

IN THE SUPREME COURT OF THE STATE OF NEVADA


THE SPARKS JUSTICE COURT AND  
THE STATE OF NEVADA,  
Appellants,  
vs.  
DAWN MARIE SMITH,  
Respondent.

No. 51884

**FILED**

OCT 07 2009

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

This is an appeal from a district court order granting a petition for a writ of prohibition. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Respondent Dawn Marie Smith was charged in justice court with driving under the influence. Smith pleaded not guilty and proceeded to trial on the charge. During the questioning of the State's first witness, Smith orally moved to suppress all evidence relating to the traffic stop that led to her arrest. The justice court entered an order that granted the motion, suppressed all evidence arising from Smith's detention, and sua sponte dismissed the case against Smith. The State appealed to the district court from the justice court's order. The district court reversed the order granting the motion to suppress and remanded the matter to the justice court. Over Smith's objection, the justice court set the matter for a new trial. Subsequently, Smith filed a petition for a writ of prohibition in the district court and argued that any retrial on the DUI charge would violate the Double Jeopardy Clause. The district court found that jeopardy attached when the justice court began to hear evidence against

Smith and any further prosecution on the DUI charge would constitute double jeopardy. The district court granted Smith's petition for a writ of prohibition and restrained the justice court from taking any further action in the case against Smith. This appeal followed.

A writ of prohibition was the appropriate remedy

Appellants claim that the district court erred by granting the writ of prohibition because a writ of prohibition is not available as an error-preventing device. Appellants argue that a double jeopardy violation is an affirmative defense that does not go to the jurisdiction of the court and therefore Smith should have been required to raise the double jeopardy claim in the justice court. Appellants further argue that Smith waived her double jeopardy claim by failing to raise it during the appeal from the order granting the motion to suppress.

A writ of prohibition "arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." NRS 34.320.

We conclude that Smith appropriately sought relief via a writ of prohibition. Smith's double jeopardy claim was a jurisdictional claim. See Hylton v. District Court, 103 Nev. 418, 427, 743 P.2d 622, 628 (1987) (granting a writ of prohibition after finding that the Double Jeopardy Clause precluded further prosecution of the defendant on the alleged offenses). Smith did not waive this jurisdictional claim by failing to raise the claim during the appeal from the order granting her motion to suppress.

The district court did not err by granting the writ of prohibition

Appellants claim that the district court erred by granting the petition for a writ of prohibition and finding that the dismissal of Smith's case before the completion of her trial was the functional equivalent of an acquittal. Appellants argue that an order "dismissing" a charge based on what the court anticipates will be presented is not the equivalent of an acquittal and if the original trier of fact is available to continue a trial the Double Jeopardy Clause does not preclude finishing an interrupted trial.

A writ of prohibition may issue only where there is no plain, speedy, and adequate remedy at law. NRS 34.330. This court reviews "a district court's grant or denial of writ relief for an abuse of discretion." Koller v. State, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

The United States Supreme Court has held that if a trial judge grants an acquittal and "the prosecution has not yet obtained a conviction, further proceedings to secure one are impermissible" because "subjecting the defendant to postacquittal factfinding proceedings going to guilt or innocence violates the Double Jeopardy Clause." Smith v. Massachusetts, 543 U.S. 462, 467 (2005) (quoting Smalis v. Pennsylvania, 476 U.S. 140, 145 (1986)). According to the Supreme Court, a midtrial dismissal of charges will implicate double jeopardy when the dismissal constitutes a final judgment of acquittal. See id. at 474; Price v. Vincent, 538 U.S. 634, 642-43 (2003). "[A] defendant is acquitted only when 'the ruling of the judge, whatever its label, actually represents a resolution [in the defendant's favor], correct or not, of some or all of the factual elements of the offense charged.'" United States v. Scott, 437 U.S. 82, 97 (1978) (alteration in the original) (quoting United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977)).

Here, the justice court determined that there was no legal basis for stopping Smith and all evidence arising from the detention was inadmissible. Although the trial had not proceeded to its conclusion, the justice court further determined that the suppression of the evidence was dispositive of the matter and sua sponte dismissed the case against Smith. The district court found that the justice court's determination was a factual resolution regarding the DUI charge against Smith and therefore constituted an acquittal of that charge. The district court found that this court's holding in State v. Combs, 116 Nev. 1178, 1181, 14 P.3d 520, 521 (2000), was controlling and any further prosecution on the DUI charge would constitute double jeopardy. The district court's findings are supported by the record and Smith did not have any plain, speedy, or adequate remedy at law. Accordingly, we conclude that the district court did not abuse its discretion by granting Smith's petition for a writ of prohibition.

Having reviewed appellants' claims and concluded they lack merit we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.  
Cherry

Douglas, J.  
Douglas

Gibbons, J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Washoe County District Attorney Richard A. Gammick  
Kenneth A. Stover  
Washoe District Court Clerk