

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120636-U
NO. 4-12-0636
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 8, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DANA R. HASSELBRING,)	No. 11CF880
Respondent-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Interlocutory appeal dismissed for lack of appellate jurisdiction because defendant failed to file timely notice of appeal.

¶ 2 In November 2011, the trial court denied defendant's motion to dismiss the State's case against him on double jeopardy grounds. In June 2012, defendant filed another motion to dismiss based on double jeopardy which the court struck as duplicative of defendant's prior motion. Defendant appeals, arguing the court erred in denying his motion to dismiss based on double jeopardy and insufficient evidence to sustain the charge. The State argues we do not have jurisdiction over this interlocutory appeal. We agree and dismiss defendant's appeal.

¶ 3 I. BACKGROUND

¶ 4 In June 2011, the State charged defendant, Dana R. Hasselbring, with aggravated driving with a drug, substance, or compound in his breath, blood, or urine, a Class 2 felony (625

ILCS 5/11-501(d)(1)(F) (West 2010); 625 ILCS 5/11-501(a)(6) (West 2010)). The State alleged defendant had drugs in his system when he was involved in a motor vehicle accident resulting in the death of Eddie Piat. According to the State's charging instrument, defendant's "violation was a proximate cause of the death[.]"

¶ 5 On September 15, 2011, defendant filed multiple motions to dismiss the State's charge against him. His third motion to dismiss argued his prosecution was barred by the double jeopardy clauses of the Illinois and United States Constitutions and section 3-4(b)(1) of the Criminal Code (720 ILCS 5/3-4(b)(1) (West 2010)). Defendant argued his conviction for failure to reduce speed to avoid an accident barred the current prosecution because it was a lesser included offense of the charge for which he was being prosecuted.

¶ 6 On November 14, 2011, the trial court held a hearing on defendant's first through fifth motions to dismiss and denied each motion. In response to the court's question whether a setting was in place, defense counsel stated:

"Judge, if the Court would grant me hopefully a week—if not, a minimum of a couple of days here—it's my understanding—and I don't have the specific Supreme Court Rule in front of me—but it's my understanding for a motion to dismiss for double jeopardy purposes that if Mr. Hasselbring so chose to appeal this that he—that it's nondiscretionary, that he, in fact, could."

¶ 7 On April 9, 2012, defendant filed his seventh motion to dismiss. According to the motion:

"The State has produced in Discovery a laboratory report dated November 19, 2010, in which Tara M. Kerns, a Forensic Scientist with the Illinois State Police, determined that the only chemical detected in the blood sample given by the defendant was Benzoylcegonine that was measured to be 70 billionths of a kilogram per liter of blood."

Benzoylcegonine is a cocaine metabolite. The motion alleged the amount of Benzoylcegonine detected in defendant's urine was so small as to be unmeasurable. No cocaine was detected in either the blood or urine sample. No alcohol was detected in the blood sample and was not tested for in the urine sample. Defendant argues as a matter of law:

"the metabolite found in the defendant's blood does not constitute a 'controlled substance' as defined by the Statute and, thus, the defendant did not have 'any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of . . . a controlled substance listed in the Illinois Controlled Substances Act . . .' while he was operating a motor vehicle on the evening that the collision occurred."

¶ 8 On May 2, 2012, the trial court held a hearing on defendant's seventh motion to dismiss. After hearing arguments, the court denied the motion for two reasons. First, the court found the motion sought a pretrial ruling on the sufficiency of the evidence in the case. Second, the court found the charging instrument was legally sufficient. At the end of the hearing, the State mentioned defendant was going to seek an interlocutory appeal and the following exchange

occurred:

"[TRIAL COURT]: Okay. There was a ruling in regard to jeopardy, so I think under—what is it—Section (e)?

