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2017 IL App (4th) 150245-U

NO. 4-15-0245

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 6, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, )

Plaintiff-Appellee, )

v. )

JON B. COLLINS, )

Defendant-Appellant. )

) Appeal from

) Circuit Court of

) Livingston County

) No. 14CF96

) Honorable

) Robert M. Travers,

) Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court (1) affirmed in part, concluding the evidence was sufficient to support defendant's conviction of reckless discharge of a firearm and reckless conduct and that the trial court applied the proper burden of proof in determining defendant's guilt; and (2) reversed in part, concluding double-jeopardy principles precluded further prosecution on the reckless discharge of a firearm charge following the trial court's unequivocal grant of defendant's motion for a directed finding of not guilty.

¶ 2 In April 2014, the State charged defendant, Jon B. Collins, with aggravated assault (count I) (720 ILCS 5/12-2(c) (West 2012)), reckless discharge of a firearm (count II) (720 ILCS 5/24-1.5(a) (West 2012)), and reckless conduct (count III) (720 ILCS 5/12-5(a)(1) (West 2012)). In December 2014, the matter proceeded to a bench trial. Following the close of the State's case, defense counsel asked the trial court to enter a finding acquitting the defendant of all three charges. The court granted the motion for a directed verdict on counts I and II and denied the motion for a directed verdict on count III. The State requested reconsideration of the

court's ruling on count II. The court subsequently reconsidered its ruling and denied the motion for a directed verdict on count II. Following defendant's presentation of evidence, the court found him guilty on counts II and III. In April 2015, the court sentenced defendant to 24 months' probation.

¶ 3 Defendant appeals, arguing (1) the State failed to prove him guilty of reckless discharge of a firearm or reckless conduct beyond a reasonable doubt; (2) the trial court erred in granting the State's motion to reconsider on the basis of double jeopardy where the court directed a finding of acquittal for reckless discharge; and (3) his right to due process was violated where the court applied an incorrect burden of proof and convicted him of reckless discharge of a firearm and reckless conduct. We affirm in part and reverse in part.

¶ 4 I. BACKGROUND

¶ 5 In April 2014, the State charged defendant with aggravated assault (count I) (720 ILCS 5/12-2(c) (West 2012)), reckless discharge of a firearm (count II) (720 ILCS 5/24-1.5(a) (West 2012)), and reckless conduct (count III) (720 ILCS 5/12-5(a)(1) (West 2012)). In December 2014, the matter proceeded to a bench trial.

¶ 6 A. The State's Case

¶ 7 Judith Collins, defendant's wife, testified she and defendant lived in a rural area in a "one and a half story" house with a recreation room above the living room. According to Judith, defendant kept 10 to 15 firearms in the home, including a five-shot .357 revolver stored in a box in the living room.

¶ 8 In April 2014, Judith and her husband attended a funeral. After the funeral, Judith attended a dinner and defendant went home. Judith arrived home approximately two hours after

defendant and found him sleeping in a chair with a half-empty bottle of moonshine and the television and stereo on.

¶ 9 Judith was in the kitchen when defendant woke up, turned down the stereo, and shot one bullet through the ceiling. Judith had previously fired the .357 revolver and recognized that by the sound as the gun defendant used. Judith went to the doorway between the kitchen and the living room and asked defendant what he was doing. According to Judith, defendant stated, "[ ]if [she was] going to make the house a mess, he's going to make it more messy.[ ]" Judith testified she went back into the kitchen and heard four more shots in rapid succession.

¶ 10 According to Judith, defendant then asked her to get him more bullets for the gun and Judith refused to do so. Defendant got up to retrieve the bullets himself. Judith testified, "he pointed the gun at me, but I knew it was empty; and he, you know, pulled the trigger. And said he'd go get his own bullets. Then he walked toward the bedroom, and that's when I left." Although she knew the gun was empty, Judith testified she felt scared when defendant pointed the gun at her. Defendant went into the bedroom and was knocking things over when Judith left because she did not know what defendant was going to do. When she left, Judith went to her mother-in-law's house and eventually made a report to the Streator police.

