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SLIP OPINION NO. 2026-OHIO-3976

THE STATE OF OHIO, APPELLEE, v. THOEN, APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Thoen*, Slip Opinion No. 2026-Ohio-3976.]

Criminal law—Double jeopardy—Whether the Double Jeopardy Clauses of the United States and Ohio Constitutions bar further proceedings depends on whether a defendant has acquired a legitimate expectation of finality in the guilty-plea proceeding and whether concerns of prosecutorial overreach are implicated—Appellant’s guilty plea to an unlawful bill of information could not culminate in a lawful judgment of conviction, and the finality interests were therefore never implicated—Court of appeals’ judgment affirmed.

(No. 2025-0093—Submitted November 18, 2025—Decided October 13, 2026.)

APPEAL from the Court of Appeals for Knox County,

No. 23CA15, 2024-Ohio-5720.

SHANAHAN, J., authored the opinion of the court, which KENNEDY, C.J., and DEWINE, DETERS, and HAWKINS, JJ., joined. FISCHER, J., concurred in judgment only. BRUNNER, J., concurred in judgment only and would hold that retrial was permitted due to manifest necessity.

SHANAHAN, J.

{¶ 1} This appeal asks us to decide whether jeopardy attaches when a trial court unconditionally accepts a criminal defendant’s guilty plea. The United States Constitution provides: “No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const., amend. V. The Ohio Constitution mirrors the United States Constitution, stating: “No person shall be twice put in jeopardy for the same offense.” Ohio Const., art. I, § 10.

{¶ 2} By means of a bill of information, appellant, Daniel Thoen, was charged with, and pleaded guilty to, raping his granddaughter when she was four years old. But Ohio law does not permit the offense with which Thoen was charged to be prosecuted by a bill of information; instead, it must be prosecuted by an indictment.

{¶ 3} After the trial court accepted Thoen’s guilty plea but before it sentenced him, appellee, the State of Ohio, moved to dismiss the bill of information and the trial court granted that motion. Thereafter, the State presented the matter to a grand jury, which returned an indictment charging Thoen with one count of rape of a child under the age of ten in violation of R.C. 2907.02(A)(1)(b). Thoen pleaded not guilty and filed a motion to dismiss the indictment on double-jeopardy grounds, but the trial court denied that motion. Following a bench trial, Thoen was found guilty as charged in the indictment, and his conviction was affirmed on appeal.

{¶ 4} Because the State initially used an unlawful charging instrument against Thoen, jeopardy did not attach to his guilty plea, notwithstanding the fact

that the trial court had accepted that plea. The double-jeopardy protections did not preclude the State from obtaining an indictment and the trial court from proceeding to trial on that indictment. We therefore affirm the judgment of the Fifth District Court of Appeals affirming the trial court's judgment denying Thoen's motion to dismiss the indictment.

I. BACKGROUND

{¶ 5} In 2023, four-year-old Jane Doe communicated with her mother that Thoen, her grandfather, had raped her. Sheriff's detectives interviewed Thoen. He was Mirandized and agreed to speak with them. Thoen confessed to Doe's touching his genitals and placing his penis in her mouth.

{¶ 6} Thoen was charged by complaint in the Mount Vernon Municipal Court with one count of rape of a child less than 13 years of age. The matter was bound over to the Knox County Common Pleas Court. Following bindover, Thoen waived his right to an indictment and agreed to plead guilty to a bill of information charging him with one count of rape in violation of R.C. 2907.02(A)(1)(b).

{¶ 7} The written plea agreement and the plea colloquy advised Thoen that he faced a maximum prison term of 11 years. In fact, Thoen faced a mandatory term of life imprisonment because the offense involved a victim under the age of ten. *See* R.C. 2907.02(B); R.C. 2971.03(A)(2). After the trial court accepted Thoen's guilty plea but before it sentenced him, the State discovered the error and moved to dismiss the bill of information in order to proceed on a lawful charging instrument that accurately reflected the statutory penalties for the offense.

{¶ 8} Following a hearing, the trial court declined to enforce the plea agreement and granted the State's motion to dismiss the bill of information. The State presented the matter to a grand jury, and the grand jury returned an indictment charging Thoen with one count of rape of a child under the age of ten in violation of R.C. 2907.02(A)(1)(b). Thoen pleaded not guilty to the charge and moved to dismiss the indictment on double-jeopardy grounds. The trial court denied Thoen's

motion to dismiss the indictment, finding that jeopardy never attached when Thoen pleaded guilty to the charge in the unlawful bill of information.

{¶ 9} Thoen then waived his right to a jury trial and proceeded to a bench trial. At the conclusion of the testimony, the trial court found Thoen guilty as charged in the indictment, and Thoen was sentenced to a mandatory prison term of 15 years to life and was classified as a Tier III sex offender.

{¶ 10} Thoen appealed. He argued that jeopardy attached the moment the trial court unconditionally accepted his guilty plea to the bill of information. The Fifth District disagreed. It concluded that jeopardy did not attach to Thoen's guilty plea, 2024-Ohio-5720, ¶ 45 (5th Dist.), and that Thoen had no finality interest in his guilty plea or the plea agreement, because the trial court "had no legal authority . . . to impose the illegal-but-agreed-upon sentence," *id.* at ¶ 41.

{¶ 11} Thoen appealed to this court, and we accepted discretionary review on the following two propositions of law:

Proposition of Law I: Jeopardy attaches when a trial court unconditionally accepts a defendant's guilty plea.

Proposition of Law II: If a trial court erroneously accepts a defendant's guilty plea, there is no manifest necessity for the prosecution to dismiss and reindict the case because any such error can be resolved by restoring the parties to their pre-plea positions.

See 2025-Ohio-1090.

{¶ 12} Because we conclude that jeopardy did not attach to Thoen's guilty plea to the bill of information, we do not consider his second proposition of law.

II. ANALYSIS

A. The Double Jeopardy Clauses

{¶ 13} The Double Jeopardy Clauses of the United States and Ohio Constitutions protect against three distinct wrongs. *State v. Gustafson*, 1996-Ohio-299, ¶ 35, citing *United States v. Halper*, 490 U.S. 435, 440 (1989), *abrogated on other grounds by Hudson v. United States*, 522 U.S. 93, 100-103 (1997). Applicable here is the protection from a second prosecution for the same offense following a conviction. See *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). We have said that “[t]he protection provided by the Ohio Constitution’s Double Jeopardy Clause is coextensive with that provided by the Double Jeopardy Clause of the United States Constitution.” *Clark v. Adult Parole Auth.*, 2017-Ohio-8391, ¶ 13.¹

{¶ 14} The United States Supreme Court has not identified in guilty-plea proceedings the precise point at which jeopardy attaches, see *Bally v. Kemna*, 65 F.3d 104, 107 (8th Cir. 1995), or when it terminates, see *United States v. Brune*, 991 F.3d 652, 657 (5th Cir. 2021). The Court has “assume[d] that jeopardy attache[s] at least when [a defendant is] sentenced . . . on his plea of guilty,” *Ricketts v. Adamson*, 483 U.S. 1, 8 (1987), but has also noted that “the taking of a guilty plea is not the same as an adjudication on the merits after full trial,” *Ohio v. Johnson*, 467 U.S. 493, 500, fn. 9 (1984). The Court has also recognized that attachment occurs at the “point in criminal proceedings at which [double-jeopardy] purposes and policies are implicated.” *Serfass v. United States*, 420 U.S. 377, 388 (1975).

{¶ 15} In *Johnson*, the Court articulated what those purposes and policies are. The defendant in *Johnson* pleaded guilty to charges of involuntary

1. We have expressed a willingness to revisit precedent in which this court “has previously, and without analysis,” interpreted a provision of the Ohio Constitution in lockstep with the United States Supreme Court’s interpretation of the United States Constitution. *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 31. But while Thoen mentioned Ohio’s Double Jeopardy Clause both below and in this court in passing, he has made no independent argument regarding the state clause. We thus have no occasion to revisit our caselaw interpreting the meaning of the state clause in lockstep with the federal clause.

manslaughter and grand theft but pleaded not guilty to the more serious charges of murder and aggravated robbery. The trial court accepted the defendant's guilty pleas and dismissed the two more serious charges on the ground that prosecuting the defendant on those charges would violate the federal Double Jeopardy Clause. The Court reversed the trial court's judgment dismissing the two more serious charges, stating that "the principles of finality and prevention of prosecutorial overreaching" that it had applied in *Brown v. Ohio*, 432 U.S. 161 (1977), did not "reach [the] case" and noting that the defendant had "not been exposed to conviction on the charges to which he pleaded not guilty" and that the State had not "had the opportunity to marshal its evidence and resources more than once or to hone its presentation of its case through a trial." *Johnson* at 501. Furthermore, the Court reasoned that "[t]he acceptance of a guilty plea to lesser included offenses while charges on the greater offenses remain[ed] pending . . . [had] none of the implications of an 'implied acquittal' which results from a verdict convicting a defendant on lesser included offenses rendered by a jury charged to consider both greater and lesser included offenses." *Id.* at 501-502. And the Court added that "[t]here simply [had] been none of the governmental overreaching that double jeopardy is supposed to prevent." *Id.* at 502.

