No. _____

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

PETITION FOR WRIT OF CERTIORARI

LORI SWANSON
Minnesota Attorney General

JOHN J. CHOI
Ramsey County Attorney

THOMAS R. RAGATZ
Assistant Ramsey County Attorney
Counsel of Record

345 Wabasha St. N., Suite 120
St. Paul, Minnesota 55102
Telephone: (651) 266-3156
tom.ragatz@co.ramsey.mn.us
Attorneys for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

The state used a certified copy of one of defendant/respondent Sago's prior convictions to prove that he was ineligible to possess a firearm. After a jury convicted him of ineligible possession, the state discovered an administrative error in the certified copy; this conviction was not for a crime that made Mr. Sago ineligible to possess a firearm, unlike his other adjudications that were not submitted to the jury. The district court held that the error in the certified copy rendered the evidence insufficient, and granted Mr. Sago's motion for a judgment of acquittal. The Minnesota Court of Appeals held that the acquittal was proper and precludes a retrial.

In *Lockhart v. Nelson*, 488 U.S. 33 (1988), this Court held that a post-trial finding of insufficient evidence only precludes retrial under the Double Jeopardy Clause if it is based on a face-value assessment of *all* the evidence admitted, not just the evidence properly admitted. In *Evans v. Michigan*, 133 S.Ct. 1069 (2013), this Court cited its precedent and held that a finding of insufficient evidence precludes retrial under the Double Jeopardy Clause even if the finding is based on a legally erroneous analysis.

Did *Evans* – or the cases cited therein – overrule *Nelson*?

TABLE OF CONTENTS

APPENDIX INDEX

TABLE OF AUTHORITIES

Page

CASES CITED

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Minnesota, respectfully requests that this Court issue a writ of certiorari to review the judgment of the Minnesota Court of Appeals in this case.

OPINION BELOW

The opinion of the Minnesota Court of Appeals is unpublished. *State v. Sago*, 2013 WL 1943006 (Minn. App. May 13, 2013); Appendix ("App.") 1-9. The Minnesota Supreme Court denied the state's petition for further review on August 6, 2013. App. 10.

JURISDICTION

The Minnesota Court of Appeals issued its decision on May 13, 2013; judgment was issued on August 14, 2013. App. 11-12. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case presents a question under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury,

except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Mr. Sago was arrested on January 25, 2012, in St. Paul, Minnesota. Ramsey County subsequently charged him with possession of a firearm by an ineligible person, alleging that he had three prior convictions or juvenile adjudications that made him ineligible to possess a firearm. At trial, the state introduced a certified copy of the most recent of these three: a 2008 Washington County conviction for riot in the second degree. After the jury convicted Mr. Sago, the state discovered that the certified copy was erroneous; Mr. Sago had pled guilty to first-degree criminal damage to property, with the riot charge dismissed. The former does not render a person ineligible to possess a firearm. App. 2.

At the first hearing where it was discussed that the certified copy of the riot conviction could be wrong, defense counsel stated "I'm as shocked as

anybody, everything I've seen says it was riot, but probation in the PSI indicates that it was criminal damage to property." June 15, 2012 hearing at 5-6.

At the next hearing, the prosecutor noted that the state had discovered the problem, and had moved quickly. June 29, 2012 hearing at 4-5. The district court stated that the certified copy of the conviction came in without objection; "everyone assumed that since it was a certified copy of a conviction that it was indeed correct." *Id.* at 6. The court noted that the later-discovered problem with the certified copy "appears to be the result of an administrative error." *Id.* at 7.

The court also stated that "there are other convictions out there, as I understand it, that make Mr. Sago ineligible to possess a firearm." *Id.* at 7. The defense argued for acquittal, but acknowledged that "there's a genuine mistake, that Washington County's information had been incorrect." *Id.* at 9. The defense asserted that it was a trial tactic for the state not to use evidence of other convictions. *Id.* at 10. "May it have been overkill? Maybe. But the bottom line is, that was a conscious decision on their part. And the State should not be allowed another bite of the apple on this." *Id.* The prosecutor agreed that without the erroneous certified copy of the prior conviction the evidence was insufficient, but cited *Lockhart v. Nelson,* 488 U.S. 33 (1988), for the principle that a post-trial finding of insufficient evidence only precludes retrial under the Double Jeopardy Clause if it is based on a face-value assessment of all the

evidence admitted, not just the evidence properly admitted. The prosecutor argued that the appropriate remedy here is a new trial. *Id.* at 3-5.

At a July 6, 2012 hearing, and in an Order filed that day, the district court granted the defense motion for a judgment of acquittal and ordered the case dismissed. App. 3. As discussed below, the Minnesota Court of Appeals affirmed, distinguishing *Nelson* as not involving an acquittal, and relying on *Evans v. Michigan*, 133 S.Ct. 1069 (2013), for the principle that even an erroneous acquittal bars retrial. App. 5-9. The Minnesota Supreme Court denied the state's petition for review. App. 10.

REASONS FOR GRANTING THE PETITION

This case provides this Court with the opportunity to resolve a recurring question with nationwide impact: if a court finds that evidence necessary for a conviction was erroneously admitted, does this finding preclude retrial? This is an important question because it determines whether a retrial is possible whenever, after trial, a critical drug or DNA test is discovered to be inaccurate, or a crucial witness credibly recants, or newly discovered evidence repudiates necessary prosecution evidence. The answer to this question is unclear; this Court should clarify whether it overruled *Lockhart v. Nelson* in its recent decision in *Evans v. Michigan*, or in the cases cited therein.

In *Nelson,* this Court faced a situation substantively identical to the instant case. Mr. Nelson challenged his sentencing conviction because a certified copy of a prior felony conviction – admitted without objection from the defense – turned out to have been wrongly admitted. 488 U.S. at 34. Unbeknownst to the prosecutor, Mr. Nelson had been pardoned several years after this prior conviction. *Id.* at 36. This Court summarized its holding: "in cases such as this, where the evidence offered by the State and admitted by the trial court – whether erroneously or not – would have been sufficient to sustain a guilty verdict, the Double Jeopardy Clause does not preclude retrial." *Id.* at 34.

Here too, the prior-conviction evidence admitted at trial – taken at face value – was sufficient to sustain the guilty verdict. As in *Nelson*, "[p]ermitting retrial in this instance is not the sort of governmental oppression at which the Double Jeopardy Clause is aimed." *Id*. at 42. As in *Nelson*, if Mr. Sago had established at trial that the certified copy of his prior conviction was incorrect, "[t]he trial judge would presumably have allowed the prosecutor an opportunity to offer evidence of another prior conviction. . . . Our holding today thus merely recreates the situation that would have been obtained if the trial court had excluded the evidence of the conviction because of the showing of a pardon." *Id*. (citation omitted).[1]

[1] In arguing for acquittal and dismissal, Mr. Sago relied on an earlier decision, *Burks v. United States*, 437 U.S. 1 (1978).
(Continued on following page)

The court of appeals here focused on the fact that the district court entered a judgment of acquittal. App. 5, 8. The state acknowledges that under *Evans v. Michigan*, 133 S.Ct. at 1073-76, and the cases cited therein, an erroneous acquittal based on insufficient evidence is not appealable. But, unless these cases overruled *Nelson*, it sets out the on-point principle that for double jeopardy purposes the sufficiency of the evidence must be assessed taking the evidence at face value. The district court here *did not* find the face-value evidence insufficient. Rather, it found that "it was later discovered that the conviction proved at trial is not a valid conviction for a crime of violence." This is no different than the situation in *Nelson*. Indeed, the defense expressly conceded below that there was a "genuine mistake" here – the information on Mr. Sago's Washington County conviction was simply incorrect. June 29, 2012 hearing at 9.

The district court's use of the word "acquit" does not automatically make its order an acquittal for double-jeopardy purposes. For example, if a court found ineffective assistance of trial counsel and ordered an "acquittal," no case says this would preclude retrial. "Acquittal" is not a magic word that, even if used inappropriately, always precludes any further analysis. *See, e.g., Evans*, 133 S.Ct. at 1076 ("We have

---

But in *Nelson*, this Court explained why *Burks* is inapplicable – it involved a finding of insufficient evidence that was based on a review of all of the evidence admitted, not just the evidence that was properly admitted. 488 U.S. at 40-42.

emphasized that labels do not control our analysis in this context; rather, the substance of a court's decision does.").

The situation here is similar to where recantation of a witness requires reversal of a conviction. The state is not aware of any case holding that the remedy is acquittal, rather than a new trial, where the recantation renders the evidence at the original trial insufficient. Further, this issue will arise in cases involving the troubled St. Paul, Minnesota crime lab.[2] If the only drug-identification evidence at trial was a test report that should not have been admitted, under the court of appeals' decision here acquittal is necessary and no retrial is possible, regardless of the quantity of drugs that is untainted and available for retesting. App. 8-9.

