

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MOHAMED ALFAKIR,

Defendant-Appellee.

UNPUBLISHED

May 7, 1999

No. 207433

Wayne Circuit Court

LC No. 92-011297

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals of right from the trial court's order denying its motion to vacate a judgment of acquittal. We reverse and reinstate the original verdict. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After a bench trial, the court convicted defendant of larceny over \$100, MCL 750.356; MSA 28.588. An alibi witness subpoenaed by defendant did not appear in court. Defendant appealed as of right (Docket No. 164940). We remanded the case to the trial court for an evidentiary hearing with testimony from the alleged alibi witness. We indicated that if the testimony did not support defendant's alibi, then the conviction was affirmed. However, if the testimony supported defendant's alibi, the trial court was to reopen proofs and render a new verdict, or grant defendant a new trial, at its discretion.

On remand the trial court, upon learning that defendant faced possible deportation as a result of the conviction, sua sponte declared defendant acquitted of the charge. Subsequently, the trial court heard testimony from the alleged alibi witness, and found that the testimony did not support the alibi. Nevertheless, the trial court refused to vacate the judgment of acquittal.

We reverse the trial court's order denying the motion to vacate the judgment of acquittal, and reinstate the original verdict. The trial court altered its verdict immediately upon learning that defendant faced possible deportation as a result of the conviction. The trial court did not comply with our remand order, and erred by altering its verdict for a reason unrelated to a substantive error. MCR 6.435(B); *People v Hutchinson*, 224 Mich App 603, 606; 569 NW2d 858 (1997); *People v Jones*, 203 Mich

App 74, 82; 512 NW2d 26 (1993). Reinstatement of the original verdict does not offend the Double Jeopardy Clause. US Const, Am V; Const 1963, art 1, § 15; *Jones, supra*, at 83.

Reversed. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski