IN THE COURT OF APPEALS OF IOWA

No. 7-075 / 06-0598
Filed March 14, 2007

STATE OF IOWA,
Plaintiff-Appellant,

vs.

ASHCELYN HUMMEL, a/k/a,
ASHCELYN VRCHOTICKY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

The State of Iowa appeals from the trial court's ruling sustaining a motion in arrest of judgment purporting to acquit the defendant. **REVERSED AND REMANDED.**

Ashcelyn Hummel, Bondurant, pro se.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, John P. Sarcone, County Attorney, and Celene Gogerty, Assistant County Attorney, for appellant.

Patricia Reynolds, Acting State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

The State of Iowa appeals from the trial court's ruling sustaining a motion in arrest of judgment purporting to acquit the defendant. We agree the trial court erred in granting a motion in arrest of judgment based upon sufficiency of the evidence. We therefore reverse the trial court's ruling on the motion in arrest of judgment. The trial court did not issue a final ruling on the motion for a new trial. We therefore remand for a final ruling on the motion for a new trial.

I. Background and Facts

On October 2, 2005, Ashcelyn Hummel was stopped by Polk County Deputy James Courter because Hummel's vehicle had an invalid registration sticker. Upon Courter's request, Hummel produced a valid driver's license, but was unable to provide proof of insurance. Courter decided to impound the vehicle due to the expired license plates and Hummel's failure to provide proof of insurance. There were two passengers in the vehicle with Hummel who were allowed to leave.

Courter began an inventory search of the vehicle and searched a brown purse he found in the driver's seat. Inside the purse he found a small plastic bag with a white crystal substance that was field tested and determined to contain methamphetamine, a pair of scissors with burn residue, cigarette rolling papers, and a prescription bottle with Hummel's name on it. Hummel denied the bag was hers and said the purse belonged to a friend. Courter arrested Hummel for possession of methamphetamine.

On October 13, 2005, Hummel was charged with possession of a controlled substance, third offense. At trial, Hummel's parents testified that the vehicle had been stolen sometime in September 2005, and it was cluttered with many items not belonging to them when it was found. A passenger in the vehicle, Tucker Wentland, testified he had assumed the brown purse belonged to Hummel and passed it to her from the back floor board when Courter asked for Hummel's driver's license. He also testified that, while Courter and Hummel were in the patrol car, he observed the other passenger put something into Hummel's purse and place a glass pipe under the seat. The jury found Hummel guilty.

After the verdict, Hummel filed a motion in arrest of judgment and a motion for a new trial. The State resisted. The trial court found the evidence was insufficient to charge Hummel with any offense and therefore sustained the motion in arrest of judgment and acquitted Hummel. Interestingly, in the same ruling, the trial court denied the defendant's motion for acquittal finding that "a jury could find that the purse and its contents belonged to Defendant." In ruling on the motion for a new trial, the trial court found that there were credibility issues with both parties. The trial court stated,

> Taking into account the credibility problems raised by witnesses on both sides, . . . the Court finds the verdict is contrary to the evidence. . . . Constructive possession of an illegal substance was not proven by substantial evidence. The weight of the evidence does not prove Defendant guilty. Rather, the weight of the evidence is in Defendant's favor.

The trial court failed, however, to grant the motion for a new trial stating, "the Motion for a New Trial would be granted, but a new trial is unnecessary because of the Court's ruling on Defendant's Motion in Arrest of Judgment."

II. Scope of Review

Our review of whether the trial court applied an incorrect legal standard in granting a motion in arrest of judgment is for correction of errors at law. Iowa R. App. P. 6.4.

III. Merits

Hummel[1] concedes it is an error to grant a motion in arrest of judgment based upon sufficiency of the evidence. *See State v. Oldfather*, 306 N.W.2d 760, 762 (Iowa 1981) (holding trial court erred in sustaining a motion in arrest of judgment based on a challenge to the sufficiency of the evidence). Hummel further concedes the trial court should not have granted her motion on the basis of sufficiency of the evidence nor acquitted her on that basis. *See State v. Deets*, 195 N.W.2d 118, 123 (Iowa 1972) ("[E]ven where properly granted, an

[1] We respond to the brief submitted by Hummel's attorney, Theresa R. Wilson. Hummel submitted a pro se supplemental brief and argument that raises the issue of whether having another trial after an acquittal is violative of the Iowa Constitution. Iowa Const. art. 1, § 12 ("No person shall after acquittal, be tried for the same offence."). A second trial would not violate the constitution. The United States Supreme Court has stated that, "where there is no threat of either multiple punishment or successive prosecutions, the Double Jeopardy Clause is not offended." *United States v. Wilson*, 420 U.S. 332, 344, 95 S. Ct. 1013, 1022, 43 L. Ed. 2d 232, 242 (1975). The Court has held that "an order favoring the defendant could constitutionally be appealed by the Government…. for example, the Government has been permitted without serious constitutional challenge to appeal from orders arresting judgment after a verdict has been entered against the defendant." *Id. Cf. State v. Keehner*, 425 N.W.2d 41, 46 (Iowa 1988) ("Since reversal on appeal would merely reinstate the jury's verdict, the double jeopardy guaranty is not offended.").

order in arrest of judgment does not operate as an acquittal. Rather, it serves to place a defendant in the same situation or position as he was before commencement of the prosecution.").

We agree the trial court erred in granting Hummel's motion in arrest of judgment based upon the sufficiency of the evidence. Therefore, the sole issue left for this court to decide is whether the grant of a new trial is appropriate given the state of the record. Hummel asserts her case should be remanded for a new trial pursuant to the trial court's ruling on her motion for a new trial. The State asserts that, because the trial court failed to expressly order a new trial, it would be premature for this court to rule on an order not yet issued. The question is whether the trial court's statement in ruling on the motion for a new trial that a new trial "would be granted" constitutes a final ruling. We hold it does not.

Final judgments and decisions by the trial court, including an order granting or denying a new trial, may be appealed. Iowa R. App. P. 6.1(1). In order for this court to rule on an appeal, it is necessary to have a final ruling. *Green v. Advance Homes, Inc.*, 293 N.W.2d 204, 207 (Iowa 1980) ("If the trial court's judgment is not final, defendant's appeal must be dismissed."); *see also Wilson v. Corbin*, 241 Iowa 226, 228, 40 N.W.2d 472, 474 (1950) (holding a final judgment is an enforceable determination that finally adjudicates the rights of the parties).

> Both the Supreme Court of the United States and this court have held that in both civil and criminal cases the judgment is final for purposes of appeal when it terminates the litigation between the parties on the merits and leaves nothing to be done but to enforce by execution what has been determined.

State v. Allan, 166 N.W.2d 752, 755 (Iowa 1969). A mere indication of the leanings of the judge does not constitute a ruling. *See Wolf v. Murrane*, 199 N.W.2d 90, 95 (Iowa 1972) ("[A] judgment must be certain and in intelligible form so the parties understand the adjudication. Though the judgment may contain findings of fact and conclusions of law, it is only the decretal portion of the judgment that constitutes an adjudication." (citations omitted)); *Hews v. Stonebreaker*, 132 Iowa 608, 109 N.W. 1092 (1906) ("It is fundamental that an appeal will not lie from an opinion filed by the trial court."); *Andrews v. Concannon*, 76 Iowa 251, 41 N.W. 8, 9 (1888) (holding the court's findings of facts and conclusions of law are not a final order, and an appeal will not lie where there is no judgment).

IV. Conclusion

The trial court erred in granting a motion in arrest of judgment based upon sufficiency of the evidence. We therefore reverse the trial court's ruling on the motion in arrest of judgment. The trial court did not issue a final ruling on the motion for a new trial. We therefore remand for a final ruling on the motion for a new trial pursuant to *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). The standard to be applied in ruling on a motion for a new trial is whether the jury's verdict is contrary to the clear weight of the evidence, which requires the court to make a determination of whether "a greater amount of credible evidence supports one side of an issue than the other." *Id.*

REVERSED AND REMANDED.