Precluding the executive branch from prosecuting Mr. Sago for his illegal possession of a firearm – because of what the district court correctly called an administrative error, by the judicial branch – would serve no valid purpose. "Corresponding to the right of an accused to . . . a fair trial is the societal interest in punishing one whose guilt is clear after he has obtained such a trial." *Nelson*, 488 U.S. at 38 (quoting *United States v. Tateo*, 377 U.S. 463, 466 (1964)). A jury found that Mr. Sago possessed a firearm. There

[2] *See* http://tinyurl.com/stpcrimelab (February 14, 2013 Minnesota Star Tribune: "Reviews Fault St. Paul Crime Lab in Many Areas").

is no dispute that he has prior adjudications that make it illegal for him to possess a firearm. Neither the district court nor the court of appeals found or even suggested that the prosecution somehow should have known about what the defense acknowledged was a "genuine mistake" in exhibit 14 – the certified copy of Mr. Sago's most recent prior conviction – which refers to Mr. Sago being convicted of or sentenced for riot on six different pages. The sentencing orders also refer to Mr. Sago having been sentenced on the riot charge. It is true that there are also references to Mr. Sago being convicted of or sentenced on first-degree criminal damage to property, but these two counts are not mutually exclusive.

Mr. Sago made an argument below that the court of appeals seemed to adopt: the state made a tactical decision not to enter evidence of all of his prior convictions or adjudications, and should not get a second chance to do so. But the same could be said of the prosecution in *Nelson*. Requiring the state to always submit redundant evidence, in order to avoid the remote possibility of a Double Jeopardy Clause issue, would hardly be in the interest of judicial efficiency, and is not constitutionally mandated. *See State v. Kraushaar*, 470 N.W.2d 509, 513, n. 3 (Minn. 1991) ("In reviewing sufficiency of evidence, courts should include any erroneously admitted evidence; otherwise the state would have an incentive to 'over-try' cases."). Indeed, had the state tried to admit not just Mr. Sago's most recent conviction, but also one or both of his juvenile adjudications that render him ineligible

to possess a firearm, the defense likely would have objected that the juvenile adjudications (which could not be used for impeachment) were cumulative and unfairly prejudicial.

Mr. Sago also argued below that the Double Jeopardy Clause precludes retrial because the state should have known that he was convicted of damage to property, not riot. But under *Nelson*, the question is not what the state and defense should have known, but simply whether "the evidence offered by the State and admitted by the trial court – whether erroneously or not – would have been sufficient to sustain a guilty verdict." 488 U.S. at 34. Again, no one has ever suggested any misconduct by the prosecutor.[3]

The court of appeals distinguished *Nelson* based on its "procedural posture" (App. 8), but its posture is irrelevant to its principle: that for double-jeopardy purposes, the sufficiency of the evidence must be assessed taking the evidence at face value. At face value – and considered in the light most favorable to the state, as it must be under sufficiency-of-the-evidence review – the certified copy of the prior conviction here is sufficient, as the district court and defense acknowledged below by expressing their surprise at the later-discovered mistake in the certified copy.

---

[3] The question here indisputably is not what the state *could* have known, because in *Nelson* the prosecutor could have confirmed the defendant's statement that he had been pardoned, but the prosecutor's failure to do this did not preclude retrial. 488 U.S. at 36.

The court of appeals also distinguished *Nelson* on the fact that Mr. Sago was never convicted of riot, whereas Mr. Nelson was convicted but later pardoned. App. 9. This is a distinction without a difference. In both cases the defendant did not have the qualifying prior conviction that he appeared to have. The evidence of Mr. Sago's riot conviction should not have been admitted because it was erroneous. This is not the same as the evidence being facially insufficient, as *Nelson* makes clear. 488 U.S. at 34.[4]

In short, while it is arguable that this case – like *Evans* – just involves an erroneous finding of insufficient evidence, the fatal flaw in the Minnesota Court of Appeals' decision is that under *Nelson* the finding here is not a finding of insufficient evidence for double jeopardy purposes, because it is not a finding that all the evidence admitted, *taken at face value*, is insufficient. This Court should clarify that the finding here does not fall within the rule that even an erroneous finding of insufficient evidence bars retrial. To

[4] The court of appeals also held that the trial court properly denied the state's motion for a new trial under the state's procedural rules. This does not, however, mean that the court of appeals correctly held that double jeopardy bars a new trial. If the district court had just reversed Mr. Sago's conviction, without entering an acquittal or ordering a new trial, the state could have recharged him. But because the Minnesota Court of Appeals has now held that double jeopardy precludes a retrial, unless this Court reverses the Minnesota Court of Appeals the state will not be able to recharge Mr. Sago, despite the fact that it is undisputed that he was ineligible to possess a firearm, and a jury found that he possessed a firearm.

conclude otherwise would be to put form over substance, and hold that the result in *Nelson* would have been different if the judge there simply had used the word "acquit."

Finally, we recognize that this decision is unpublished, but this fact should not be determinative in this age of electronic research. As of November 7, 2013, this decision is one of only two that cite both *Nelson* and *Evans*. (The other decision does not involve a district court finding of insufficient evidence. *VanPatten v. State*, 986 N.E.2d 244 (Ind. 2013)). This decision undoubtedly will be cited by defendants seeking double-jeopardy protection. Lower courts need guidance in determining whether retrial is possible when critical evidence is later discovered to be erroneous. This Court should provide that guidance now, before more indisputably guilty defendants like Mr. Sago walk scot free.

———♦———

CONCLUSION

This Court should grant the petition for writ of certiorari.

Dated: November 12, 2013

Respectfully submitted,

LORI SWANSON
Minnesota Attorney General

JOHN J. CHOI
Ramsey County Attorney

THOMAS R. RAGATZ
Assistant Ramsey
County Attorney
Counsel of Record

345 Wabasha St. N., Suite 120
St. Paul, Minnesota 55102
Telephone: (651) 266-3156

Attorneys for Petitioner

2013 WL 1943006

Court of Appeals of Minnesota.
STATE of Minnesota, Appellant,
v.
Esau Chucky **SAGO**, Respondent.

No. A12-1240. May 13, 2013.
Review Denied Aug. 6, 2013.

Ramsey County District Court, File No. 62-CR-12-740.

Lori Swanson, Attorney General, John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, MN, for appellant.

Charles F. Clippert, Clippert Law Firm, St. Paul, MN, for respondent.

Considered and decided by CHUTICH, Presiding Judge; PETERSON, Judge; and ROSS, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge.

In this appeal, the state argues that the district court erred in entering a judgment of acquittal and dismissing the charge against respondent Esau Chucky Sago, rather than ordering a new trial. Because the district court properly denied the state's

motion for a new trial and granted Sago's motion for judgment of acquittal, we affirm.

FACTS

Respondent Esau Chucky Sago was arrested on January 25, 2012, in St. Paul. Ramsey County subsequently charged him with possession of a firearm by an ineligible person. *See* Minn.Stat. § 624.713, subd. 1(2) (2010). In the complaint, the state cited three alleged prior convictions that made Sago ineligible to possess a firearm: a second-degree riot conviction; a juvenile adjudication for a fifth-degree controlled substance violation; and a juvenile adjudication for terroristic threats.

During a two-day jury trial, the state introduced into evidence a certified copy of Sago's criminal conviction for second-degree riot in Washington County in 2008. The state did not present any evidence of Sago's two juvenile adjudications. The jury convicted Sago of felon in possession based on the riot conviction.

During the pre-sentence investigation process, the state learned that Sago's 2008 conviction was actually for first-degree criminal damage to property and not second-degree riot. Under Minnesota law, criminal damage to property is not a crime of violence that makes a person ineligible to possess a firearm. *See* Minn.Stat. § 624.712, subd. 5 (2010). The state notified the defense and the district court of the error.

The state moved for a new trial and Sago moved for judgment of acquittal. The district court denied the state's motion, concluding that rule 26.04 of the Minnesota Rules of Criminal Procedure provided no mechanism for the state to move for a new trial. It granted Sago's motion because his 2008 criminal-damage-to-property conviction did not support a conviction under section 624.713. The state appealed.

DECISION

I. Motion for a New Trial

The state first contends that the district court erred by denying its motion for a new trial. Here, the district court denied the state's motion for a new trial because it concluded that "[t]here is no procedural mechanism for the State to move for a new trial." Under the Minnesota Rules of Criminal Procedure, the district court may grant a new trial "on written motion of a defendant" or "on its own initiative and with the consent of the defendant."[1] Minn. R.Crim. P. 26.04, subd. 1, 2. The rules of criminal procedure, however, do not allow the state to move for a new trial. Thus, the district court did not err in denying the state's motion for a new trial.

[1] The district court asked Sago if he would consent to a new trial, but Sago did not.

II. Judgment of Acquittal

The state also appeals the district court's grant of Sago's motion for judgment of acquittal.[2] A motion for judgment of acquittal is properly granted where the evidence, viewed in the light most favorable to the state, is insufficient to sustain a conviction. *State v. Simion,* 745 N.W.2d 830, 841 (Minn.2008); *see also* Minn. R.Crim. P. 26.03, subd. 18(1) (stating that a court may order "a judgment of acquittal on one or more of the charges if the evidence is insufficient to sustain a conviction"). When the state's evidence is insufficient for a conviction, "the only just . . . remedy is the direction of a judgment of acquittal." *State v. Clark,* 755 N.W.2d 241, 256 (Minn.2008) (alteration in original) (quotation omitted). A reviewing court must determine whether the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably have concluded that the defendant was guilty of the

---

[2] A motion for judgment of acquittal is typically made at the close of evidence for either party or within 15 days after the jury is discharged. *See* Minn. R.Crim. P. 26.03, subd. 18(1), (3). The jury found Sago guilty on April 26, 2012, but Sago did not move for judgment of acquittal until June 28, 2012. The state objected to the timing of Sago's motion before the district court, and the district court concluded that Sago's motion was timely because it was brought within fifteen days after the error in his previous conviction was discovered. The state does not appeal this determination, and thus, has waived any argument about the timeliness of Sago's motion. *See State v. Butcher,* 563 N.W.2d 776, 780 (Minn.App.1997) (stating that issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

charged offense. *Bernhardt v. State,* 684 N.W.2d 465, 476-77 (Minn.2004).

The state charged Sago with violating Minnesota Statutes section 624.713, subdivision 1(2), which prohibits possession of a firearm by a person who has been convicted of a crime of violence. Because Sago had never actually been convicted of second-degree riot, the court explicitly found that the state failed to prove an essential element of the crime. The district court's conclusion that the evidence was insufficient to convict is an acquittal on the merits "because such a finding involve[d] a factual determination about the defendant's guilt or innocence." *State v. Sahr,* 812 N.W.2d 83, 90 (Minn.2012), *cert denied,* ___ U.S. ___, 133 S.Ct. 1455, 185 L.Ed.2d 384 (2013). Because the state's evidence was insufficient for a conviction, the district court properly entered a judgment of acquittal. *See Clark,* 755 N.W.2d at 256.

The state argues that the district court applied the wrong remedy and that it should have granted a new trial rather than granting a judgment of acquittal and dismissing the charge against Sago. This argument requires us to analyze whether double jeopardy bars re-trial. "[W]hen there is an acquittal on the merits, double jeopardy bars review of any underlying issues. . . ." *Id.*; *see also Evans v. Michigan,* ___ U.S. ___, ___, 133 S.Ct. 1069, 1074, 185 L.Ed.2d 124 (2013) ("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." (alteration in original) (quotation omitted)).

The state argues that this case is governed by the Supreme Court's decision in *Lockhart v. Nelson,* 488 U.S. 33, 109 S.Ct. 285, 102 L.Ed.2d 265 (1988). In *Lockhart,* the defendant pleaded guilty to burglary and the state sought to sentence him under the habitual criminal statute "which provides that a defendant who is convicted . . . and who has previously been convicted of . . . [or] found guilty of four . . . or more felonies, may be sentenced to an enhanced term of imprisonment of between 20 and 40 years." *Id.* at 34-35, 109 S.Ct. at 287 (alteration in original) (quotation omitted). At the sentencing hearing, the state introduced certified copies of four prior felony convictions. *Id.* at 36, 109 S.Ct. at 288. On cross-examination, the defendant claimed that the governor had pardoned one of the convictions but eventually "agreed that the conviction had been commuted rather than pardoned." *Id.* Based on the four prior convictions, the jury found that the defendant qualified for an enhanced sentence. *Id.*

Several years later, the state investigated the allegedly pardoned conviction at the district court's request and found that the defendant had in fact been pardoned for the crime. *Id.* at 37, 109 S.Ct. at 289. The state informed the court that it intended to move to resentence the defendant as a habitual offender, using a different prior conviction. *Id.* The district court held that the double-jeopardy clause prevented the state from attempting to resentence

the defendant as a habitual offender. *Id.* The Eighth Circuit Court of Appeals affirmed. *Id.*

