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Review Granted May 28, 2025

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Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Patrick Jay SULLIVAN, Appellant.

A23-1134
|
Filed January 27, 2025
|
Review Granted May 28, 2025

Aitkin County District Court, File No. 01-CR-23-45

Attorneys and Law Firms

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Considered and decided by Smith, Tracy M., Presiding Judge; Schmidt, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge [*]

***1** In this reinstated direct appeal from the judgment of conviction for felony domestic assault following a stay and remand for postconviction proceedings, appellant argues that the postconviction court violated double jeopardy by engaging in further review of his case after vacating his conviction for insufficient evidence, and by reinstating his conviction. Appellant also contends that the evidence at trial was insufficient to sustain his conviction. [1] Because we conclude that double jeopardy did not preclude the postconviction court from reconsidering its first order or reinstating appellant's conviction, and that the evidence at trial was sufficient to sustain the conviction, we affirm.

FACTS

Respondent State of Minnesota charged appellant Patrick Jay Sullivan with felony domestic assault pursuant to Minn. Stat. § 609.2242, subd. 4 (2022), and misdemeanor mistreatment of an animal pursuant to Minn. Stat. § 343.21, subd. 7 (2022), alleging that Sullivan had assaulted his mother, S.W., and abused his dog.

During a pretrial hearing the day before Sullivan's jury trial, his trial counsel stated that "we are going to be stipulating or do stipulate to the two convictions that are mentioned in the complaint ... so that those don't need to be proven at trial nor introduced at trial." [2] The next day, the district court ruled that the state could present evidence of two prior convictions for impeachment purposes during Sullivan's testimony. The district court and the parties then discussed stipulating to the prior convictions:

> THE STATE: ... I believe [defense counsel] had indicated that his client intends to stipulate as to those prior convictions for the purposes of the State's meeting its burden. I would like to put that on the record. And then my office can draft the stipulation for the Court to read to the jury.
>
> ....
>
> DEFENSE COUNSEL: Well, I believe we just stipulated it into the record, and I don't suspect it's going to be in the instructions for finding a verdict. But I don't know what else to say. I have never had a written stipulation. We've always just done it orally. If you think it's necessary.
>
> THE COURT: ... [W]e've always just done it on the record here. And I think there's been a stipulation to that so that we know that those convictions are out there. They can be used for impeachment purposes based upon my ruling here. I don't know that we need any sort of separate stipulation.
>
> ....

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> THE STATE: ... I am accustomed in my practice to seeing stipulations written, signed by both parties, and then read to the jury at the close of the State's case, as you know, an exhibit, evidence because stipulations are evidence. That's been my practice what I'm accustomed to seeing, but, you know, when in Rome. I'm happy to adjust.
>
> ***2** ....
>
> THE COURT: Okay. So I think we're all on the same page here. We won't have to have a separate stipulation prepared. They are not going to be part of the final instructions as they have been stipulated to. They can be used for the impeachment purposes, just as I ruled on here.

At trial, Sullivan testified in his own defense. On cross-examination, the state impeached Sullivan with both prior convictions. The district court twice instructed the jury to consider the prior convictions only for purposes of assessing Sullivan's credibility. The district court did not instruct the jury on the prior-conviction element of felony domestic assault. The jury found Sullivan guilty of domestic assault and acquitted him of misdemeanor mistreatment of an animal. The district court sentenced Sullivan to 21 months commitment. Sullivan appealed.

We granted Sullivan's motion to stay his appeal to allow him to pursue postconviction relief. Sullivan filed a postconviction petition to vacate his conviction, arguing that the state "failed to prove [Sullivan] guilty beyond a reasonable doubt because it failed to prove the prior-conviction element" of felony domestic assault.

On February 7, 2024, the postconviction court held a hearing on Sullivan's petition. Sullivan argued that because he never personally stipulated to the prior-conviction element, and the state otherwise failed to prove that element beyond a reasonable doubt, his conviction should be vacated. The state argued that vacating the conviction would be unfair because the state had "requested a written stipulation and was rebuffed" by the district court and defense counsel.

