No. 13-593

In The Supreme Court of the United States

STATE OF MINNESOTA,

Petitioner,

v.

ESAU CHUCKY SAGO,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Minnesota

REPLY BRIEF FOR STATE OF MINNESOTA

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ARGUMENT

Petitioner State of Minnesota's basis for filing this petition is the conflict between *Lockhart v. Nelson* and *Evans v. Michigan* (and the cases cited therein).[1] Under *Nelson*, a judge's post-conviction finding of insufficient evidence precludes retrial under the Double Jeopardy Clause only if it is based on a face-value assessment of all the evidence admitted, not just the evidence properly admitted. Under *Evans*, a judge's order of acquittal based on a finding of insufficient evidence precludes further proceedings under the Double Jeopardy Clause even if the finding is erroneous. What happens, then, when a judge orders an "acquittal" for insufficient evidence but fails to consider all of the evidence at face value, and just considers the evidence properly admitted? This Court should grant this petition to resolve this conflict, and should hold that an "acquittal" for insufficient evidence is only an acquittal for double-jeopardy purposes if it is based on a face-value assessment of all the evidence admitted.

Respondent Sago does not dispute that there is a conflict between *Nelson* and *Evans*. He simply argues that at face value the evidence here is insufficient, unlike in *Nelson*, so this case falls squarely within the ruling of *Evans*. Respondent is objectively wrong. The critical fact is that no court has ever found or even suggested that the evidence here, taken at face value,

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[1] 488 U.S. 33 (1988) and 133 S.Ct. 1069 (2013), respectively.

is insufficient. To the contrary, the district court acknowledged the face-value sufficiency of the evidence "proving indicating [sic]" respondent's prior conviction; the district court focused on the "later discovered" "clerical" or "administrative error" in the certified copy admitted at trial. July 6, 2012 Order at 2-4 (copy attached). The Minnesota Court of Appeals also focused on the "erroneous nature" of the evidence and did not even hint that "the certified copy of Sago's criminal conviction for second-degree riot" somehow was facially insufficient. Pet. App. 2, 9.

Nor has any court ever found or even suggested that the prosecution should have known about what defense counsel acknowledged in the district court was a "genuine mistake" in exhibit 14 (the certified copy of respondent's most recent prior conviction) – which refers to respondent being convicted of or sentenced on second-degree riot, on pages 4, 5, 6, 7, 8, and 9. (This exhibit was attached to respondent's brief in the Minnesota Court of Appeals). As for the sentencing-order portion of exhibit 14, which respondent misleadingly only includes one page from in his appendix, it also refers to respondent having been sentenced on second-degree riot, on pages 13 and 14.[2] And to the extent that respondent's argument seems

[2] It is true that there are also references to respondent being convicted of or sentenced on first-degree criminal damage to property, but these two convictions or sentences are not mutually exclusive. *Nowhere* does it say that the riot charge was dismissed or resulted in a not-guilty verdict.

to be that the prosecution *could* have known about the error in the certified copy of his prior conviction, this is not the test under *Nelson*. Pet. 9 n. 3.[3]

In short, the evidence here plainly is sufficient at face value, as the defense essentially conceded in the district court. Pet. 2-3.

It could be argued – although respondent does not – that there is no conflict between *Evans* and *Nelson* because the latter did not involve a judge using the word "acquit." But such a conclusion would put form over substance. Pet. 6-7. If a judge mistakenly used the word "acquit" when reversing a conviction because of ineffective assistance of counsel, no law suggests that the Double Jeopardy Clause would preclude retrial. The result should be no different if a

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[3] Respondent's argument that the "State's analogy to the troubled St. Paul Minnesota Police crime lab is telling" seems to be based on confusion about the analogy. Br. in Opp. 6. The state of course does not contend that a defendant can ever be retried after a jury verdict of acquittal. The question is what should happen *after a conviction* when it is discovered that erroneous drug-testing evidence was improperly admitted – or a key witness has recanted, for example. Under respondent's argument the defendant has to walk free, and cannot be retried even if the drugs at issue can be retested, or if at retrial another witness could be called for the key evidence supplied by the recanting witness. No law supports this broad expansion of the Double Jeopardy Clause. Further, the argument for a retrial here is even stronger than in a drug-testing case, because the error here – the mistake in the certified copy of respondent's prior conviction – was caused by the judicial branch, but has now been held to preclude the executive branch from retrying respondent.

judge mistakenly used the word "acquit" when reversing a conviction because essential evidence was later discovered to be wrong (with no finding that the evidence, taken at face value, was insufficient). The state agrees that if a judge erroneously found that the face-value evidence was insufficient, the Double Jeopardy Clause would preclude retrial under *Evans*. That is not what happened here.

It also could be argued – although respondent does not – that this conflict is not worthy of this Court's review. But post-*Evans* this question is likely to recur in cases involving prior convictions, or erroneous drug or DNA or other scientific testing, or witnesses who later recant, for example. And the result here – which gives prosecutors a strong argument for admitting redundant and arguably unfairly prejudicial evidence of multiple prior convictions – is obviously unjust, given the undisputed fact that respondent *is* ineligible to possess a firearm, even though the certified copy of this particular prior conviction was discovered after trial to be erroneous.[4]

And it could be argued – although respondent does not – that this conflict is not yet ripe for review. But this case presents a double-jeopardy issue based

[4] *See Nelson*, 488 U.S. at 38 ("It would be a high price indeed for society to pay were every accused granted immunity from punishment because of any defect sufficient to constitute reversible error in the proceedings leading to conviction.").

on this Court's own precedent. Decisions from additional lower courts would not be particularly helpful in deciding this straightforward issue.