{¶ 16} Despite the Court's holding in *Johnson*, the federal courts of appeals have adopted differing approaches as to when jeopardy attaches and terminates in guilty-plea proceedings. Some federal courts of appeals have held that jeopardy ordinarily attaches when a trial court unconditionally accepts a guilty plea. *See, e.g., United States v. Ursery*, 59 F.3d 568, 571 (6th Cir. 1995) (noting that "jeopardy attaches to a guilty plea pursuant to a plea agreement upon the *court's acceptance* of the plea agreement" [emphasis in original]), *rev'd on other grounds*, 518 U.S. 267 (1996); *United States v. Patterson*, 381 F.3d 859, 865 (9th Cir. 2004); *Morris v. Reynolds*, 264 F.3d 38, 49 (2d Cir. 2001). Another federal appellate court has noted that while jeopardy ordinarily attaches to a guilty plea, "[a] fatal defect in an

indictment may permit a second indictment.” *United States v. McIntosh*, 580 F.3d 1222, 1228 (11th Cir. 2009).

{¶ 17} Yet other federal courts of appeals have more clearly recognized that the unconditional acceptance of a guilty plea does not automatically mean that jeopardy has attached. *See Bally*, 65 F.3d at 108 (collecting cases from several federal courts that have “questioned the rationale of cases holding that jeopardy attaches upon acceptance of a guilty plea”). For example, the United States Court of Appeals for the Fifth Circuit has recognized that “*Johnson* . . . ‘provided a framework . . . for determining whether jeopardy attaches when a defendant pleads guilty’ ” and that “[c]ourts must examine ‘the twin aims of the Double Jeopardy Clause: protecting a defendant’s finality interests and preventing prosecutorial overreaching.’ ” (Second ellipsis in original.) *Brune*, 991 F.3d at 665, quoting *United States v. Patterson*, 406 F.3d 1095, 1097 (9th Cir. 2005) (Kozinski, J., dissenting).

{¶ 18} We find the two-prong framework established in *Johnson*, 467 U.S. 493, persuasive because it correctly focuses on the interests protected by the federal Double Jeopardy Clause rather than treating every unconditionally accepted guilty plea as constitutionally equivalent to a final judgment after trial.

{¶ 19} The finality interests protected by the federal Double Jeopardy Clause arise from a defendant’s legitimate expectation that a criminal proceeding has reached its lawful conclusion. *See Brown*, 432 U.S. at 165, quoting *United States v. Jorn*, 400 U.S. 470, 479 (1971) (plurality opinion) (“Where successive prosecutions are at stake, the guarantee serves ‘a constitutional policy of finality for the defendant’s benefit.’ ”); *United States v. DiFrancesco*, 449 U.S. 117, 128 (1980), quoting *Crist v. Bretz*, 437 U.S. 28, 33 (1978) (a “‘primary purpose’ of the Clause [is] ‘to preserve the finality or integrity of judgments’ ”). Those interests are strongest following an acquittal or a final judgment of conviction because the defendant is entitled to rely on the disposition as ending the prosecution. *See*

Johnson at 501-502 (noting that the acceptance of a guilty plea to lesser included offenses while the charges on the greater offenses remained pending had “none of the implications of an ‘implied acquittal’ which results from a verdict convicting a defendant on lesser included offenses rendered by a jury charged to consider both greater and lesser included offenses”).

{¶ 20} By the same token, concerns of prosecutorial overreach—which arise “from attempts to secure additional punishment after a prior conviction and sentence,” *Brown* at 166, citing *Green v. United States*, 355 U.S. 184, 187-188 (1957)—are low when the State is merely continuing a prosecution that has not reached a lawful conclusion and the State never had its “right to one full and fair opportunity to convict those who [had] violated its laws,” *Johnson*, 467 U.S. at 502; accord *DiFrancesco* at 128 (noting that implicit in the prohibition against successive trials is the prevention of the government from reprosecuting after gaining an advantage from what it learned at the first trial).

{¶ 21} The Fifth Circuit’s decision in *Brune*, 991 F.3d 652, exemplifies these two considerations. The defendant’s indictment in *Brune* referenced the wrong offense, but the defendant pleaded guilty to the correct offense. After the trial court accepted the defendant’s plea, it noted the wrong charge in its recommendation and acceptance of the plea and issued a presentence-investigation report with a maximum prison term under the wrong charge. The government asked the trial court to modify its order to reflect the defendant’s plea to the correct charge. The trial court rejected the defendant’s double-jeopardy argument and amended its order to reflect the defendant’s plea to the correct charge.