On February 29, 2024, the district court granted Sullivan's postconviction petition concluding that:

> 6. A review of the trial transcript shows that the Defendant never stipulated to the prior convictions in writing or orally. In addition, the jury never found the element of prior convictions beyond a reasonable doubt.
>
> 7. All elements of a crime must be proven beyond a reasonable doubt for a conviction to stand. In the case-at-bar, one element is missing. Therefore, the Defendant's petition to vacate is **GRANTED**.

The district court set the case for a plea hearing. The state filed a notice of intent to seek aggravated sentencing.

Sullivan then argued that because the postconviction court vacated his conviction "due to insufficient evidence," double jeopardy barred further prosecution. The district court set a hearing on this motion. On the morning of that hearing, the state moved for reconsideration of the order vacating Sullivan's conviction, arguing that the prior-conviction element had been proven when Sullivan "admitted to the convictions while under oath." In a memorandum filed two days later, the state argued that the "stipulation was admitted in error" and thus amounted to a trial error subject to harmless-error review. The state further argued that the error was harmless because "the jury was otherwise exposed to the evidence required to meet the state's burden."

***3** The postconviction court granted the state's motion to reconsider and reinstated Sullivan's conviction determining that "the stipulation [was] received in error" and thus subject to harmless-error analysis. The postconviction court concluded that the error was "not prejudicial" because, among other reasons, the jury "was told of [Sullivan's] prior convictions during [his] cross-examination" and Sullivan admitted to the convictions under oath.

We granted Sullivan's motion to reinstate the appeal and this appeal follows.

DECISION

I. The postconviction court did not violate double jeopardy by reconsidering its order vacating Sullivan's conviction for insufficient evidence and reinstating the conviction.

On appeal, Sullivan argues that the postconviction court violated double jeopardy by engaging in further review of his case after vacating his conviction for insufficient evidence, and by reinstating his conviction. We review constitutional issues of double jeopardy de novo. *State v. Large*, 607 N.W.2d 774, 778 (Minn. 2000).

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The Fifth Amendment of the United States Constitution and article I, section 7 of the Minnesota Constitution both contain double-jeopardy clauses that "protect a criminal defendant from a second prosecution for the same offense after an acquittal on the merits." *State v. Pass*, 832 N.W.2d 836, 840 (Minn. 2013) (quotation omitted). That protection attaches regardless of whether the source of the acquittal is a jury verdict or a judicial determination. *Smith v. Massachusetts*, 543 U.S. 462, 466-67 (2005) ("[W]e have long held that the Double Jeopardy Clause of the Fifth Amendment prohibits reexamination of a court-decreed acquittal to the same extent it prohibits reexamination of an acquittal by jury verdict.").

A district court renders "an acquittal on the merits when 'the ruling of the judge, whatever its label, actually represents a resolution in defendant's favor, correct or not, of some or all of the factual elements of the offenses charged.' " *Large*, 607 N.W.2d at 779 (quoting *United States v. Scott*, 437 U.S. 82, 97, 98 (1978)). To determine whether a district court's decision "represents a resolution in the defendant's favor of some or all of the factual elements of the offense charged, we consider both the form and the substance of the [district] court's ruling." *State v. Sahr*, 812 N.W.2d 83, 90 (Minn. 2012). A district court's finding of insufficient evidence to convict on one or more elements of a criminal offense "amounts to an acquittal on the merits because such a finding involves a factual determination about the defendant's guilt or innocence." *Id.* (citing *Sanabria v. United States*, 437 U.S. 54, 59, 68-69 (1978)). "A verdict of acquittal on the merits deprives the state of an opportunity to appeal and deprives us of jurisdiction to review the lower court's ruling." *Large*, 607 N.W.2d at 779. And an acquittal on the merits rendered by a reviewing court precludes a second prosecution to the same extent as an acquittal declared by a district court. *See* *Burks v. United States*, 437 U.S. 1, 17-18 (1978) (holding that "the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient").