¶ 11 Judith returned to the house late that night or early the next morning "after police were finished." Judith identified bullet holes in the ceiling directly above the chair defendant usually sat in as those created when defendant fired his gun. Judith testified none of the rounds were discharged in her direction and no debris fell near her while defendant shot the gun. At no time did Judith have any sense her safety was endangered by the gunshots.

¶ 12 Earl Dutko, a lieutenant with the Livingston County Sheriff's Department, testified he took photographs of the home in the course of his investigation in this case. One of

the photographs depicted bullet holes in the living room ceiling. Another photograph showed the bar area in the recreation room where the bullets came up through the living room ceiling. Another photograph showed a bullet wedged into the ceiling paneling above the bar area in the recreation room.

¶ 13 B. Motion for Directed Verdict

¶ 14 Following the close of the State's case, defense counsel asked the trial court to enter a finding acquitting the defendant of all three charges. In part, defense counsel argued the State failed to introduce evidence showing Judith's bodily safety was endangered where the undisputed evidence showed the bullets were fired directly into the ceiling while Judith was in the kitchen. The State argued defendant discharged a firearm while Judith was approximately eight feet away and that close proximity was sufficient to survive a motion for a directed verdict. Following a brief rebuttal argument by defense counsel, the court asked the State if it had anything further to argue and the prosecutor responded, "No, your Honor."

¶ 15 The trial court granted the motion for a directed verdict as to count I and denied the motion as to count III. The court then ruled as follows:

"In relation to [c]ount [II], as the pleadings stand right now, it's a charge of reckless discharge of a firearm in that the defendant endangered the bodily safety of Judith Collins in that, while acting in a reckless manner, he discharged a firearm in close proximity to Judith Collins without regard to where the shots were fired.

Okay. First of all, I would note that this is a significantly different allegation and a more specific allegation than is required by statute. [720 ILCS 5/24-1.5(a) (West 2012)], and this is the gist

of the charge here: A person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety of an individual.

As a matter of fact, the allegation here could relate to the defendant endangering himself; he is an individual. That is not pled. It has been pled specifically in relation to his wife, Judith Collins.

I would also point out that there are two elements here that need to be proved; and I'm going to go to the statute. Forget the pleading, okay? As far as the statute is concerned, there has to be a reckless discharge, excuse me, they have to discharge a firearm in a reckless manner. Okay. Done. Okay. Discharging a firearm five times in a home, occupied by himself and his wife, shooting into other rooms, arguably, for directed verdict purposes, okay, proven.

The next factor, however, is, which endangers the bodily safety of an individual. I have heard no testimony that firing into the ceiling of the living room endangered any, well, may have endangered him, okay, but I didn't hear any testimony that there's a gas main above it, that there is gas spread into the room above it, that there's even water up there, or that the ceiling may give way or the walls are flimsy and the bullet could ricochet and maybe the bullet would go through the ceiling and the roof and then come

down and go through the roof and the ceiling again striking the wife in the kitchen. I haven't heard any suggestion to that. We haven't had any experts testify to that. He simply shot into the room above at a time when she was in the kitchen.

On, taking the facts, the proof in the strongest regard in favor of the State, I don't believe there's been a showing of that. So, I would also grant the directed finding in relation to [c]ount [II].

So, that leaves you with [c]ount [III]."

The prosecutor immediately said, "Your Honor, the People request reconsideration in light of the Illinois Supreme Court's ruling in *People v. Collins* [214 Ill. 2d 206, 824 N.E.2d 262 (2005)]," and provided the court with a copy of the case.

¶ 16 Defense counsel argued there was no "authority for a motion to reconsider an acquittal when the defendant's already been acquitted on [c]ount [II], when the [c]ourt granted the motion. \*\*\* Frankly, I think it's too late; I don't think you can reconsider an acquittal." The trial court responded, "Whether it's reconsideration or whether it's a continuation of their argument, it is allowed." The court discussed *Collins* and then stated, "So, the [c]ourt reconsiders its ruling directing a verdict of acquittal in relation to [c]ount [II] and denies the motion for a directed finding on [c]ount [II]." Thus the case continued as to counts II and III.

¶ 17 C. Defendant's Case

¶ 18 Defendant testified he fired the gun into the ceiling while Judith was in the kitchen approximately 8 to 16 feet away. According to defendant, he did not believe Judith, or anyone else, was placed in any danger and he did not fire the weapon in anyone's direction.