[DEFENSE COUNSEL]: 308, Your Honor, and again when we were here last time, I agreed to continue this and I did so on the basis of counsel's representation, that she would agree also to that we would be permitted to seek a 308(a) appeal to the appellate court for these two issues: One, whether or not the metabolites is sufficient, and then two, under the double jeopardy issue. So that's where we are at, Judge. I would ask that we be able to present to you our written or our findings for certified questions.

[TRIAL COURT]: Okay. Yeah. Frankly I don't think it requires the State's agreement. I think you have an appeal as a matter of right when there's a claim that jeopardy is attached, so what setting do you want me to give to this so that I have some sort of status hearing to see what's filed?"

The trial court set a status hearing for May 21, 2012.

¶ 9 On June 4, 2012, defendant filed his eighth motion to dismiss, again arguing his prosecution was barred by the double jeopardy clauses of the Illinois and United States Constitutions (U.S. Const., amend. V; Ill. Const. 1970, art. I, § 10) and by statute (720 ILCS 5/3-4(b)(1) (West 2010)).

¶ 10 On June 7, 2012, the trial court held a hearing on defendant's eighth motion to dismiss. After hearing arguments, the court struck the motion and did not consider the motion's merits because it duplicated prior motions ruled on earlier. Defense counsel then asked the court to treat his eighth motion to dismiss as a motion to reconsider his previous rulings. The court told defense counsel he could file whatever motions he thought could be timely filed. The court stated it would then decide whether the motions could be heard or were untimely.

¶ 11 On July 6, 2012, defendant filed a notice of interlocutory appeal.

¶ 12 II. ANALYSIS

¶ 13 Before we address the arguments defendant raises in this appeal, we must first determine whether we have jurisdiction. Defendant points to Illinois Supreme Court Rule 604(f) as authority for this court's jurisdiction in this case. According to Rule 604(f), "The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy." Ill. S. Ct. R. 604(f) (eff. July 1, 2006). However, the issue in this case is whether defendant's appeal was timely filed to grant this court jurisdiction under Rule 604(f).

¶ 14 The notice of interlocutory appeal filed July 6, 2012, states defendant is appealing from the trial court's denial of his third motion to dismiss, his eighth motion to dismiss, and his motion to reconsider his third motion to dismiss. Defendant stated the trial court struck his eighth motion to dismiss because it was duplicative of his third motion to dismiss. Defendant contends he asked the court to consider his eighth motion to dismiss a motion to reconsider its prior ruling on defendant's third motion to dismiss. However, the court did not consider defendant's eighth motion to dismiss as a motion to reconsider. Instead, the court specifically

instructed defense counsel he would need to file a motion to reconsider with the circuit clerk. From the record, defendant did not file a motion to reconsider the court's denial of his third motion to dismiss.

¶ 15 The State argues defendant cannot appeal the trial court's denial of his third motion to dismiss in this case because he failed to appeal in a timely manner. Further, the State argues defendant has not provided any authority that would allow him to appeal from the striking of his eighth motion to dismiss because it was duplicative of his third motion to dismiss.

¶ 16 Defendant argues the trial court's decision to strike his eighth motion to dismiss as duplicative gives this court jurisdiction over this appeal. According to defendant:

"[T]he Eighth Motion, from which this appeal stems, is timely. The Eighth Motion was filed on June 4, 2012[,] and denied by the Court on June 7, 2012. A timely appeal within thirty days was filed on July 6, 2012. The Eighth Motion to Dismiss alleged that, based upon the Court's ruling in denying Defendant's Seventh Motion to Dismiss and in denying the request by the Defendant for a bill of particulars, the prior Motion regarding double jeopardy was now different. In other words, once the Court decided that the case could proceed without any finding of impairment, and that driving was the only act necessary, the analysis changed. Certainly, the Court's striking of the Motion or denying it without having any argument thereon makes no substantive difference. The Defendant properly raised the issue of double jeopardy pursuant to

his Eighth Motion and the trial court denied it. If the Eighth Motion's denial was required to be appealed within thirty days, the Defendant complied."