Sullivan argues that because the postconviction court's first order vacated his conviction for insufficient evidence, that order constituted an acquittal on the merits, barring further review his case. We disagree. While an acquittal on the merits generally bars further review, the United States Supreme Court has recognized an exception permitting reexamination of guilt where "a judge rules in favor of the defendant after a verdict of guilty has been entered by the trier of fact." *United States v. Wilson*, 420 U.S. 332, 352-53 (1975). "When a jury returns a verdict of guilty and a trial judge (or an appellate court) sets aside that verdict and enters a judgment of acquittal, the Double Jeopardy Clause does not preclude a prosecution appeal to reinstate the jury verdict of guilty." *Smith*, 543 U.S. at 467; *see also* Minn. R. Crim. P. 28.04, subd. 1 (3), (5) (providing that the state may appeal "from an order granting postconviction relief" and "from a judgment of acquittal by the district court entered after the jury returns a verdict of guilty").

***4** The jury found Sullivan guilty of felony domestic assault and judgment of conviction was entered. Therefore, even accepting Sullivan's contention that the postconviction court's first order was an acquittal on the merits, that order did not preclude an appeal by the state or a "reexamination of guilt" by the postconviction court. *See* *Smith*, 543 U.S. at 467; *Wilson*, 420 U.S. at 352-53.[3] The state's motion to reconsider sought a different ruling on the postconviction court's legal determination vacating Sullivan's conviction. The state's motion did not amount to a second trial or reprosecution of the case. Similarly, the postconviction court was free to reexamine its legal determination of the prior-conviction element and "reinstate the jury verdict of guilty" without violating double jeopardy. *See* *Smith*, 543 U.S. at 467; *see also* *Evans v. Michigan*, 568 U.S. 313, 329-30 n.9 (2013) ("If a court grants a motion to acquit after the jury has convicted, there is no double jeopardy barrier to an appeal by the government from the court's acquittal, because reversal would result in reinstatement of the jury verdict of guilt, not a new trial.").

Sullivan relies on *Smith* to support his argument that the postconviction court's reconsideration of its first order violated double jeopardy. In *Smith*, the trial court acquitted the defendant of one of the three charged offenses midway through a jury trial. *Id.* at 464. Before closing arguments, at the prosecutor's request, the trial court reversed the acquittal and the jury convicted the defendant on all three counts. *Id.* at 465-66. The Supreme Court held that reconsideration of the midtrial acquittal violated double jeopardy and that such an acquittal must be treated as final. *Id.* at 473. But *Smith* is distinguishable because both the acquittal and reconsideration in *Smith* occurred during trial, before the entry of a judgment of conviction. Here, by contrast, the jury found Sullivan guilty

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and the district court entered a judgment of conviction. And as *Smith* instructs, when a jury returns a guilty verdict and a reviewing court subsequently sets aside the verdict and enters a judgment of acquittal, double jeopardy does not preclude reexamination of guilt. *Id.* at 467.

Sullivan also relies on *Large*, where the Minnesota Supreme Court held that double jeopardy precludes further review of a case after a verdict of acquittal on the merits. 607 N.W.2d at 779. But *Large* is distinguishable on the same grounds as *Smith*. In *Large*, a jury acquitted the defendant on three of four charged offenses and deadlocked on the fourth. *Id.* at 776. The district court then dismissed the fourth charge because acquittal on the third charge left insufficient evidence to convict on the fourth charge. *Id.* at 778, 779-80. Thus, as in *Smith*, the jury never returned a guilty verdict, and no judgment of conviction was ever entered. The district court entered a judgment of acquittal in the first instance and thus the state was precluded from appealing the acquittal.

