

MSC Opinion: People v. Szalma

29. August 2010 By Nicole Mazzocco

On August 26, 2010, the Michigan Supreme Court published its opinion in *People v. Szalma*, No. 140021. The Court held that where the trial judge determined that a prosecutor failed to present sufficient evidence to convict the defendant, the double-jeopardy clauses of the United States Constitution and the Michigan Constitution prohibit retrial.

Defendant George Szalma was charged with first-degree criminal sexual conduct based on allegations that he had used his finger to penetrate the anus of his four-year-old son. At trial, the prosecutor and the defense attorney agreed that first-degree criminal sexual conduct required the prosecutor to prove that the defendant acted with sexual intent. Following the prosecutor's case, the defense moved for a directed verdict. The trial court granted the motion, stating that the prosecutor had failed to present any evidence that the defendant acted with sexual intent. The Court of Appeals reversed and remanded for a new trial.

The Michigan Supreme Court granted leave to consider whether the double-jeopardy clauses of the United States Constitution and the Michigan Constitution prevented retrial. The Court noted that the double-jeopardy clauses bar such retrial where "the ruling of the trial judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." The Court then held that trial court's finding that the prosecutor presented no evidence to support sexual intent met this requirement. The prosecutor also asked the Court to consider whether the double-jeopardy bar was affected by fact that sexual intent is not an element of the crime. The Court held this argument waived by the prosecutor's assent to its inclusion at trial.

Justice Cavanaugh, joined by Chief Justice Kelly, concurred. He disagreed with the majority's lengthy analysis, considering the result compelled by United States Supreme Court precedent. The majority believed that these cases were not controlling, but, nonetheless, reached the same conclusion.