{¶ 22} Applying the two-prong framework from *Johnson*, the Fifth Circuit held that jeopardy did not attach to the defendant’s guilty plea. *Brune* at 663-665. It held that the defendant had no finality interest, because the mere acceptance of the defendant’s guilty plea did “not carry the same expectation of finality and tranquility that comes with a jury’s verdict” and “the government [had] had no

opportunity to marshal evidence . . . because the plea proceedings ‘[did] not involve the ordeal of a trial’ ” (second bracketed text in original), *id.* at 665, quoting *United States v. Santiago Soto*, 825 F.2d 616, 618 (1st Cir. 1987). The Fifth Circuit also considered that the defendant could have foreseen a prosecution under the correct charge because he referenced the correct charge in his plea, and it found no concern of prosecutorial overreach, because the government did not bring new charges against the defendant after agreeing to a plea agreement and the government had not had an opportunity to convict the defendant on the correct charge. *See id.*; *see also Santiago Soto* at 620 (jeopardy did not attach despite concerns of prosecutorial overreach when the defendant lacked a finality interest in a guilty plea that the trial court initially accepted but then rejected in the same hearing).

{¶ 23} Ohio precedent does not dictate a contrary result. In *State ex rel. Leis v. Gusweiler*, this court held that jeopardy attached after a trial court accepted a no-contest plea and entered a finding of guilt. 65 Ohio St.2d 60, 61 (1981). In *Leis*, however, the trial court did more than accept the defendant’s no-contest plea—it resolved the factual elements of the charged offense against the State and found the defendant guilty of the lesser included offense of attempted rape. *Id.* Here, by contrast, Thoen pleaded guilty and the trial court accepted his plea without making any comparable adjudication of the facts. Our holding in *Leis* also arose in the context of a valid indictment, not a prosecution initiated on a charging instrument not authorized under Ohio law. We therefore did not address in *Leis* whether jeopardy attaches when the trial court unconditionally accepts a guilty plea but lacks authority to conclude the prosecution through a lawful judgment of conviction. Thus, *Leis* involved materially different circumstances and does not resolve the question presented here.

B. Application to This Case

{¶ 24} We review de novo a trial court’s judgment denying a motion to dismiss an indictment on double-jeopardy grounds because it presents a pure question of law. *State v. Mutter*, 2017-Ohio-2928, ¶ 13.

{¶ 25} Thoen argues that jeopardy attached when he pleaded guilty to the bill of information because the trial court unconditionally accepted his plea and the acceptance of his plea constituted a conviction for double-jeopardy purposes. But “the taking of a guilty plea is not the same as an adjudication on the merits after full trial.” *Johnson*, 467 U.S. at 500, fn. 9. The unconditional acceptance of a guilty plea does not necessarily carry the same constitutional consequences or implicate the same interests as a guilty verdict following a trial.

{¶ 26} This case does not arise from a completed prosecution that culminated in a lawful judgment of conviction. Nor could it. Because the prosecution initially proceeded on a charging instrument that Ohio law did not authorize, the trial court’s unconditional acceptance of Thoen’s guilty plea to the unlawful bill of information could not culminate in a lawful judgment of conviction. Accordingly, the interests of finality and prosecutorial overreach protected by the federal and state Double Jeopardy Clauses were never implicated.

{¶ 27} The offense with which Thoen was charged carries a mandatory term of life imprisonment. *See* R.C. 2907.02(B); R.C. 2971.03(A)(2). Such an offense must proceed by way of indictment, a requirement that cannot be waived. *See* Crim.R. 7(A) (“A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. . . .”); R.C. 2941.021 (“Any criminal offense which is not punishable by death or life imprisonment may be prosecuted by information filed in the common pleas court by the prosecuting attorney if the defendant . . . waives in writing and in open court prosecution by indictment.”). The implication of R.C. 2941.021 is that a criminal offense that is punishable by death or life

imprisonment may not be prosecuted by a bill of information, because the right to an indictment cannot be waived in those circumstances. *Accord* Crim.R. 7(A).

{¶ 28} Thoen was charged by means of a bill of information rather than an indictment, and he could not waive his right to be properly charged by an indictment. Such a defect would have made a judgment of conviction on the bill of information voidable on direct appeal. *See State ex rel. Beaucamp v. Lazaroff*, 1997-Ohio-277, ¶ 5 (the manner by which a defendant is charged is procedural rather than jurisdictional); *State v. Harper*, 2020-Ohio-2913, ¶ 26 (procedural errors, including errors in the exercise of jurisdiction, render a court’s judgment “voidable” and can be raised only on direct appeal). Because Ohio law did not authorize the prosecution of Thoen by means of a bill of information, the trial court lacked authority to enter a lawful judgment of conviction on that charging instrument. *See Smith v. United States*, 360 U.S. 1, 10 (1959).

