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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 09, 2026 12:18 PM
v	No. 371445 Osceola Circuit Court
RICHARD SHAWN SHOEMAKER, Defendant-Appellant.	LC No. 2023-006215-FC

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

PER CURIAM.

Defendant, Richard Shawn Shoemaker, appeals by right following his convictions on three counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(2)(b) (sexual penetration of a victim less than 13 years old by a perpetrator 17 years of age or older). Defendant argues that his prosecution in this case violated his right against double jeopardy because he was previously acquitted of CSC-I charges involving the same victim in a separate case. For the reasons stated in this opinion, we disagree with defendant's arguments and therefore affirm.

I. BACKGROUND AND FACTS

In 2022, defendant was charged and tried in a separate criminal case on seven counts of CSC-I for conduct that allegedly occurred between 2002 and 2008 when the victim was under the age of 13. After a two-day jury trial in that case, the trial court granted defendant's motion for a directed verdict because, among other issues, the prosecution had charged defendant under a version of the statute that did not take effect until 2008[1] and the trial court could not, based on the

[1] MCL 750.520b, as amended by 2007 PA 163, took effect on July 1, 2008.

evidence presented, differentiate between alleged conduct that was governed by the statute and alleged conduct that took place before the statute took effect.

The prosecution then charged defendant in this case with three counts of CSC-I for conduct that occurred only in 2009 and 2010, when the victim was still under the age of 13.[2] At the outset of the case, defendant moved to dismiss the charges on grounds that the trial would violate his protection against double jeopardy given that he had received a directed verdict in the 2022 case. The trial court denied the motion but cautioned the prosecution to confine testimony to the date range specified in the amended complaint. After being convicted as charged, defendant reiterated his double-jeopardy claim in a motion for new trial and also contended that he received ineffective assistance of trial counsel. Although the trial court again rejected defendant's double-jeopardy argument, following a *Ginther* hearing the trial court vacated defendant's convictions and ordered a new trial on the basis that defendant received ineffective assistance of trial counsel. As for the double-jeopardy argument, the trial court reasoned that because "no real specific incidents were testified to in the first trial"—rather, the victim testified that the "this type of behavior" had occurred hundreds of times—and because the trial court had limited the timeframe for the testimony in the present case,[3] the three new CSC-I charges were not barred by the right against double jeopardy.

Defendant now appeals the trial court's decision regarding double jeopardy.

II. JURISDICTION

Before addressing the merits, we address whether we have jurisdiction over defendant's appeal. Defendant raises two related but legally distinct issues: (1) that his second trial violated his right against double jeopardy, and (2) that a retrial on the vacated counts would violate his right against double jeopardy. In order for this Court to have jurisdiction over defendant's claim of appeal, defendant must be appealing from a "final judgment" or "final order" of the circuit court. MCR 7.203(A)(1). Under MCR 7.202(6)(*ii*), a "final judgment" or "final order" in a criminal case is defined as "the original sentence imposed following a conviction." Because the first issue raised by defendant stems from his convictions, under MCR 7.203(A)(1) and MCR 7.202(6)(*ii*) we have jurisdiction to consider this issue.

Given that defendant's convictions have been vacated, however, we must also evaluate whether the issue is now moot, as "appellate courts will sua sponte refuse to hear cases that they do not have the power to decide" such as one in which judgment "cannot have any practical legal effect upon a then existing controversy." *People v Richmond*, 486 Mich 29, 35; 782 NW2d 187 (2010) (citation and quotation marks omitted). We conclude that the issue is not moot because, as

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[2] The prosecution initially charged defendant with four counts of CSC-I arising from conduct that was alleged to have occurred on dates from 2009 to 2011, but dismissed one of the counts before the arraignment.

[3] The trial court's order states that the testimony was limited to incidents "between January 1, 2009 and August 11, 2011." However, this appears to be a scrivener's error, as the date range in the amended information was January 1, 2009 to August 11, *2010*.

the prosecution acknowledges, given that defendant faces the prospect of retrial, the issue of whether the prosecution in this case was barred by the right against double jeopardy bears on whether retrial on the same charges is possible. Simply put, if defendant prevails on his double-jeopardy claim, then he is entitled to a judgment of acquittal and cannot be retried. Therefore, the outcome of this appeal *can* have a practical legal effect upon an existing controversy. See *id.*

Defendant's second issue—whether in the future, retrial would be barred by the right against double jeopardy—does not directly arise from any final judgment or final order of the circuit court. See MCR 7.203(A)(1); MCR 7.202(6)(*ii*). Thus, somewhat paradoxically, we are without jurisdiction to decide it. We acknowledge, however, that as a practical matter, addressing the first issue necessarily resolves the second, because, as stated, if defendant's prosecution violated his right against double jeopardy, then a future trial on the same charges would also be barred.

