

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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COURT OF APPEALS
DETROIT OFFICE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

-vs-

Case #

Lower Court # 11-09841

JOSEPH WEEKLEY,

Defendant-Appellee.

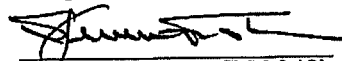
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**DEFENDANT-APPELLEE'S ANSWER TO
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

Now comes Joseph Weekley, by and through his attorney Steven Fishman, and for the reasons set forth in the United States Supreme Court case of Evans v Michigan, 133 SCt 1069 (2013), requests that this Court deny the prosecution's emergency application for leave to appeal on double jeopardy grounds and refer the case back to the trial court for completion of the jury trial now in progress on Count II only.

Respectfully submitted,



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Dated: October 3, 2014

**BRIEF IN RESPONSE TO PROSECUTION'S
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

STATEMENT OF FACTS

Joseph Weekley, a Detroit Police officer who was a member of the Special Response Team (SRT) was charged in a grand jury indictment with involuntary manslaughter (Count I) and careless, reckless, or negligent use of a firearm causing death (Count II). The charges arose out of the death of a 7-year old child during the execution of a search warrant by the SRT on May 16, 2010.

A jury trial began on September 15 and is now in progress. At the close of the prosecution's case, defense counsel moved for a directed verdict as to Count I. After hearing argument from both sides, the trial judge granted the motion and dismissed Count I. On information and belief, a written order has been entered; however, even if one has not, the trial judge clearly stated on the record that the motion for directed verdict as to Count One was granted.¹

The prosecution now files an emergency application for leave to appeal with the Court of Appeals. Because the United States Supreme Court has already ruled on this issue in Evans v Michigan, 133 SCt 1069 (2013), this Court should deny the prosecution's application on double jeopardy grounds and refer the case back to the trial court for completion of the jury trial as to Count II only.

¹ See transcript of motion, pp 11-13.

ARGUMENT

I. The United States Supreme Court's ruling that the Double Jeopardy clause prohibits a retrial after the granting of a motion for directed verdict is binding on the Michigan Court of Appeals and requires the denial of the prosecution's application for leave to appeal.

In Evans v Michigan, 133 SCt 1069 (2013), the United States Supreme Court reversed both the Michigan Supreme Court and the Michigan Court of Appeals and ruled in an 8-1 decision that a retrial following a court-decreed acquittal is barred on double jeopardy grounds, even if the acquittal is "based upon an egregiously erroneous foundation," Fong Foo v United States, 369 US 141, 143 (1962); an erroneous decision to exclude evidence, Sanabria v United States, 437 US 54, 68-69 (1978); a mistaken understanding of what evidence would suffice to sustain a conviction, Smith v Massachusetts, 543 US 462, 473 (2005); or a "misconstruction of the statute" defining the requirements to convict, Arizona v Rumsey, 467 US 30(1984).

The Court further held that an acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. See, e.g., United States v Scott, 437 US 82, 98 (1978); Burks v United States, 437 US 1, 10 (1978). The Court differentiated substantive rulings from procedural rulings, which lead to dismissals or mistrials on a basis unrelated to factual guilt or innocence. The Court held that unlike those rulings, acquittals are substantive rulings that conclude proceedings absolutely, and thus raise significant double jeopardy concerns. Scott, 437 US, at 91.

In Evans, the Court found that the trial court clearly "evaluated the [State's] evidence and determined that it was legally insufficient to sustain a conviction." United States v. Martin Linen Supply Co., 430 US 564, 572 (1977). Significantly, the Court further held that even though the defendant's acquittal was the product of an erroneous interpretation of governing legal principles, that error affected only the accuracy of the determination to acquit, not its essential character.

The issue presented to the Court was summarized by Justice Sotomayor as follows:

When the State of Michigan rested its case at petitioner Lamar Evans' arson trial, the court entered a directed verdict of acquittal, based upon its view that the State had not provided sufficient evidence

of a particular element of the offense. It turns out that the unproven “element” was not actually a required element at all.

We must decide whether an erroneous acquittal such as this nevertheless constitutes an acquittal for double jeopardy purposes, which would mean that Evans could not be retried. This Court has previously held that a judicial acquittal premised upon a “misconstruction” of a criminal statute is an “acquittal on the merits . . . [that] bars retrial.” Arizona v. Rumsey, 467 US 203, 211 (1984). Seeing no meaningful constitutional distinction between a trial court’s “misconstruction” of a statute and its erroneous addition of a statutory element, we hold that a midtrial acquittal in these circumstances is an acquittal for double jeopardy purposes as well.” (Emphasis added)

The Court’s opinion emphasized that double jeopardy principles have always barred retrial after a motion for directed verdict is granted. The Court stated as follows:

It has been half a century since we first recognized that the Double Jeopardy Clause bars retrial following a court-decreed acquittal, even if the acquittal is “based upon an egregiously erroneous foundation.” Fong Foo, *supra*. A mistaken acquittal is an acquittal nonetheless, and we have long held that “[a] verdict of acquittal . . . could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution.” United States v. Ball, 163 US 662, 671 (1896).

After reviewing the various circumstances that might give rise to the granting of a motion for directed verdict, including erroneous rulings by the trial judge, the Court emphatically stated that the nature of the rulings were irrelevant to the issue of double jeopardy:

[T]he fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles affects the accuracy of that determination, but it does not alter its essential character. Scott, *supra*, at 82, 98. ²

In the instant case, as required by law, the trial judge considered the motion for directed verdict at the close of the prosecution’s case. After hearing the arguments of counsel and reviewing the law, the trial judge granted the defense motion and dismissed the involuntary

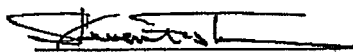
² Defense counsel is in no way conceding that the trial judge’s ruling in the instant case was erroneous. The language from Evans is included merely to demonstrate to the Court that even where a trial judge’s ruling may be completely erroneous as to the law, it does not change the fact that a retrial is barred by the Double Jeopardy Clause.

manslaughter count.³ The United States Supreme Court has clearly stated that the trial judge's ruling cannot be appealed and that retrial on that count is prohibited by the Double Jeopardy clause of the United States Constitution. Therefore, the prosecution's emergency application for leave to appeal should be denied.

CONCLUSION

WHEREFORE, for the reasons stated above, Defendant-Appellee requests that this Court deny the prosecution's emergency application for leave to appeal, and send the case back to the trial court for completion of the jury trial now in progress with respect to Count II only.

Respectfully submitted,



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Dated: October 3, 2014

³ Because Evans v Michigan so clearly controls the result in this case, defense counsel has intentionally not addressed the factual and legal issues raised by the motion for directed verdict.

CERTIFICATE OF SERVICE

I certify that on October 3, 2014, I served a copy of the attached Response to Emergency Application for Leave to Appeal upon Thomas Chambers, Assistant Wayne County Prosecutor, by email.



Steven Fishman (P23049)
Attorney for Defendant Weekley