Defendant testified his home was in a rural area and the nearest neighbor was approximately 100 feet to the north. At the time of the incident, defendant knew Judith was in the kitchen.

¶ 19 Following defendant's presentation of evidence, the court found him guilty on counts II and III. When the trial court found defendant guilty on count III, it noted the statutory language required the State to prove a defendant recklessly performed an act that caused bodily harm to or endangered the safety of another person. 720 ILCS 5/12-5(a)(1) (West 2014). The court went on to say, "I've already discussed the reckless act, which is the firing of the weapon inside the building; and it has endangered the safety of the individual, and that being [the] wife. So, I find him guilty beyond a reasonable doubt of [c]ount [III]." In April 2015, the court sentenced defendant to 24 months' probation.

¶ 20 D. Posttrial Motion

¶ 21 Defendant filed a posttrial motion alleging, in part, the trial court acquitted defendant on count II and the court's subsequent reconsideration violated double jeopardy principles. During the hearing on the posttrial motion, the State said, "My recollection, your Honor, is that when the [c]ourt said, ['] so, that leaves you with [c]ount [III], ['] you were looking at counsel and indicated that the [c]ourt would invite more argument." In denying defendant's posttrial motion, the court, in part, stated as follows:

"If I recall the motion for a directed finding and if I recall the arguments at that time, the State led with its general argument, cited no authority. The [c]ourt then went into a detailed explanation for its ruling. The State then offered authority. The authority made it clear that the [c]ourt was incorrect in relation to its directed finding. And that's pretty much where it was. It was

one conversation. It was not as it was in [*People v. Cervantes*, 2013 IL App (2d) 110191, 991 N.E.2d 521], an overnight or a reserved ruling where the judge left the bench, concluded the hearing, and had an opportunity to think this over and then came back on the date of ruling and said, [']okay, I'm changing the circumstances.['] This is not an instance where double jeopardy attaches. This is all part of the same argument."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant argues (1) the State failed to prove him guilty of reckless discharge of a firearm or reckless conduct beyond a reasonable doubt; (2) the trial court erred in granting the State's motion to reconsider on the basis of double jeopardy where the court directed a finding of acquittal for reckless discharge; and (3) his right to due process was violated where the court applied an incorrect burden of proof and convicted him of reckless discharge of a firearm and reckless conduct. We turn first to the sufficiency of the evidence.

¶ 25 A. Sufficiency of the Evidence

¶ 26 Defendant contends the State failed to prove him guilty beyond a reasonable doubt of either reckless discharge of a firearm or reckless conduct. Specifically, defendant argues the State failed to prove his actions endangered Judith's safety.

¶ 27 In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *Collins*, 214 Ill. 2d at 217, 824 N.E.2d at 267. It is not our function "to retry the defendant, nor will we substitute our judgment for that of the



trier of fact." *Id.* at 217, 824 N.E.2d at 268. We reverse a conviction only where the evidence is so improbable, unsatisfactory, or inconclusive as to create a reasonable doubt of defendant's guilt. *Id.* at 217, 824 N.E.2d at 267-68.

¶ 28 To support a charge of reckless discharge of a firearm, the State must prove a defendant (1) recklessly discharged a firearm, and (2) endangered the bodily safety of an individual. 720 ILCS 5/24-1.5(a) (West 2014); see *Collins*, 214 Ill. 2d at 212, 824 N.E.2d at 265. To support a charge of reckless conduct, the State must prove a defendant recklessly performs an act that causes bodily harm to or endangers the safety of another person. 720 ILCS 5/12-5(a)(1) (West 2014). Defendant does not challenge whether his conduct was reckless. Defendant argues the State failed to prove his conduct endangered another—specifically, Judith.

¶ 29 In *Collins*, the supreme court addressed the meaning of "endangerment" in the reckless discharge of a firearm statute. *Collins*, 214 Ill. 2d at 214, 824 N.E.2d at 266. The court determined the plain meaning of "endanger" referred "to a potential or possibility of injury." *Id.* at 215, 824 N.E.2d at 266. "The term does not refer to conduct that will result or actually results in harm, but rather to conduct that could or might result in harm." *Id.* The State need not prove a defendant aimed and discharged a firearm in the direction of a particular person. *Id.* at 215-16, 824 N.E.2d at 267. "[T]he State must establish that a defendant's reckless conduct created a dangerous situation—such that an individual was in peril of probable harm or loss." *Id.* at 215, 824 N.E.2d at 266.

¶ 30 The defendant in *Collins* was charged with reckless discharge of a firearm after police officers observed him firing a 9-millimeter semiautomatic handgun into the air in his backyard. *Id.* at 210-11, 824 N.E.2d at 264. The defendant argued the State failed to prove he endangered the bodily safety of an individual where there was no evidence (1) the area was

populated, (2) bullets fell near or around the police officers, or (3) bullets were recovered from the backyard or surrounding area. *Id.* at 217, 824 N.E.2d at 268. The appellate court found the State needed to present evidence of the area around the shooting, the proximity of falling bullets to people in the area, or the angle and direction the defendant discharged the firearm. *Id.*

¶ 31 The supreme court rejected defendant's argument and the appellate court's reasoning, concluding "The inherent danger caused by the reckless discharge of a firearm into the air, and the obvious ricochet effect that may occur when bullets fall to the ground, are matters of common sense. In this case, what inevitably came down endangered, placed individuals in peril of probable harm or loss, those in the vicinity of the discharge." *Id.* at 218, 824 N.E.2d at 268. The supreme court then "examine[d] whether the record demonstrate[d] that an individual was in the vicinity of the discharge." *Id.* One of the officers testified she heard at least 15 gunshots when she approached the backyard, and the supreme court determined this alone was sufficient evidence to establish defendant endangered an individual. *Id.* However, the court noted there was additional evidence that other individuals were placed in danger: when the defendant discharged the firearm, two women were inside his house and his two codefendants and two police officers were standing 25 to 30 feet away. *Id.* The evidence also showed the shooting occurred in a residential area with at least four homes in proximity to the location of the shooting. *Id.* The supreme court concluded this was sufficient evidence to show the defendant's reckless discharge of a firearm endangered an individual. *Id.* at 218-19, 824 N.E.2d at 268.

¶ 32 In contrast, defendant relies on *People v. Moreno*, 2015 IL App (3d) 130119, 29 N.E.3d 660. In *Moreno*, the defendant, while standing on a deck, discharged a firearm into the ground. *Id.* ¶ 9. The appellate court concluded no individual was in peril of probable harm or loss because defendant fired into the dirt and the partygoers on the deck were behind the

defendant. *Id.* ¶ 44. The appellate court addressed *People v. Johnson*, 20 Ill. App. 3d 1085, 1087, 314 N.E.2d 197, 198 (1974), in which the court found the defendant acted recklessly when he fired a shot into the ground near three men standing on a sidewalk. The *Moreno* court distinguished *Johnson*, stating,

"While Johnson shot into the ground, the key distinction is that he shot at, or in the direction of, the three men standing in front of him on the sidewalk. In the instant case, the partygoers were behind defendant as he shot into the dirt. The probability, or even possibility, of that happening is far too remote to find that defendant's conduct created a 'substantial' risk of endangering the bodily safety of others." *Moreno*, 2015 IL App (3d) 130119, ¶ 46, 29 N.E.3d 660.

¶ 33 We find *Moreno* unpersuasive. The appellate court did not meaningfully address *Collins* except to make the single conclusory statement that "No individual was in peril of probable harm or loss." *Id.* ¶ 44. We find the *Moreno* court's distinction of *Johnson* is foreclosed by the supreme court's reasoning in *Collins*. As noted above, the supreme court determined the State was not required to introduce evidence of the angle or direction of the discharge, as the inherent danger of discharging a firearm in the air and the possibility of a ricochet were "matters of common sense." *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268. We further note the dissent in *Moreno* found the case indistinguishable from *Collins* and would have affirmed the defendant's conviction. *Moreno*, 2015 IL App (3d) 130119, ¶¶ 59, 65 (Wright, J., dissenting).