The Supreme Court granted review to address the issue of "whether the Double Jeopardy Clause allows retrial when a reviewing court determines that a defendant's conviction must be reversed because evidence was erroneously admitted against him." *Id.* at 40, 109 S.Ct. at 290. The Supreme Court distinguished reversals "based solely on evidentiary insufficiency" where the "government has failed to prove its case against the defendant," and reversals based on "ordinary trial errors [such] as the incorrect receipt or rejection of evidence." *Id.* (quotations omitted). "[T]he latter implies nothing with respect to the guilt or innocence of the defendant but is simply a determination that [he] has been convicted through a judicial *process* which is defective in some fundamental respect." *Id.* (alteration in original) (quotation omitted). The Supreme Court concluded that "in cases such as this, where the evidence offered by the State and admitted by the trial court – whether erroneously or not – would have been sufficient to sustain a guilty verdict, the Double Jeopardy Clause does not preclude retrial." *Id.* at 34, 109 S.Ct. at 287.

The state argues that the district court should have applied the *Lockhart* standard in determining whether to grant a judgment of acquittal. Specifically, the state contends that the district court should have considered the evidence of the second-degree riot charge offered by the state, erroneous or not, in determining whether the evidence was sufficient to

sustain a guilty verdict. Because second-degree riot is a crime of violence that makes a person ineligible to possess a firearm, the state contends that the district court erred by concluding that the evidence was insufficient and granting the judgment of acquittal.

Although the facts of the present case are somewhat similar to those of *Lockhart,* the procedural posture of this case is remarkably different. In *Lockhart,* the district court did not grant a judgment of acquittal, but rather "declared [Lockhart's] enhanced sentence to be invalid." *Id.* at 37, 109 S.Ct. at 289. Accordingly, the Supreme Court reviewed the district court's determination that double jeopardy would bar the state's attempt to resentence Lockhart. The court concluded that, in the context of the double-jeopardy clause, the district court applied the incorrect standard and should have considered all the evidence presented by the state, erroneous or not, to determine whether retrial was permitted. *Id.* at 34, 109 S.Ct. at 287.

Here, unlike *Lockhart,* the state is appealing from the grant of a judgment of acquittal. When determining whether to grant a judgment of acquittal, the district court is required to view the evidence in the light most favorable to the state. *See Simion,* 745 N.W.2d at 841. Because the district court granted the judgment of acquittal and denied the state's motion for a new trial, the district court never reached the double-jeopardy issue presented in *Lockhart.* The state cites no caselaw demonstrating that, when viewing the evidence in the light most favorable to

the state in the context of a judgment of acquittal, the district court is required to ignore the erroneous nature of evidence presented by the state.

In addition, Sago was never convicted of second-degree riot, unlike the conviction in *Lockhart* that occurred and was subsequently pardoned. Thus, Sago's judgment of acquittal was not based on an ordinary trial error, but rather was based on evidentiary insufficiency because the government failed to prove its case. *See Lockhart,* 488 U.S. at 40, 109 S.Ct. at 290. The state could have introduced evidence at trial of Sago's juvenile adjudications that make him ineligible to possess a firearm, but it chose not do so. "[T]he Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." *Clark,* 755 N.W.2d at 256 (quotation omitted).

The district court properly concluded that "[w]ithout one or more of those convictions . . . the State has failed to prove an essential element of the crime charged, and this conviction may not stand." Thus, we affirm the district court's judgment of acquittal.

Affirmed.

STATE OF MINNESOTA

IN SUPREME COURT

A12-1240

State of Minnesota,

Petitioner,

vs.

Esau Chucky Sago,

Respondent.

ORDER

(Filed Aug. 6, 2013)

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of the State of Minnesota for further review be, and same is, denied.

Dated: August 6, 2013

BY THE COURT:

/s/

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA **COURT OF APPEALS**

JUDGMENT

State of Minnesota,
Appellant, vs. Esau
Chucky Sago, Respondent

Appellate Court
A12-1240

Trial Court
62-CR-12-740

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Ramsey County District Court, Criminal Division herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.

It is further determined and adjudged that Esau Chucky Sago herein, have and recover of the State of Minnesota herein the amount of $1,531.25 as attorney fees in this cause.

Dated and signed: August 14, 2013

FOR THE COURT:

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: /s/
Assistant Clerk

Statement For Judgment

Costs and Disbursements in the Amount of:

Attorney Fees in the amount: $1,531.25

Other:

Total: $1,531.25

Satisfaction of Judgment Filed: _____
Dated

Therefore the above judgment is duly satisfied in full and discharged of record

Attest: AnnMarie S. O'Neill *By:* _____
Clerk of the Appellate Court *Assistant Clerk*