

COURT OF APPEALS OF OHIO, THIRD APPELLATE DISTRICT, MARION COUNTY

State v. Moore

2026-Ohio-167 (3d Dist. Jan. 20, 2026) · No. 9-24-56 · Decided January 20, 2026

SUMMARY

The Ohio Third District Court of Appeals affirmed Gerry L. Moore’s conviction and 11-year prison sentence for conspiracy to commit aggravated murder. The court held that the law-of-the-case doctrine barred reconsideration of Moore’s double-jeopardy argument because the issue had been decided in his prior interlocutory appeal. The court concluded that improper venue in the prior Erie County proceedings did not trigger double jeopardy and affirmed the Marion County judgment.

CASE DETAILS

COURT	Court of Appeals of Ohio, Third Appellate District, Marion County
WRITING FOR THE COURT	William R. Zimmerman; John R. Willamowski; Juergen A. Waldick
JURISDICTION	Ohio Court of Appeals, Third Appellate District, Marion County
DECIDED	January 20, 2026
DOCKET	9-24-56
DISPOSITION	affirmed
PROCEDURAL POSTURE	Moore appealed from the October 24, 2024 sentencing judgment of the Marion County Court of Common Pleas, arguing that the trial court erred by failing to dismiss the case on double-jeopardy grounds.
STANDARD OF REVIEW	The court applied the law-of-the-case doctrine and reviewed whether extraordinary circumstances or injustice warranted reconsideration of the prior appellate decision.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Gerry L. Moore v. State of Ohio

TOPICS

- double jeopardy criminal procedure appellate procedure interlocutory appeal sentencing

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the law-of-the-case doctrine barred Moore from relitigating his double-jeopardy challenge after the Third District had rejected the same challenge in his prior interlocutory appeal.
2. Whether the prior prosecution's termination for improper venue barred the Marion County prosecution under the Double Jeopardy Clause.

HOLDINGS

1. The law-of-the-case doctrine barred reconsideration of Moore's double-jeopardy challenge because the issue had been fully briefed, argued, and decided in the prior interlocutory appeal, and no extraordinary circumstances or injustice warranted departure from that decision.
2. A judicial determination that venue is improper does not trigger double jeopardy and therefore does not bar retrial of the charges in the proper venue.

KEY QUOTATIONS

“The doctrine of the law of the case provides that “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.”” (¶ 8)

“Since the issue of double jeopardy was fully briefed, argued and decided in Moore’s interlocutory appeal, we adhere to the law-of-the-case doctrine and decline to revisit our prior decision.” (¶ 11)

FACTUAL BACKGROUND

Moore was indicted in Marion County for conspiracy to commit aggravated murder, attempted aggravated murder, conspiracy to commit kidnapping, and attempted kidnapping, with repeat-violent-offender specifications. The charges arose after an earlier Erie County prosecution was vacated because venue was improper, and Moore argued that retrying him in Marion County violated double jeopardy. After the trial court denied his motion to dismiss, Moore pleaded guilty to conspiracy to commit aggravated murder in exchange for dismissal of the remaining counts and specifications and received an eleven-year prison sentence.

PROCEDURAL HISTORY

Moore was indicted in Marion County on conspiracy and attempted aggravated-murder and kidnapping charges. After an earlier Erie County prosecution was vacated for improper venue and Moore was reindicted in Marion County, the trial court denied his motion to dismiss on double-jeopardy grounds. Moore previously pursued an interlocutory appeal, in which the Third District affirmed. He later pleaded guilty to conspiracy to commit aggravated murder under a negotiated plea agreement and was sentenced to eleven years in prison. In this appeal from the sentencing judgment, the Third District applied the law-of-the-case doctrine and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The cause was remanded to the trial court solely for execution of the judgment for appellate costs, and the court directed the clerk to certify the opinion and judgment entry as the mandate under App.R. 27 and serve them under App.R. 30.