Finally, if this Court concludes that there is no conflict here because *Nelson* is on point, it should reaffirm the post-*Evans* vitality of *Nelson* by summarily reversing the Minnesota Court of Appeals.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Dated: January 30, 2014

Respectfully submitted,

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STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF RAMSEY	SECOND JUDICIAL DISTRICT

State of Minnesota, Plaintiff,	
vs.	Court File No. 62-Cr-12-740
Esau Chucky Sago, Defendant.	ORDER

This matter came before the Court for hearing on July 6, 2012, Attorneys Juan Hoyos and Jada Lewis appeared on behalf of The State of Minnesota and attorney John Sadowski appeared on behalf of Defendant Esau Chucky Sago. The Court, having reviewed the State's Motion for New Trial and Defendant's Motion for Judgment of Acquittal, and heard the argument of counsel, makes the following written findings pursuant to Rule 26.03, subd. 18(2) and (3) of the Minnesota Rules of Criminal Procedure:

FACTS

1. Defendant Esau Chucky Sago was arrested on January 25, 2012, in St. Paul, Minnesota by St. Paul Police. He was subsequently charged with possession of a firearm by an ineligible person under Minnesota Statute § 624.713(1)(2). In its complaint, the State alleged that Mr. Sago had three prior convictions or juvenile adjudications which made him ineligible to possess a firearm:

a conviction for Riot in the Second Degree (Washington County, D.C.F.N. 82-CR-08-3961); an adjudication for Violation of Controlled Substance Law Fifth Degree (Hennepin County – D.C.F.N. 27-J5-03-61421); and an adjudication for Terroristic Threats (Hennepin County – D.C.F.N. 27-J9-04-52151).

2. The case was tried to a jury beginning on April 25, 2012. At trial, the State introduced evidence (a certified copy of a criminal conviction) proving indicating that Mr. Sago had been convicted of Riot in the Second Degree in Washington County, Minnesota in 2008. The State did not introduce evidence regarding the two Hennepin County juvenile adjudications. On April 26, 2012, a jury convicted Defendant of being an ineligible person in possession of a firearm, on the basis of the prior Riot in the Second Degree conviction. The court set the case for sentencing on June 15, 2012.

3. Prior to the sentencing hearing, Ramsey County Probation completed a court-ordered presentence investigation ("PSI."). The PSI listed the 2008 conviction from Washington County as being a conviction for felony Criminal Damage to Property in the First Degree and not Riot in the Second Degree. Under the statute charged, Criminal Damage to Property is not a crime of violence which renders a person ineligible to possess a handgun (*See* Minn. Stat. § 624.712(5)). The parties were notified of this discrepancy and Defendant's sentencing hearing was continued for two weeks to June 29, 2012, in order for the State to obtain an expedited transcript of the Washington

County plea hearing to verify probation's findings. The transcript confirmed to the satisfaction of the Court and all parties that Mr. Sago was in fact convicted of Criminal Damage to Property in the Washington County case, and the Riot in the Second Degree charge was dismissed as part of the plea agreement.

4. On June 26, 2012, the State moved the Court for a new trial. On June 28, 2012, Defendant filed a motion for Judgment of Acquittal. On June 29th, 2012, the court continued the case to July 6, 2012, for a hearing on the issues.

CONCLUSIONS OF LAW

1. Under Rule 26.04 of the Minnesota Rules of Criminal Procedure, only a defendant may move for a new trial. There is no procedural mechanism for the State to move for a new trial. Consequently, the State's Motion for New Trial is denied, because it does not have standing to bring such a motion.

2. Defendant has not filed a motion for a new trial under Rule 26.04, subd. 1, and has not consented to a new trial on the Court's own initiative under 26.04, subd.2.

3. Defendant's Motion for Judgment of Acquital was timely. Even though Minn.R.Crim.Proc. 26.03(18)(3) requires that such a motion be brought within 15 days after the jury is discharged was April 26, 2012, the possible administrative error was not revealed until June 15, 2012, and the error was not confirmed until the Washington County plea

hearing transcript was received and reviewed by the Court on June 29, 2012. Defendant's motion was brought within 15 days after the administrative error was discovered, and the Court finds that it would be unjust to deny the motion simply on timeliness grounds. It would have been impossible for Defendant to make the motion within 15 days, because Defendant has no grounds for such a motion until the error was discovered. All parties acted promptly in attempting to investigate and rectify the administrative error. No party is unduly prejudiced by the timing of Defendant's motion, as the clerical error was revealed to all parties at the same time, and both parties acted diligently to correct the error. The Court notes that it has inherent authority to act in situations essential to the performance of the judicial function. *See In re Clerk of Lyon County Court's Compensation,* 241 N.W.2d 781 (Minn. 1976). This is such a situation and it would be a miscarriage of justice for the Court not to act.

4. The Court is granting defendant's Motion for. Judgment of Acquittal because it was later discovered that the conviction proved at trial it is not a valid conviction for a crime of violence. The State could have chosen to introduce at trial evidence of all three of Defendant's convictions, including evidence of his juvenile adjudications, and it chose not to do so. Without one or more of those convictions, however, the State has failed to prove an essential element of the crime charged, and this conviction may not stand.

ORDER

1. The State's motion for a new trial is denied.

2. Defendant's motion for judgment of acquittal is granted. The Court vacates the jury verdict of April 26, 2012, and enters a judgment of acquittal. This case is dismissed. Defendant may be released from custody, effective immediately.

3. Pursuant to Minn. R. Crim. Proc. 28.04, Subd. 8(4), this Order is stayed for ten (10 days) from the date of this Order, in order to allow the State time to perfect an appeal. Defendant is ordered held on $25,000 bond.

BY THE COURT:

/s/ **Marek**
Lezlie Ott Marek
Judge of Ramsey County
District Court

Dated this 6th day of July, 2012