

# Order

Michigan Supreme Court  
Lansing, Michigan

July 9, 2025

Megan K. Cavanagh,  
Chief Justice

167208 & (55)

Brian K. Zahra  
Richard H. Bernstein  
Elizabeth M. Welch  
Kyra H. Bolden  
Kimberly A. Thomas  
Noah P. Hood,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 167208  
COA: 362057  
Ottawa CC: 20-044111-FC

DANTE ERIC WELLS,  
Defendant-Appellant.

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On May 7, 2025, the Court heard oral argument on the application for leave to appeal the April 18, 2024 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we REVERSE Part II(C) of the judgment of the Court of Appeals and REMAND this case to the Ottawa Circuit Court for resentencing. In all other respects, leave to appeal is DENIED. The motion to remand is DENIED.

Defendant was charged with possession of methamphetamine with intent to deliver, MCL 333.7401(2)(b)(i), and the jury was instructed on simple possession of methamphetamine, MCL 333.7403(2)(b)(i), as a lesser included offense. The jury returned a verdict finding defendant guilty of simple possession, but not guilty of possession with intent to deliver. At sentencing, the trial court explained its sentence by noting that,

at the trial, we heard a lot about—the Court was concerned about the number of dollars you had on you, the amount of money that you had on you at the time of the check. And, also, the other things that were in your possession, or in your vehicle, including the scales, and the baggies, and the baggies’ location being in the safe. If baggies are going to be used for a purpose of baking or cooking, they’re going to be in the kitchen, they’re not going to be locked up in a safe. And, the fact that there’s also a scale in the safe says volumes about what those baggies were going to be used for, and that shows an intent to distribute. And, the Court recalls the testimony of Sergeant DeYoung, that often times, people that are dealing have either a lot of drugs, or otherwise, they have a lot of cash. You had a lot of cash on you at that time.

The trial court then stated, “But the jury convicted you of possession of methamphetamine, and that is what you will be sentenced on,” before sentencing defendant at the top of his

minimum guidelines range to serve 46 to 120 months in prison. The trial court then concluded, “The Court recognizes that this is at the high end of the guidelines, but based under all the circumstances, the Court believes that that is appropriate, based on your record, as well as the details of what occurred here.” Defendant moved for resentencing, arguing that he was erroneously sentenced on the basis of acquitted conduct, but the trial court denied defendant’s motion.

Defendant appealed, and the Court of Appeals affirmed. *People v Wells*, unpublished per curiam opinion of the Court of Appeals, issued April 18, 2024 (Docket No. 362057). The panel concluded that there was no evidence that the trial court sentenced defendant on the basis of acquitted conduct because the trial court “explicitly stated that the possession conviction was the *sole* conviction for which defendant would be sentenced, regardless of the other evidence presented by the prosecution.” *Id.* at 9. We reverse this holding.

“[D]ue process bars sentencing courts from finding by a preponderance of the evidence that a defendant engaged in conduct of which he was acquitted.” *People v Beck*, 504 Mich 605, 629 (2019). “ ‘To allow the trial court to use at sentencing an essential element of a greater offense as an aggravating factor, when the presumption of innocence was not, at trial, overcome as to this element, is fundamentally inconsistent with the presumption of innocence itself.’ ” *Id.* at 626-627, quoting *State v Marley*, 321 NC 415, 425 (1988). “An ‘element’ of a crime is any ‘fact[] that increase[s] the prescribed range of penalties to which a criminal defendant is exposed.’ ” *People v McBurrows*, 504 Mich 308, 320 (2019), quoting *Apprendi v New Jersey*, 530 US 466, 490 (2000) (alterations in *McBurrows*).

MCL 333.7401, the possession with intent to deliver statute, makes it illegal to “manufacture, create, deliver, or possess with intent to manufacture, create, or deliver” a controlled substance, MCL 333.7401(1), including methamphetamine, as charged against defendant, MCL 333.7401(2)(b)(i). The jury rejected that defendant was proven guilty of this charge beyond a reasonable doubt and instead found defendant guilty of simple possession of methamphetamine as a lesser included offense.<sup>1</sup> MCL 333.7403, the simple possession statute, makes it illegal to “knowingly or intentionally possess a controlled

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<sup>1</sup> Although we asked the parties to address “whether the jury acquitted the defendant of the principal charge of possession with intent to distribute methamphetamine when it found him guilty of the lesser charge of simple possession,” the record provides thorough support for the conclusion that both parties conceded at defendant’s sentencing that the jury acquitted defendant of possession with intent to deliver. See *People v Wells*, \_\_\_ Mich \_\_\_; 14 NW3d 430 (2024). Accordingly, this order does not address that issue.

substance,” MCL 333.7403(1), in this case, methamphetamine, MCL 333.7403(2)(b)(i). The key elemental difference between the two statutes is the intent to deliver the substance.

Although the trial court noted that it was sentencing defendant only on simple possession, the trial court also explained at sentencing that it believed that defendant had expressed the intent to deliver the substance, despite the jury’s rejection of that charge. In fact, after explaining details of the evidence presented against defendant at trial, the trial court noted that “the fact that there’s also a scale in the safe says volumes about what [the] baggies were going to be used for, and that shows an intent to distribute.” Thus, under the totality of the circumstances, we conclude that the trial court relied on the intent element, the only element differentiating the charge that the jury rejected—possession with intent to deliver—from the one that the jury found defendant guilty of completing beyond a reasonable doubt—simple possession. “Because the sentencing court punished the defendant more severely on the basis of the judge’s finding by a preponderance of the evidence that the defendant committed” possession with intent to deliver, “of which the jury had acquitted him, it violated the defendant’s due-process protections.” *Beck*, 504 Mich at 629.

Such reliance violated defendant’s due-process rights, because it constituted a finding at sentencing of an essential element to a charge that the jury specifically determined was not proven beyond a reasonable doubt. *Id.* at 626, 629. Thus, we hold that the trial court erred when it relied on its own determination that defendant possessed an intent to distribute methamphetamine in imposing defendant’s sentence for his conviction of simple possession, and the Court of Appeals erroneously affirmed that decision.<sup>2</sup> We therefore reverse Part II(C) of the judgment of the Court of Appeals and remand this case to the Ottawa Circuit Court for resentencing.

We do not retain jurisdiction.

HOOD, J., did not participate because the Court considered this case before he assumed office.

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<sup>2</sup> We note that the Court of Appeals has applied *Beck* in multiple published opinions on different facts in the last few years and reached the same conclusion we now reach that resentencing is required when a trial court sentences a defendant on the basis of acquitted conduct. See, e.g., *People v Brown*, 339 Mich App 411, 427 (2021); *People v Kilgore*, \_\_\_ Mich App \_\_\_, \_\_\_ (October 16, 2024) (Docket No. 365881); slip op at 6-7. In reviewing the specific facts of this case, we hold that the trial court erred by sentencing defendant on the basis of an element of a charged offense that the jury rejected.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 9, 2025

Clerk