CASES CITED

- State v. Saxon, 2006-Ohio-1245, ¶ 18
- Nolan v. Nolan, 11 Ohio St.3d 1, 3-5 (1984)
- State v. Morrissey, 2022-Ohio-3519, ¶ 11 (3d Dist.)
- State v. Moore, 2024-Ohio-1736, ¶ 5-6, 42-43 (3d Dist.)
- State v. Moore, 2022-Ohio-1460, ¶ 1
- United States v. Smith, 599 U.S. 236, 252-254 (2023)

OPINION

PER CURIAM.

[Cite as State v. Moore, 2026-Ohio-167.] IN THE COURT OF APPEALS OF OHIO THIRD APPELLATE DISTRICT MARION COUNTY STATE OF OHIO, CASE NO. 9-24-56 PLAINTIFF-APPELLEE, v. GERRY L. MOORE, OPINION AND JUDGMENT ENTRY DEFENDANT-APPELLANT. Appeal from Marion County Common Pleas Court General Division Trial Court No. 22-CR-380 Judgment Affirmed Date of Decision: January 20, 2026 APPEARANCES: W. Joseph Edwards for Appellant Kristin R. Palmer for Appellee Case No. 9-24-56 ZIMMERMAN, P.J. {¶1} Defendant-appellant, Gerry L. Moore (“Moore”), appeals the October 24, 2024 judgment entry of sentencing of the Marion County Court of Common Pleas.

For the reasons that follow, we affirm. {¶2} On June 29, 2022, the Marion County Grand Jury indicted Moore on Count One of conspiracy to commit aggravated murder in violation of R.C. 2923.01(A)(1), (J)(1), a first-degree felony; Count Two of attempted aggravated murder in violation of R.C. 2923.02/2903.01(A) and R.C. 2929.02(A), a first-degree felony; Count Three of conspiracy to commit kidnapping in violation of R.C.

2923.01(A)(1), (J)(2), a second-degree felony; and Count Four of attempted kidnapping in violation of R.C. 2923.02/2905.01(A)(3), (C)(1), a second-degree felony. All four counts of the indictment included a repeat-violent-offender specification under R.C. 2941.149(A). Moore appeared for arraignment on August 18, 2022, and entered pleas of not guilty. {¶3} On February 17, 2023, Moore filed a motion to dismiss based on double-jeopardy grounds, which the trial court denied.

On April 11, 2023, Moore filed an interlocutory appeal of the trial court’s judgment denying his motion to dismiss.¹ *State v. Moore*, 2024-Ohio-1736, ¶ 8 (3d Dist.). In that interlocutory appeal, we affirmed the trial court’s judgment. *Moore* at ¶ 43. 1 In Moore’s interlocutory appeal, we set forth the extensive factual and procedural background of this case, and we will not duplicate those efforts here. -2- Case No. 9-24-56 {¶4} On October 10, 2024, Moore withdrew his pleas of not guilty and entered a guilty plea, under a negotiated-plea agreement, to Count One of the indictment.

In exchange for Moore’s guilty plea, the State agreed to dismiss Counts Two, Three, and Four. The State further agreed to dismiss the repeat-violent-offender specifications on all four counts. The guilty plea was subsequently vacated by the trial court because Moore was not advised that the offense charged in Count One carried mandatory prison time. {¶5} On October 23, 2024, Moore again entered a guilty plea, under a negotiated-plea agreement, to Count One of the indictment.

In exchange for Moore’s guilty plea, the State agreed to dismiss Counts Two, Three, and Four and the repeat-violent-offender specifications on all four counts. The trial court conducted a Crim.R. 11 colloquy, accepted Moore’s guilty plea, found him guilty, and sentenced Moore to 11 years in prison for conspiracy to commit aggravated murder. {¶6} On November 15, 2024, Moore filed a notice of appeal, raising a single assignment of error for our review.

Assignment of Error The Trial Court Erred When It Failed To Dismiss This Case Based On Double Jeopardy Grounds. {¶7} In his sole assignment of error, Moore argues that the trial court erred by failing to dismiss this case based on double-jeopardy grounds.

In response, the -3- Case No. 9-24-56 State points out Moore’s failure to acknowledge that he previously filed an interlocutory appeal from the trial court’s denial of his motion to dismiss. The State argues that the law-of-the-case doctrine precludes us from reconsidering the double-jeopardy issue already decided in *State v. Moore*, 2024-Ohio-1736 (3d Dist.).

We agree. Standard of Review {¶8} The doctrine of *res judicata* “promotes the principles of finality and judicial economy by preventing endless relitigation of an issue on which a defendant has already received a full and fair opportunity to be heard.” *State v. Saxon*, 2006- Ohio-1245, ¶ 18. Similarly, the doctrine of the law of the case provides that “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *Nolan v. Nolan*, 11 Ohio St.3d 1, 3 (1984). “The doctrine is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results.” *Nolan* at 3.

Therefore, “[t]he decision of an appellate court in a prior appeal will ordinarily be followed in a later appeal in the same case and court.” *Id.* at 4. See *State v. Morrissey*, 2022-Ohio- 3519, ¶ 11 (3d Dist.) (applying the law-of-the-case doctrine in the appellant’s later appeal and declining to

revisit the decision made on the issue of merger in appellant's prior appeal). -4- Case No. 9-24-56 Analysis {¶9} In the instant appeal, Moore claims that he was improperly subjected to double jeopardy.

Specifically, Moore argues that he "was originally tried in Erie County for the same incident" and "the Erie County case was dismissed by the Supreme Court of Ohio."² (Appellant's Brief at 4). According to Moore, "[a]fter the case was dismissed, it should not have been retried in Marion County." (Id.). {¶10} Moore's arguments pertaining to double jeopardy were fully briefed, argued and decided by this court in *State v. Moore*, 2024-Ohio-1736 (3d Dist.).

In *Moore*, we concluded that the trial court did not err by denying Moore's motion to dismiss based on double-jeopardy grounds. *Moore* at ¶ 42. In reaching our decision, we noted that the Sixth District Court of Appeals vacated Moore's convictions for conspiracy to commit aggravated murder and attempted aggravated murder due to improper venue in Erie County, and the Supreme Court of Ohio affirmed the Sixth District's decision.

Id. at ¶ 5-6. After Moore was reindicted on the charges of conspiracy to commit aggravated murder and attempted aggravated murder in Marion County—and the trial court subsequently denied his motion to dismiss, we concluded that "[a] judicial determination that venue is improper does not trigger the double jeopardy clauses and does not, therefore, bar a retrial of the charges in 2 We note that the Supreme Court of Ohio did not "dismiss" the case as alleged by Moore.

Rather, the Supreme Court of Ohio affirmed the judgment of the Sixth District Court of Appeals that venue was improper in Erie County. *State v. Moore*, 2022-Ohio-1460, ¶ 1. -5- Case No. 9-24-56 the proper venue." *Id.* at ¶ 42, citing *United States v. Smith*, 599 U.S. 236, 252-254 (2023). {¶11} Under the law-of-the-case doctrine, the decision of an appellate court in a prior appeal will ordinarily be followed in a later appeal in the same case and court absent extraordinary circumstances.

Nolan, 11 Ohio St.3d at 4-5. Since the issue of double jeopardy was fully briefed, argued and decided in Moore's interlocutory appeal, we adhere to the law-of-the-case doctrine and decline to revisit our prior decision.

We see no reason to disturb this court's earlier decision rejecting Moore's arguments regarding double jeopardy. This case does not present any extraordinary circumstances to warrant reexamination of the issues decided in the interlocutory appeal.

Moreover, this court's adherence to the law-of-the-case doctrine will not cause any injustice under the facts and circumstances of this case. {¶12} Accordingly, Moore's sole assignment of error is overruled. {¶13} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court. Judgment Affirmed WILLAMOWSKI and WALDICK, J.J., concur. -6- Case No. 9-24-56 JUDGMENT ENTRY For

the reasons stated in the opinion of this Court, the assignment of error is overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered.

The cause is hereby remanded to the trial court for execution of the judgment for costs. It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket.

See App.R. 30. William R. Zimmerman, Judge John R. Willamowski, Judge Juergen A. Waldick,
Judge DATED: /hls -7-