III. STANDARD OF REVIEW

"A double-jeopardy challenge presents a question of law that we review de novo." *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

IV. ANALYSIS

Defendant contends that his second trial was barred by the Double Jeopardy Clause. We disagree.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no "person be subject for the same offence to be twice put in jeopardy of life or limb . . . ." US Const, Am V. The Michigan Constitution contains a similar provision: "No person shall be subject for the same offense to be twice put in jeopardy." Const 1963, art 1, § 15.

In *Ashe v Swenson*, 397 US 436, 443, 445; 90 S Ct 1189; 25 L Ed 2d 469 (1970), the United States Supreme Court held that the principle of collateral estoppel—which "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit"—is "embodied in the Fifth Amendment guarantee against double jeopardy." Accordingly, "the prohibition against double jeopardy . . . protects against a second prosecution for the same offense" after an acquittal or a conviction, a principle also known as the " 'successive prosecutions' strand of double jeopardy." *People v Miller*, 498 Mich 13, 17; 869 NW2d 204 (2015) (citation modified).

At issue in this case is whether defendant was improperly prosecuted for the same offenses after being acquitted in a previous case. Defendant argues that because he received a directed verdict on the CSC-I charges in the 2022 case, prosecuting him for CSC-I in this case is unconstitutional.

As stated, the Double Jeopardy Clause prohibits prosecution of the same offenses, but different conduct necessarily indicates different offenses. See *People v Tobey*, 401 Mich 141, 149; 257 NW2d 537 (1977) (holding that although the defendant's "conduct in selling heroin on different days to the same person is substantially similar conduct, it's not the same conduct or act. For double jeopardy . . . purposes each sale is separate conduct, a separate act and transaction,

and . . . a separate and distinct criminal offense."), overruled in part on other grounds by *People v Williams*, 483 Mich 226; 769 NW2d 605 (2009). Further, we have observed that when "interpreting the first-degree criminal sexual conduct statute, Michigan courts have consistently held that the Legislature intended to punish separately each criminal sexual penetration." *People v Wilson*, 196 Mich App 604, 608; 493 NW2d 471 (1992). Therefore, the Double Jeopardy Clause does not prohibit prosecution when the charges concern different conduct and different incidents of sexual penetration.

Defendant relies on *Ashe* for the proposition that when "a previous judgment of acquittal was based upon a general verdict," applying the rule against collateral estoppel in the criminal context

> requires a court to examine the record of the prior proceeding, taking into account the pleadings, evidence, charge and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. The inquiry must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings. [*Ashe*, 397 US at 444 (quotation marks and citation omitted).]

Thus, defendant focuses his argument on the testimony provided by the victim at the first trial. Defendant specifically highlights that the prosecutor elicited (albeit somewhat contradictory) testimony that the victim was assaulted when she was 12 years old, which, given the victim's age, would have occurred sometime between 2009 and 2010. Thus, defendant reasons, the testimony spilled outside the confines of the charged incidents between 2002 and 2008 and infringed on the period charged in the instant trial, which concerned conduct occurring in 2009 and 2010. As a result, he argues, double-jeopardy protections under *Ashe* apply.

We disagree with defendant's analysis. Again, the successive-punishment strand of double jeopardy "protects against a second *prosecution* for the same offense." *Miller*, 498 Mich at 17 (emphasis added). In the 2022 trial, defendant was not being *prosecuted* for any offenses that occurred in 2009 or 2010, the timeframe of the alleged incidents charged in this case. Instead, the charges were confined to offenses allegedly committed during the period between 2002 and 2008. Indeed, when the trial court read the charges to the jury in the 2022 trial, it advised the jury that defendant was charged with seven counts of CSC-I "on or about 2002 to 2008." Thus, the charges in the 2022 trial and this trial did not overlap. We need not examine whether evidence adduced at the first trial implicated the charges in this case, because regardless of the testimony elicited, defendant could not then have been convicted for any conduct occurring in 2009 or 2010.

In *Ashe*, the Supreme Court determined that the defendant's right against double jeopardy was violated when he was tried twice regarding a robbery at a poker game that occurred on January 10, 1960. *Id.* at 438-439, 445-446. The defendant was initially tried and acquitted for the robbery of one of the participants of the poker game and then tried again (and ultimately convicted) for robbing another participant of the poker game during the same incident. *Id.* Because in the first trial, the "single rationally conceivable issue in dispute before the jury was whether the petitioner had been one of the robbers" in the January 10, 1960 incident, the Double Jeopardy Clause barred the defendant's retrial for the robbery. *Id.* at 445.

In this case, by contrast, the same "issue" was not in dispute before the jury, because, as discussed, the timeframes of the charged offenses differed. The charges in each case thus concerned different conduct and different incidents of sexual penetration, which are separately punishable. See *Wilson*, 196 Mich App at 608. Whether some of the testimony implicated a duplicative timeframe is of no moment. Accordingly, defendant's trial in this case was not barred by the guarantee against double jeopardy.

Affirmed.

/s/ Randy J. Wallace
/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin