

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).

No. 3--09--0748

Order filed March 3, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellant,)	
)	
v.)	No. 08--CM--4984
)	
LEVITICUS JACKSON,)	Honorable
)	Marilee Viola,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

Held: The State's appeal of a trial court's order granting a judgment notwithstanding the verdict on the basis of legally inconsistent verdicts was dismissed because the trial court entered judgments of acquittal and the State lacks the authority to appeal an acquittal.

The defendant, Leviticus Jackson, was charged by criminal complaint with three counts of domestic battery (720 ILCS 5/12--3.2(a)(2) (West 2008)) and two counts of interfering with the reporting of domestic violence (720 ILCS 5/12--6.3 (West 2008)). The trial court directed a verdict in favor of the defendant on

one of the counts of domestic battery. Thereafter, a jury acquitted the defendant of the other two counts of domestic battery, but convicted him of both counts of interfering with the reporting of domestic violence. The defendant's motion for a judgment notwithstanding the verdict, on the basis that the jury's guilty verdicts were inconsistent with their acquittals, was granted. The State's motion for reconsideration was denied. On appeal, the State argues that the trial court erred in granting the defendant's motion for a judgment notwithstanding the verdict. We dismiss the appeal.

FACTS

The charges against the defendant arose from an argument with his wife after his 12-year-old son skipped wrestling practice in order to perform religious field service. The defendant wanted his son to return to school to go to practice, but his wife disagreed, and the defendant and his wife started yelling and cursing at each other. The wife and son left their home and started getting in their car. The defendant came out of the house, and yelled at his son to come back in the house. According to the wife and the son, the son was standing outside of the car, and the defendant grabbed his son by the collar, and dragged him back inside the house. The defendant testified that he grabbed his son by the wrist, not the collar, to take him back inside the house. The son testified that, when they got back

inside the house, the defendant threw him against the couch and then hit him on the head. The defendant claimed that his wife attacked him from behind as he and his son went back inside the house, causing him to stumble and causing his son to fall to the floor.

The wife testified that after she returned to the house, she told the defendant that she was going to call the police. She said that after she picked up the telephone, the defendant grabbed the telephone cord and pulled it out of the wall and broke the receiver. The son also testified that the defendant ripped the telephone cord "out of the slot." The defendant denied touching the wall telephone. The wife and son both testified that as the wife tried to use her cellular telephone to call the police, the defendant took it out of her hand and broke it. The defendant claimed that the cellular telephone was broken because his wife threw it at him.

The defendant was arrested and charged with one count of domestic battery against his wife, two counts of domestic battery against his son, and two counts of interfering with the reporting of domestic violence.

Following the close of the State's case-in-chief, the defendant filed a motion for a directed verdict as to all five counts. The trial court granted the motion as to the count of domestic battery that alleged physical contact with his wife and

denied the motion as to the other four counts. The jury found the defendant not guilty of the two remaining counts of domestic battery, but found the defendant guilty of the two counts of interfering with the reporting of domestic violence.

The defendant filed a posttrial motion for judgment notwithstanding the verdict or a new trial, arguing that the State did not meet its burden of proving an essential element of the offense of interfering with the reporting of domestic violence, specifically, an act of domestic violence. The State opposed the motion, arguing that there was a difference between domestic battery and the domestic violence necessary to the offense of interfering with the reporting of domestic violence. The trial court found that the verdicts were not legally consistent and granted the defendant's motion for judgment notwithstanding the verdict. The trial court reasoned that the State had alleged physical abuse as the domestic violence underlying the reporting charges, but the jury found the defendant not guilty of physical abuse. The trial court entered an order finding the defendant not guilty of the two counts of interfering with the reporting of domestic violence and entered judgments of acquittal as to those charges.

The State filed a motion to reconsider, arguing not only that the verdicts were consistent, but also that *People v. Jones*, 207 Ill. 2d 122 (2003), precluded the defendant from challenging

his convictions on the sole basis that they were legally inconsistent with his acquittal of other charges. The trial judge acknowledged that she may have erred in granting the motion on the basis of inconsistent verdicts, but she found that she was bound by the holding in *People v. Van Cleve*, 89 Ill. 2d 298 (1982), which held that judgments notwithstanding the verdict are acquittals and nonappealable. She denied the motion for reconsideration, stating that vacating the order of acquittal would be a violation of double jeopardy. The State appealed.

ANALYSIS

The State contends that the trial court erred in granting the defendant's motion for judgment notwithstanding the verdict on the two counts of interfering with the reporting of domestic violence. The State argues that it is not precluded from appealing because, although the trial court used the word "acquittal," it was not really an acquittal in that there was no ruling on the sufficiency of the evidence. The defendant counters that the appeal must be dismissed because the State cannot appeal an acquittal.

Initially, we note that double jeopardy does not bar the State's appeal. The defendant would not be subject to a new trial even if the State was successful; reinstating a jury verdict does not violate double jeopardy. See *People v. Mink*, 141 Ill. 2d 163 (1990).

However, our constitution provides that "after a trial on the merits in a criminal case, there shall be no appeal from a judgment of acquittal." Ill. Const. 1970, art. VI, §6. Our supreme court has held that this provision provides rights and protections beyond those assured by the double jeopardy clause. *Van Cleve*, 89 Ill. 2d 298. In addition, the State derives its power to appeal from an adverse judgment in a criminal case from Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2006). Rule 604(a)(1) provides that a State "may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114--1 of the Code of Criminal Procedure of 1963[.]" (725 ILCS 5/114--1 (West 2008)). Section 114--1(a) delineates grounds for the dismissal of a criminal charge. 725 ILCS 5/114--1(a) (West 2008).

As the trial court acknowledged, the defendant's motion for a judgment notwithstanding the verdict was probably entered in error. However, the trial court clearly granted the judgment notwithstanding the verdict and specifically entered a judgment of acquittal. Even if this was a mistake, it is a judgment of acquittal, not a dismissal of charges within the purview of section 114--1, and is nonappealable under Rule 604(a). See *People v. Rey*, 136 Ill. App. 3d 645 (1985). We find that, although there would be no retrial of the defendant, and thus, no double jeopardy violation, the judgment of acquittal is

nonappealable. Thus, we have no choice but to dismiss the appeal.

CONCLUSION

For the foregoing reasons, we dismiss the appeal from the judgment of the circuit court of Will County.

Appeal dismissed.