¶ 34 Based on the reasoning in *Collins*, we conclude the evidence in this case is sufficient to prove defendant's conduct endangered the bodily safety of an individual. The evidence showed defendant discharged a firearm at least five times into the ceiling while his wife was also present in the home. Defendant argues there was no evidence showing defendant's conduct presented a substantial possibility of harm to Judith. However, defendant draws the "substantial possibility" language from *Moreno*, which we decline to follow. As the supreme court held in *Collins*, endangerment "does not refer to conduct that will result or actually results in harm, but rather to conduct that *could* or *might* result in harm." (Emphases added.) *Collins*, 214 Ill. 2d at 215, 824 N.E.2d at 266. The State need not prove a defendant aimed and discharged a firearm in the direction of a particular person. *Id.* at 215-16, 824 N.E.2d at 267.

¶ 35 We conclude defendant's act of discharging a firearm into the ceiling of an occupied house is the type of conduct that could or might result in harm. Defendant's actions certainly created a dangerous situation which put Judith in peril of probable harm or loss. *Id.* at 215, 824 N.E.2d at 266. Accordingly, we conclude the evidence was sufficient to find defendant guilty of reckless discharge of a firearm and reckless conduct beyond a reasonable doubt. We turn next to defendant's double-jeopardy claim.

¶ 36 B. Double Jeopardy

¶ 37 The fifth amendment to the United States Constitution, made applicable to the states via the fourteenth amendment, provides, in part, that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const., amend. V; see also *People v. Bellmyer*, 199 Ill. 2d 529, 536-37, 771 N.E.2d 391, 396 (2002). The same protection is granted by the Illinois Constitution and by statute. Ill. Const., art. I, § 10; 720 ILCS 5/3-4 (West 2012); see also *People v. Sienkiewicz*, 208 Ill. 2d 1, 4, 802 N.E.2d 767, 770 (2003). "[T]he

double jeopardy clause of our state constitution is to be construed in the same manner as the double jeopardy clause of the federal constitution." *In re P.S.*, 175 Ill. 2d 79, 91, 676 N.E.2d 656, 662 (1997).

¶ 38 The double jeopardy clause protects against (1) a second prosecution for the same offense following acquittal; (2) a second prosecution for the same offense following conviction; and (3) multiple punishments for the same offense. *Ohio v. Johnson*, 467 U.S. 493, 498-99 (1984). The principles of double jeopardy ensure "that the State does not make repeated attempts to convict an individual, thereby exposing him to continued embarrassment, anxiety, and expense, while increasing the risk of an erroneous conviction or an impermissibly enhanced sentence." *Id.*

¶ 39 The first protection is at issue in this case. "The law attaches particular significance to an acquittal. [Citations.] To permit a second trial after an acquittal, however erroneous the acquittal may have been, presents an unacceptably high risk that the State, with its superior resources, may wear down a defendant so that, even though innocent, he may be found guilty." *Cervantes*, 2013 IL App (2d) 110191, ¶ 25, 991 N.E.2d 521. "An acquittal includes a ruling that the evidence is insufficient to convict; a factual finding that necessarily establishes the defendant's lack of criminal culpability; and 'any other' ruling that 'relate[s] to the ultimate question of guilt or innocence.'" *Id.* ¶ 29 (quoting *Evans v. Michigan*, 568 U.S. 313, 319 (2013)). "Culpability (*i.e.*, the 'ultimate question of guilt or innocence') is the touchstone, not whether any particular elements were resolved or whether the ultimate determination of nonculpability was legally correct." *Evans*, 568 U.S. at 324 (quoting *United States v. Scott*, 437 U.S. 82, 98 n.11 (1978)). An acquittal may be based on an erroneous interpretation of the governing legal principles, but that error affects only the accuracy of the determination, not its

essential character. *Cervantes*, 2013 IL App (2d) 110191, ¶ 29, 991 N.E.2d 521. A second trial after a mistaken acquittal violates double jeopardy. *Id.*