Sullivan also relies on *Burks* for the proposition that when a reviewing court reverses a conviction for insufficient evidence, double jeopardy "precludes a second trial" and "the only 'just' remedy available for [the reviewing] court is the direction of a judgment of acquittal." 437 U.S. at 18. In *Burks*, the Court of Appeals for the Sixth Circuit reversed a conviction for insufficient evidence and remanded to the district court "for a determination of whether a directed verdict of acquittal should be entered or a new trial ordered." *Id.* at 4 (quotation omitted). The United States Supreme Court held that the Sixth Circuit's remand order violated double jeopardy because it allowed for the possibility of a second trial, despite a determination that the evidence at the original trial was legally insufficient. *Id.* at 18. But while *Burks* precludes a second prosecution in such circumstances, it does not explicitly preclude *any* further review of a case upon a reviewing court's finding of insufficient evidence. Presumably, if the prosecution had appealed the Sixth Circuit's legal determination of the sufficiency of the evidence, such an appeal would not have been precluded by double jeopardy. *See* *Wilson*, 420 U.S. at 352-53 ("[W]hen a judge rules in favor of the defendant after a verdict of guilty has been entered by the trier of fact, the Government may appeal from that ruling without running afoul of the Double Jeopardy Clause."). Thus, *Burks* is not on point for purposes of determining whether the prosecution here was permitted to appeal the postconviction court's first order, or whether the postconviction court erred in reconsidering its decision to vacate the conviction. That inquiry is controlled by the Supreme Court's decisions in *Smith* and *Wilson*, which permit reexamination of guilt after a reviewing court vacates a conviction for insufficient evidence. We therefore conclude that the postconviction court did not violate double jeopardy by considering the state's motion for reconsideration and reinstating Sullivan's conviction.

II. The evidence was sufficient to sustain Sullivan's conviction.

***5** Sullivan argues that the evidence presented at trial was insufficient to sustain his conviction. [4] In reviewing a claim of insufficient evidence, we "undertake a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Loveless*, 987 N.W.2d 224, 246 (Minn. 2023) (quotation omitted). "And we will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

Sullivan argues that because he did not properly stipulate to his prior convictions, the state failed to prove the prior-conviction element of felony domestic abuse, "and thus the evidence supporting Sullivan's conviction was insufficient." "A criminal defendant has a right to a jury trial that includes the right to a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Kuhlmann*, 806 N.W.2d at 848 (citation and quotation omitted). A defendant seeking to "remove[ ] unduly prejudicial evidence from the jury's consideration" may stipulate to one or more elements of a charged offense. *State v. Wright*, 679 N.W.2d 186, 191 (Minn. App. 2004), *rev. denied* (Minn. June 29, 2004); *see also* Minn. R. Crim. P. 26.01, subd. 3 (providing the procedure for such stipulations). But for a stipulation to be valid, the defendant must first *personally* waive their rights to a jury trial—either orally or in writing—on the stipulated element. *Kuhlmann*, 806 N.W.2d at 850; *see also* Minn. R. Crim. P. 26.01, subd. 1 (2)(a) ("The defendant, with the approval of the court, may waive a jury trial on the issue of

guilt provided the defendant does so personally, in writing or on the record in open court."). But when a defendant's attorney stipulates to an element of an offense without the defendant personally waiving his rights, that stipulation does not function as a valid waiver. *Kuhlmann*, 806 N.W.2d at 849 ("The fact that defense counsel may stipulate to a previous-conviction element demonstrates nothing regarding the defendant's personal waiver of a right to a jury trial on that element."). And when a defendant does not validly waive their right to a jury trial on an element of an offense, the state maintains its burden to prove that element to the jury beyond a reasonable doubt. *See id.* at 848.

Despite Sullivan's attorney stating that he was stipulating to the prior convictions and later maintaining that he had done so, the record reflects that Sullivan never personally waived his right to a jury trial either orally or in writing. Thus, trial counsel's stipulation was not sufficient to accomplish a valid waiver of Sullivan's right to a jury trial on each element of the charged offense. *See id.* at 850. Absent such waiver, the state was still required to prove to the jury each element of felony domestic assault, including the prior-conviction element, beyond a reasonable doubt. *See id.*

***6** Sullivan argues that because he did not personally stipulate to the prior-conviction element and because the state presented no substantive evidence of two previous qualifying convictions with the last ten years, the state did not meet its burden to prove all elements of felony domestic assault beyond a reasonable doubt. Sullivan acknowledges that the jury heard about the prior convictions when he admitted to them during the state's cross-examination but maintains that because the prior convictions were admitted only for impeachment purposes—and not as substantive evidence—the impeachment testimony cannot be considered for sufficiency purposes as evidence establishing the prior-conviction element. We disagree.

Generally, "past-crimes evidence is only relevant to attack a witness's credibility or character for truthfulness and may be used only to impeach a witness." *State v. Swaney*, 787 N.W.2d 541, 562 (Minn. 2010) (citing Minn. R. Evid. 609(a)). Even so, when considering sufficiency of the evidence, a reviewing court looks at *all* the evidence admitted at trial, regardless of whether that evidence was properly before the jury. *See Lockhart v. Nelson,* 488 U.S. 33, 40-41 (1988) ("a reviewing court must consider *all of the evidence admitted by the trial court*" to determine whether "there was insufficient evidence to support a judgment of conviction") (emphasis added); *State v. Cox*, 779 N.W.2d 844, 853 (Minn. 2010) (concluding that "[a] reviewing court considers all of the evidence admitted by the trial court, whether erroneously admitted or not," to determine whether the evidence was legally sufficient); *State v. Kraushaar*, 470 N.W.2d 509, 513 n.3 (Minn. 1991) ("In reviewing sufficiency of evidence, courts should include any erroneously admitted evidence."). We therefore include Sullivan's admissions to his prior convictions in our consideration of whether the evidence was legally sufficient to sustain Sullivan's conviction, regardless of the purpose for which they were admitted. *See Lockhart*, 488 U.S. at 40-41. [5]

Sullivan testified during trial that he had been convicted of third-degree assault in 2015 and sentenced on a conviction for fourth-degree criminal sexual conduct in 2017. Sullivan's admissions constitute proof of two previous qualifying convictions within the last ten years sufficient to establish the prior-conviction element of felony domestic abuse. And the parties do not dispute that the evidence presented at trial otherwise established the remaining elements of felony domestic abuse. We therefore conclude that viewed in the light most favorable to the conviction, the evidence admitted at trial was sufficient for a jury to reasonably conclude that Sullivan was guilty of felony domestic abuse. *See Ortega*, 813 N.W.2d at 100.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2025 WL 302586

Footnotes

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

1 At oral argument, the state asserted that the only issue on appeal is whether the postconviction court violated double jeopardy by reinstating Sullivan's conviction. But because Sullivan's postconviction petition originally raised sufficiency of the evidence as the sole issue for review, and because Sullivan's briefs can be fairly read as also challenging sufficiency of the evidence, we consider both arguments.

2 Felony domestic assault requires proof that a defendant has "two or more previous qualified domestic violence-related offense convictions" within ten years of the charged offense. Minn. Stat. § 609.2242, subd. 4.

3 At oral argument, Sullivan conceded that the state would have been permitted to appeal the postconviction court's first order vacating the conviction but maintained that double jeopardy barred the postconviction court from reconsidering its own order. Sullivan's proposed distinction does not withstand scrutiny. If double jeopardy applies then all courts, including appellate courts, would be precluded from taking further action.

4 The parties disagree on the framing of this issue. Sullivan argues that because he is raising a sufficiency of the evidence claim, we should apply our traditional sufficiency standard of review. The state argues that the sufficiency issue results from a trial error: Sullivan's invalid waiver of his right to a jury trial on elements of the charged offense—and therefore we should review for harmless error. *See* *State v. Kuhlmann*, 806 N.W.2d 844, 851-52 (Minn. 2011) (holding that district court's "failure to obtain [the defendant's] personal waiver of his right to a jury trial on the previous-conviction elements of the charged offenses" was trial error subject to harmless-error review). For purposes of this appeal, we assume without deciding that a sufficiency standard of review is the proper framework for analyzing Sullivan's claim that the evidence was insufficient to sustain his conviction.

5 Although the prior convictions were admitted for impeachment purposes, they were also admissible as substantive evidence under Minn. R. Evid. 803(22). And the supreme court has held that in some cases, when evidence admitted for impeachment purposes is independently admissible as substantive evidence, the "defendant has no legitimate cause to complain." *See* *State v. Ortlepp*, 363 N.W.2d 39, 43-44 (Minn. 1985) (holding that a prior inconsistent statement introduced for impeachment purposes could be properly considered as substantive evidence because the statement was independently admissible as substantive evidence).

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