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Criminal Law: The Tension between Finality and Accuracy: Double Jeopardy in Guilty Pleas—State v. Jeffries

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CRIMINAL LAW: THE TENSION BETWEEN FINALITY AND ACCURACY: DOUBLE JEOPARDY IN GUILTY PLEAS—*STATE V. JEFFRIES*

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I. INTRODUCTION

The Double Jeopardy Clause protects defendants against multiple prosecutions or punishments by the government for the same offense.[1] Traditionally, and most often, double-jeopardy concerns arise when the court subjects defendants to multiple trials.[2] When a defendant is in danger of twice being put in jeopardy, the policies of finality[3] and the policies against governmental overreaching[4] invoke enforcement of the Double Jeopardy Clause, barring the government from harassing the defendant with multiple prosecutions or punishments.[5] But when a final judgment in the form of an acquittal, conviction, or punishment does not materialize in the proceeding, jeopardy continues until a final result occurs.[6]

The Minnesota Supreme Court recently held in *State v. Jeffries*[7] that the Double Jeopardy Clause bars a second plea agreement after the trial court unconditionally accepts and records the first guilty plea.[8] The court also held that a guilty plea does not forfeit[9] a defendant's right to plead double jeopardy, because the Constitution precludes multiple prosecutions and punishments for the same offense, regardless of a defendant's admission of guilt.[10]

1. *See Ex parte* Lange, 85 U.S. 163, 169 (1873).

2. *See* 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1781, at 659–60 (Fred B. Rothman & Co. 1991) (1833).

3. Brown v. Ohio, 432 U.S. 161, 165 (1977) (quoting United States v. Jorn, 400 U.S. 470, 479 (1971) (plurality opinion) (articulating the "constitutional policy of finality for the defendant's benefit")).

4. Ohio v. Johnson, 467 U.S. 493, 502 (1984).

5. Crist v. Bretz, 437 U.S. 28, 38 (1978); *accord* State v. Thomas, 995 A.2d 65, 71 (Conn. 2010) ("The policy justifications for prohibiting successive prosecutions include: (1) furthering society's interest in protecting the integrity of final judgments; and (2) protecting individuals from prosecutorial overreaching and the continued embarrassment, anxiety and expense associated with repeated attempts to convict." (citation omitted)).

6. Akhil Reed Amar, *Double Jeopardy Law Made Simple*, 106 YALE L.J. 1807, 1839–40 (1997).

7. 806 N.W.2d 56 (Minn. 2011).

8. *Id.* at 64.

9. Some case law has used the term "waiver" instead of "forfeiture" regarding the effect of a guilty plea on the constitutional rights of defendants, but the *Jeffries* opinion clarifies that the term "forfeit" is more accurate, relying on the U.S. Supreme Court's statement, "Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.'" *See id.* at 64 n.4 (quoting United States v. Olano, 507 U.S. 725, 733 (1993)).

10. *Id.* at 65 (citing Menna v. New York, 423 U.S. 61, 62 (1975)).

This case note begins by exploring the history of double-jeopardy cases involving guilty pleas.[11] Then it discusses the facts of *Jeffries* and the court's decision.[12] It argues that the court correctly concluded that a defendant's right to plead double jeopardy cannot be forfeited by entering a guilty plea, but that the court failed to properly analyze when plea agreements should implicate double-jeopardy concerns.[13] This case note concludes by asserting that the court upheld the finality of the judgment but failed to address the harm this holding will have on the accuracy of future sentences.[14] In the alternative, this case note suggests the court should have held the judge's decision to vacate the guilty plea to the same standard applied to defendants' motions to withdraw guilty pleas prior to sentencing.[15]

II. HISTORY

A. The Origins of the Double Jeopardy Clause

The Double Jeopardy Clause of the U.S. Constitution states that no one shall "be subject for the same offence to be twice put in jeopardy of life or limb."[16] The Minnesota Constitution similarly states that "no person shall be put twice in jeopardy of punishment for the same offense."[17]

Jeopardy is "[t]he risk of conviction and punishment that a criminal defendant faces at trial."[18] William Blackstone[19] summarized double jeopardy as a "universal maxim . . . that no man is to be brought into jeopardy of his life or limb more than once for the same offence."[20] As early as the 1870s, the U.S.

