charges.⁵ And, third, relying on *People v Shackelford*,⁶ where a post-trial action eliminates a felony charge, the circuit court retains jurisdiction to sentence on the remaining misdemeanor.⁷

None of these circumstances are present here. Had trial commenced on both charges and the felony charge was dismissed by motion or directed verdict, perhaps the *Schoeneth* exception could be said to apply. But that is not what happened here. The felony charge was dismissed before trial. Once that occurred and only a misdemeanor charge remained that came within the district court's jurisdiction under MCL 600.8311, we believe that under *Velting* the appropriate course of action for the circuit court was to remand the matter to the district court rather than for the circuit court to proceed to trial solely on the misdemeanor charge.

Finally, we note that the prosecution's reliance on *People v Goecke*,⁸ is misplaced. *Goecke* dealt more with the issue of personal jurisdiction than subject matter jurisdiction and, more specifically, the question whether the prosecution must proceed by appeal to the circuit court or by motion in the circuit court whether the district court binds a defendant over on one felony charge but dismisses a different felony charge. This is a significantly different issue than that presented in this case.

In light of our resolution of this issue, we need not address the remaining issues raised by defendant.

Reversed.

/s/ David H. Sawyer
/s/ Pat M. Donofrio
/s/ Donald S. Owens

³ 44 Mich 489; 7 NW 70 (1880).

⁴ 104 Mich App 204; 304 NW2d 532 (1981).

⁵ It is on this basis that both of the charges here were to be tried together in circuit court, the misdemeanor following the felony charge to circuit court.

⁶ 146 Mich App 330; 379 NW2d 487 (1985).

⁷ In *Shackelford*, the defendant was tried on a misdemeanor marijuana possession charge that was enhanced to a felony as a second offense. Defendant was convicted on the felony possession charge, but thereafter the prosecutor moved to dismiss the felony enhanced, leaving only the misdemeanor possession charge. *Id.* at 332-333.

⁸ 457 Mich 442; 579 NW2d 868 (1998).