¶ 40 The State relies on *People v. Williams*, 188 Ill. 2d 293, 721 N.E.2d 524 (1999). In *Williams*, the defendant was charged with first-degree murder and armed robbery. *Id.* at 295, 721 N.E.2d at 525. At the close of the State's case, the defendant moved for a finding of not guilty on both charges. *Id.* at 298, 721 N.E.2d at 526. The trial court heard argument from both parties and then stated, " I simply cannot find based on the evidence that's presented to me that the State even in the light most favorable to the State has met a *prima facie* case at this juncture, so I'm going to grant the motion for a directed finding and finding of not guilty as to the armed robbery." *Id.* The court went on to explain its reasoning and, without interruption, *sua sponte* stated, " Now, if you want to provide me with something, I'll be happy to look at it if you want me to hold [the ruling] in abeyance[,] but I don't think that it's established." *Id.* The State asked the judge to hold the ruling as to armed robbery in abeyance and the court responded, " All right. There's a finding of not guilty as to the charges of murder. As to the armed robbery charge, I am more than willing to look at any authority." *Id.* at 299, 721 N.E.2d at 526. The State later presented the court with authority on the subject and the court denied the defendant's motion for a finding of not guilty as to the armed robbery charge. *Id.* at 299, 721 N.E.2d at 527.

¶ 41 On appeal, the defendant argued the trial court unequivocally granted his motion for a finding of not guilty on the armed robbery charge and double jeopardy prevented the State from continuing its prosecution against him. *Id.* at 300, 721 N.E.2d at 527. The Illinois Supreme Court held the trial court did not unequivocally grant the defendant's motion for a finding of not guilty on the armed-robbery charge. *Id.* at 301, 721 N.E.2d at 528. The supreme court determined the trial judge did not actually grant defendant's motion, but postponed ruling

on the armed-robbery charge until the State presented further authority. *Id.* In so deciding, the court observed, "[j]ust a few moments after indicating that she would grant [the] defendant's motion, the trial judge showed that she was not yet prepared to rule on the motion by stating that 'if you want to provide me with something, I'll be happy to look at it if you want me to hold that in abeyance.'" *Id.* at 301-02, 721 N.E.2d at 528. The judge "repeatedly remarked that she did not yet know whether the applicable legal authority supported a finding of not guilty." *Id.* at 302, 721 N.E.2d at 528.

¶ 42 The supreme court found the record as a whole showed the trial court conveyed it would wait to review the State's legal authority before ruling on the defendant's motion for a finding of not guilty on the armed robbery charge. *Id.* The supreme court found the statements equivocal and merely intended to hold the ruling on the defendant's motion in abeyance until the next day. *Id.* at 306, 721 N.E.2d at 530. "Because the trial court did not grant [the] defendant's motion for a finding of not guilty, it also did not reconsider, withdraw, or vacate its ruling." *Id.* Because the defendant was never acquitted of the armed robbery charge, his continued prosecution and subsequent conviction for armed robbery did not place him in double jeopardy. *Id.* at 303, 307, 721 N.E.2d at 529, 531.

¶ 43 Defendant relies on *People v. Henry*, 204 Ill. 2d 267, 789 N.E.2d 274 (2003). In *Henry*, the supreme court considered "whether certain statements made by the circuit court amounted to an acquittal[] for double jeopardy purposes." *Id.* at 269, 789 N.E.2d at 276 The defendant was charged with involuntary manslaughter and aggravated battery and moved for a directed verdict at the close of evidence. *Id.* at 271, 789 N.E.2d at 277. As to the aggravated battery charge, defense counsel argued the State failed to prove the battery occurred on a public way, as required by statute. *Id.* at 271-72, 789 N.E.2d at 277. The court denied the motion for a

directed verdict as to the involuntary manslaughter charge but, as to the aggravated battery charge, the court said it believed there was no evidence the victim was on a public sidewalk. *Id.* at 272, 789 N.E.2d at 277-78. The court then stated, "So[,] I'm going to grant the directed verdict as to Count II [(the aggravated battery charge)]. Anything else while we are still on the record?" *Id.* The State then asked for leave to appeal that ruling and defense counsel argued a directed verdict was not appealable as it was a finding of not guilty. *Id.* at 272-73, 789 N.E.2d at 278. The State asked the court to reserve its ruling on the motion for a directed verdict so the State could present additional authority. *Id.* at 273, 789 N.E.2d at 278. The court responded, "Yes, reconsidering the arguments of counsel, the [c]ourt will vacate its previous order. The court will reserve the ruling on the [m]otion for [d]irected [v]erdict relative to [c]ount II." *Id.* The court later denied the motion for a directed verdict on the aggravated battery charge. *Id.* at 274, 789 N.E.2d at 279.