{¶ 29} Considering this defect in the charging instrument, neither the State nor Thoen could reasonably expect the guilty-plea proceeding to produce a lawful and final disposition that would implicate the finality interests of the federal and state Double Jeopardy Clauses. Because Thoen could have argued on direct appeal that his guilty plea was voidable because of the defective charging instrument, *see* Crim.R. 7(A), he had no legitimate expectation that his guilty plea would lead to a lawful conclusion and, therefore, jeopardy did not attach, *see Johnson*, 467 U.S. at 501-502; *Brown*, 432 U.S. at 165. Accordingly, Thoen’s guilty plea to the bill of information had “none of the implications of an ‘implied acquittal,’ ” *Johnson* at 502, and did not carry with it “‘the finality and tranquility that comes with a jury’s verdict,’ ” *Brune*, 991 F.3d at 665, quoting *Santiago Soto*, 825 F.2d at 620, because it was not a lawful judgment of conviction under Ohio law. Nor did the State have “the opportunity to marshal its evidence and resources more than once or to hone its presentation of its case through a trial,” *Johnson* at 501, because Thoen’s guilty-plea proceedings “[did] not involve the ordeal of a trial,” *Brune* at 665, quoting

Santiago Soto at 618. Under these circumstances, the finality interest of the Double Jeopardy Clauses did not arise. *See Johnson* at 501-502.

{¶ 30} Regarding the second prong of the *Johnson* framework, i.e., prevention of prosecutorial overreach, no prosecutorial overreach was present here to animate double-jeopardy concerns. The State did not obtain a second opportunity to gather evidence, refine its theory of prosecution, or gain an unfair preview of the defense’s case. *See DiFrancesco*, 449 U.S. at 128, quoting *Burks v. United States*, 437 U.S. 1, 11 (1978) (“‘central to the objective of the prohibition against successive trials’ is the barrier to ‘affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding’ ”). Indeed, the factual basis for the rape charge against Thoen remained unchanged throughout the proceedings. The State also did not seek dismissal of the bill of information to avoid an anticipated acquittal, obtain a tactical advantage, or subject Thoen to repeated attempts at a conviction, *see generally Johnson* at 501-502, and the State did not “attempt[] to secure additional punishment after a prior conviction *and* sentence” (emphasis added), *Brown* at 166. Rather, the State sought only to ensure that its prosecution of Thoen proceeded on a correct charging instrument capable of producing a lawful judgment of conviction so that it could fulfill its “one full and fair opportunity to convict” a person who had violated its laws, *Johnson* at 502.

{¶ 31} Neither the finality interests nor the concern of prosecutorial overreach implicated by the Double Jeopardy Clauses “reach this case,” *id.* at 501, because Thoen’s guilty plea to the bill of information was not authorized by Ohio law. Accordingly, jeopardy did not attach to Thoen’s guilty plea to that charging instrument. The trial court correctly dismissed the bill of information and proceeded to trial on the indictment, and the court of appeals correctly affirmed the trial court’s judgment denying Thoen’s motion to dismiss the indictment.

III. CONCLUSION

{¶ 32} Jeopardy does not automatically attach when a trial court unconditionally accepts a defendant's guilty plea. Rather, whether the Double Jeopardy Clauses of the United States and Ohio Constitutions bar further proceedings depends on whether the defendant has acquired a legitimate expectation of finality in the guilty-plea proceeding and whether concerns of prosecutorial overreach are implicated. Neither interest arose here because the trial court accepted Thoen's guilty plea to a bill of information not authorized by Ohio law. Accordingly, the Double Jeopardy Clauses did not preclude the State from proceeding to trial on a valid indictment. Therefore, we affirm the judgment of the Fifth District Court of Appeals affirming the trial court's judgment denying Thoen's motion to dismiss the indictment.

Judgment affirmed.

Charles T. McConville, Knox County Prosecuting Attorney, for appellee.

Elizabeth R. Miller, Ohio Public Defender, and R. Jessica Manungo and Max Hersch, Assistant Public Defenders, for appellant.

D. Andrew Wilson, Attorney General, Mathura J. Sridharan, Solicitor General, and Samuel C. Peterson, Deputy Solicitor General, urging affirmance for amicus curiae, Ohio Attorney General D. Andrew Wilson.
