

SIXTH DIVISION
April 25, 2014

No. 1-08-3643

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	07 CR 14075
)	
LEIGHTON JONES,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

HELD: The trial court's ruling suppressing defendant's statements is affirmed, defendant's conviction is vacated, and the case is remanded for a new trial.

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¶ 1 Following a bench trial, defendant Leighton Jones, who was between fifteen and seventeen years of age at the time of the charged conduct, was convicted of two counts of criminal sexual assault under section 12-13(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-13(a)(2) (West 2000)). Defendant was found guilty of engaging in sexual relations with his cousin, P.M., who was between eight and nine years of age at the time of the offenses. The alleged sexual abuse occurred over an approximate two-year period.

¶ 2 Defendant was sentenced as an adult to five years' imprisonment. The trial court also imposed various fees and fines. On direct appeal, defendant raised several issues, including his claim that the trial court erred in denying his motion to suppress his statements.

¶ 3 In an unpublished order, we determined the trial court erred in denying defendant's motion to suppress his oral and handwritten statements given after he underwent a polygraph test, because the court denied the motion without first resolving the issue as to whether defendant requested the presence of an attorney prior to undergoing the test. *People v. Jones*, No. 1-08-3643 (June 30, 2011) (unpublished order under Supreme Court Rule 23). We remanded the matter to the trial court to conduct a new suppression hearing to resolve the issue. We retained jurisdiction to consider the remaining issues following the court's ruling.

¶ 4 On remand, the trial court suppressed the statements. The State did not appeal the ruling. The case returns to us after our remand. We now affirm the trial court's ruling suppressing defendant's oral and handwritten statements given after he underwent the polygraph test. Because the statements should have been suppressed, we vacate defendant's conviction and remand for a new trial without the statements. *People v. Fuller*, 292 Ill. App. 3d 651, 667 (1997).

¶ 5 Having found that defendant's statements must be suppressed, we must consider the double jeopardy implications of our finding. The double jeopardy clause of the United States Constitution prohibits a retrial for the purpose of allowing the State a second opportunity to present evidence it failed to present in the first trial. *People v. Lopez*, 229 Ill. 2d 322, 367 (2008). "The State cannot retry a defendant once it has been determined that the evidence introduced at trial was insufficient to sustain a conviction." *Id.* However, the double jeopardy clause does not prohibit a retrial where the conviction is overturned because of an error in the first trial. *People v. Alfaro*, 386 Ill. App. 3d 271, 314 (2008).

¶ 6 In this case, defendant's conviction was set aside because of trial error. Therefore, we must consider whether the evidence presented at trial, including the now-suppressed oral and handwritten statements, was sufficient to convict. *Lopez*, 229 Ill. 2d at 367. "The relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

¶ 7 Viewing the evidence in the light most favorable to the State, we find a rational trier of fact could have found defendant guilty beyond a reasonable doubt. Accordingly, there is no double jeopardy impediment to retrial. Our finding does not indicate this court's determination as to defendant's guilt or innocence.

¶ 8 For the foregoing reasons, the trial court's ruling suppressing defendant's statements is affirmed, defendant's conviction and all associated fees and fines are vacated, and the case is remanded for a new trial.

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¶ 9 Reversed and remanded.