¶ 44 The supreme court distinguished *Williams* and held the trial court's original statement granting the directed verdict was unequivocal, where the judge "neither indicated willingness to examine authority with respect to the aggravated battery charge, nor offered to postpone the ruling until the parties had an opportunity to present legal authority." *Id.* at 286, 789 N.E.2d at 285. After the court granted the motion for a directed verdict, the State requested leave to appeal and defense counsel disputed whether it was an appealable order because it was a finding of not guilty. *Id.* The supreme court concluded, "[t]he record reveals that the circuit court judge, as well as the parties, acted in accordance with the belief that the circuit judge had granted [the] defendant's motion for a directed verdict." *Id.* at 287, 789 N.E.2d at 285-86. As additional support for concluding the circuit court unequivocally granted the motion for a directed verdict, the supreme court pointed to the trial judge's statement that it "reconsidered" the



arguments of counsel before vacating the prior order and reserving ruling on the motion. *Id.* at 287, 789 N.E.2d at 286. Because the circuit court judge unequivocally granted the motion, the supreme court concluded it was improper for the court to reconsider the ruling. *Id.* at 288, 789 N.E.2d at 286. The *Henry* court noted, " 'reconsideration and vacation of an order directing a verdict of not guilty exposes a criminal defendant to further proceedings \*\*\* in violation of double jeopardy principles.' [Citations.] \*\*\* [The] defendant's subsequent conviction for armed robbery violates double jeopardy." *Id.* (quoting *Williams*, 188 Ill. 2d at 301, 721 N.E.2d at 527).

¶ 45 The State contends this case is more similar to *Williams* than *Henry*. The State argues, "Similar to *Williams*, here, within the same breath of the trial court saying it would 'grant the directed finding,' the State offered the trial court additional legal authority," and the judge "accepted the State's further argument." However, the record shows the trial court stated it would grant the motion for a directed verdict and then stated, "So, that leaves you with [c]ourt [III]." The State then "request[ed] reconsideration" and provided the court with case law addressing the endangerment element of reckless discharge of a firearm. See *Collins*, 214 Ill. 2d 206, 824 N.E.2d 262. Defense counsel argued the court's decision could not be reconsidered because it was an acquittal finding defendant not guilty. After considering *Collins*, the trial court stated, "So, the [c]ourt reconsiders its ruling directing a verdict of acquittal in relation to [c]ourt [II] and denies the motion for a directed finding on [c]ourt [II]." We conclude these specific facts are more akin to *Henry* than *Williams*.

¶ 46 As in *Henry*, and unlike in *Williams*, the trial court stated it would grant the motion for a directed verdict and neither indicated it would consider additional authority nor offered to postpone its ruling for the parties to present additional authority. Also as in *Henry*, and unlike in *Williams*, the parties acted in accordance with the belief the judge had granted the

motion for a directed finding. The State did not merely "offer additional authority" that the trial court "accepted" as "further argument." The State "request[ed] *reconsideration*" and defense counsel argued the ruling could not be reconsidered because it was an acquittal. These comments are similar to those made after the circuit court's ruling in *Henry*, where the State indicated it would appeal and the ensuing discussion focused on "the propriety and the procedure of appealing the court's ruling." *Henry*, 204 Ill. 2d at 287, 789 N.E.2d at 286. As in *Henry*, the judge's own statements indicated the defendant's motion had been granted: the judge stated it "reconsider[ed] its ruling directing a verdict of acquittal." This language indicates the prior ruling was unequivocal.

¶ 47 The State also points to arguments made at the hearing on defendant's posttrial motion and the trial court's statements made during that hearing. Specifically, the State points to the prosecutor's recollection that, "when the [c]ourt said, ['] so, that leaves you with [c]ount [III], ['] you were looking at counsel and indicated that the [c]ourt would invite more argument." The State further points to the trial court's subsequent statements regarding the hearing on the motion for a directed finding: "[T]he State led with its general argument, cited no authority. The [c]ourt then went into a detailed explanation for its ruling. The State then offered authority. The authority made it clear that *the [c]ourt was incorrect in relation to its directed finding*. And that's pretty much where it was. It was one conversation. \*\*\* This is not an instance where double jeopardy attaches. This is all part of the same argument." (Emphasis added.)

¶ 48 We first note the State cites no authority for its argument that the trial court's subsequent characterization of events controls. Indeed, we note the United States Supreme Court has recognized " 'the trial judge's characterization of his own action cannot control the classification of the action.' " *Scott*, 437 U.S. at 96 (quoting *United States v. Jorn*, 400 U.S. 470,

478 n.7 (1971)). Where a ruling constitutes a determination that the State failed to prove its case, the ruling is an acquittal. *Evans*, 568 U.S. at 320. Although the trial court in this case acknowledged its ruling was incorrect based on the *Collins* case, that acknowledgment does not change the character of its ruling granting the motion for a directed finding. "[A]n acquittal due to insufficient evidence precludes retrial, whether the court's evaluation of the evidence was correct or not, [citation], and *regardless of whether the court's decision flowed from an incorrect antecedent ruling of law.*" (Emphasis added.) *Id.*

¶ 49 In conclusion, we find the specific facts of this case are more similar to what occurred in *Henry* rather than in *Williams*. Based on the reasoning in both cases, we conclude the trial court unequivocally granted defendant's motion for a directed finding as to the reckless discharge of a firearm charge. Although the trial court believed its ruling was incorrect based on authority the State provided when it requested reconsideration of the ruling, this does not change the essential character of the ruling. Because the court acquitted defendant on that charge, it violated principles of double jeopardy to reconsider the ruling and continue the prosecution on that charge. Accordingly, we conclude the judgment of the trial court must be reversed and defendant's conviction for reckless discharge of a firearm must be vacated. Because the court's ruling on the motion for a directed finding was substantive, it does not matter that the evidence may have been sufficient to convict him on this charge. Principles of double jeopardy preclude any further prosecution on the reckless discharge of a firearm.

¶ 50 C. Burden of Proof

¶ 51 Finally, defendant contends the trial court applied the wrong burden of proof and convicted defendant without determining the State's evidence was sufficient to prove defendant guilty beyond a reasonable doubt. As we have reversed defendant's conviction for reckless

discharge of a firearm, we address review this claim only as it relates to the conviction for reckless conduct.

¶ 52 "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). In a jury trial, the court must instruct the jury on the elements of the offense, the presumption of innocence, and the burden of proof. *People v. Green*, 225 Ill. 2d 612, 622, 870 N.E.2d 394, 401 (2007). "In a bench trial, although the court is presumed to know the law and apply it properly, this presumption is rebutted when the record affirmatively shows otherwise." *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 41, 967 N.E.2d 910. Whether the legal standards applied by a fact finder are correct is a legal question which we review *de novo*. *People v. Johnson*, 2017 IL 120310, ¶ 15, 77 N.E.3d 615.

¶ 53 When the trial court found defendant guilty on count III—reckless conduct—it noted the statutory language required the State to prove a defendant recklessly performs an act that causes bodily harm to or endangers the safety of another person. 720 ILCS 5/12-5(a)(1) (West 2014). The court went on to say, "I've already discussed the reckless act, which is the firing of the weapon inside the building; and it has endangered the safety of the individual, and that being [the] wife. So, I find him guilty beyond a reasonable doubt of [c]ount [III]." The statements defendant alleges rebut the presumption that the court knew the law and properly applied it were made in reference to count II—the count on which defendant was acquitted—and the court's understanding of *Collins*. Moreover, we note the court denied defendant's motion for a directed finding as to count III, which indicates the subsequent consideration of *Collins* did not affect the court's knowledge of the applicable law for the charge of reckless conduct. Nothing in the record indicates the trial court misunderstood the law as it related to the reckless conduct

charge and the court explicitly stated it found defendant guilty of reckless conduct beyond a reasonable doubt. Accordingly, we decline to reverse defendant's conviction for reckless conduct or to remand for a new trial on this charge.

¶ 54

### III. CONCLUSION

¶ 55 For the reasons stated, we affirm trial court's judgment regarding the reckless conduct charge and reverse the court's judgment regarding the reckless discharge of a firearm charge. As part of our judgment, because the State successfully defended in part, we award the State its \$50 statutory award against defendant as costs of this appeal.

¶ 56 Affirmed in part, and reversed in part.