As the State noted, defendant cites no authority for his argument the court's decision to strike a duplicative motion to dismiss provides this court with jurisdiction. "This court has often reminded counsel that the appellate court is not a depository into which the burden of research may be dumped and failure to cite legal authority in the argument section of a party's brief waives the issue for review." *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613, 708 N.E.2d 539, 543 (1999).

¶ 17 Regardless of defendant's failure to provide us with authority, Rule 604(f) provides a "defendant may appeal to the Appellate Court the *denial* of a motion to dismiss a criminal proceeding on grounds of former jeopardy." (Emphasis added.) The trial court here did not deny defendant's eighth motion to dismiss. The court specifically stated it was not ruling on the merits of defendant's eighth motion to dismiss. It merely struck the motion because it was duplicative of motions on which it had already ruled. Defendant has failed to establish the court's actions with regard to the eighth motion to dismiss give this court jurisdiction.

¶ 18 We next turn to defendant's argument we have jurisdiction of this appeal because of the trial court's denial of his third motion to dismiss, regardless of his eighth motion to dismiss. The State argues any appeal from the court's denial of defendant's third motion to dismiss is untimely. See *People v. King*, 349 Ill. App. 3d 877, 807 N.E.2d 1266 (2004). In *King*, the Second District decided a question of first impression: "whether the 30-day period for appeals in Rule 606(b) applies to interlocutory appeals under Rule 604(f)." *King*, 349 Ill. App.

3d at 878, 807 N.E.2d at 1267.

¶ 19 In describing the purpose of Rule 604(f), the Second District stated:
"Rule 604(f) concerns a defendant's right to be protected from former jeopardy for the same offense. Interlocutory appellate review from the denial of a defendant's former jeopardy challenge helps to assure that an individual will not be forced 'to endure the personal strain, the public embarrassment, and expense of a criminal trial more than once for the same offense.' *Abney v. United States*, 431 U.S. 651, 661-62 *** (1977). *** However, Rule 604(f) does not mandate that a defendant file an interlocutory appeal but merely provides a defendant with the option of doing so. [Citation.] According to the rule, a defendant 'may' file an interlocutory appeal from the denial of his or her motion to dismiss or the defendant may raise that issue on an appeal from the final judgment." *King*, 349 Ill. App. 3d at 879, 807 N.E.2d at 1268.

The Second District concluded the "30-day period for filing notices of appeal under Rule 606(b) also applies to the filing of an interlocutory notice of appeal under Rule 604(f)." *King*, 349 Ill. App. 3d at 879, 807 N.E.2d at 1268. The 30-day period satisfies the purpose of allowing a defendant a prompt appeal of the denial of a motion to dismiss based on double jeopardy, but also encourages expediency and allows "final determinations on the merits to be more quickly obtained." *King*, 349 Ill. App. 3d at 879-80, 807 N.E.2d at 1268. We agree with this reasoning.

¶ 20 Defendant's third motion to dismiss was denied on November 14, 2011. He did

not file his appeal in this case until July 6, 2012, more than 30 days later. Rule 606(b) states, except in limited circumstances "no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken." Ill. S. Ct. R. 606(b) (eff. Mar. 20, 2009). This appeal does not fall within one of those limited circumstances. As a result, we do not have jurisdiction over this interlocutory appeal.

¶ 21 Defendant also argues this court should consider the trial court's decision to deny his seventh motion to dismiss. Defendant's seventh motion argued the State could not prove the charged offense because defendant only had a cocaine metabolite in his system when he was tested after the accident. Defendant argues this court could rule on this issue because we possess jurisdiction pursuant to Rule 604(f). Because we have determined we do not have jurisdiction pursuant to Rule 604(f), defendant's argument fails.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we dismiss this appeal for lack of appellate jurisdiction.

¶ 24 Appeal dismissed.