11. *See infra* Part II.
12. *See infra* Part III.
13. *See infra* Part IV.
14. *See infra* Part V.
15. A defendant's motion to withdraw a guilty plea will be granted if it is "fair and just to do so." MINN. R. CRIM. P. 15.05, subdiv. 2.
16. U.S. CONST. amend. V; *see* Benton v. Maryland, 395 U.S. 784, 793 (1969) (applying the Double Jeopardy Clause to the states through the Fourteenth Amendment).
17. MINN. CONST. art. I, § 7. This case note collectively refers to both the U.S. and Minnesota clauses as the Double Jeopardy Clause.
18. BLACK'S LAW DICTIONARY 912 (9th ed. 2009).
19. For an account of Blackstone's career and the historical significance of his lectures and treatise, see IAN DOOLITTLE, WILLIAM BLACKSTONE: A BIOGRAPHY (2001).
20. GEORGE C. THOMAS III, DOUBLE JEOPARDY: THE HISTORY, THE LAW 27

Supreme Court described the Double Jeopardy Clause as guarding "against the action of the same court in inflicting punishment twice" and "from chances or danger of a second punishment on a second trial."[21] The Double Jeopardy Clause protects defendants from multiple prosecutions for the same offense after acquittal[22] or conviction[23] and from multiple punishments for the same offense.[24] Double-jeopardy claims are based on promoting finality,[25] preventing governmental overreaching,[26] minimizing the "harassing exposure to the harrowing experience of a criminal trial,"[27] and protecting the right to proceed with the selected jury.[28]

B. When Jeopardy Attaches

Courts must establish when jeopardy attaches in a criminal proceeding to determine whether the case implicates the purposes and policies of the Double Jeopardy Clause.[29] "It is only after a defendant is deemed to have been put in former jeopardy that any subsequent prosecution of the defendant brings the guarantee

(1998) (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 335–36 (photo. reprint, Univ. of Chi. Press 1979) (1786)).

21. *Ex parte* Lange, 85 U.S. 163, 169 (1873).

22. Ball v. United States, 163 U.S. 662, 671 (1896); *see, e.g.*, Green v. United States, 355 U.S. 184, 188 (1957).

23. *Ex parte* Nielsen, 131 U.S. 176, 186–87 (1889).

24. Justices of Bos. Mun. Ct. v. Lydon, 466 U.S. 294, 306–07 (1984); *see, e.g.*, United States v. Benz, 282 U.S. 304, 308 (1931); *Ex parte* Lange, 85 U.S. at 168; *see also* David S. Rudstein, *A Brief History of the Fifth Amendment Guarantee Against Double Jeopardy*, 14 WM. & MARY BILL RTS. J. 193, 194 (2005) (discussing the origins of the double-jeopardy guarantees).

25. Crist v. Bretz, 437 U.S. 28, 33 (1978) (discussing finality in deciding when jeopardy attaches in a jury trial); *Green*, 355 U.S. at 187 (concluding that finality protects defendants from a second criminal trial); Kyden Creekpaum, *What's Wrong with a Little More Double Jeopardy? A 21st Century Recalibration of an Ancient Individual Right*, 44 AM. CRIM. L. REV. 1179, 1182 (2007) (considering the virtue of finality).

26. Ohio v. Johnson, 467 U.S. 493, 501–02 (1984) (holding that continued prosecution of remaining charges after a guilty plea did not implicate the double-jeopardy principles of finality and governmental overreaching).

27. State v. Martinez-Mendoza, 804 N.W.2d 1, 13 (Minn. 2011) (Gildea, C.J., dissenting); *see, e.g.*, State v. Pederson, 262 Minn. 568, 570–71, 115 N.W.2d 466, 468 (1962) (reasoning that double-jeopardy concerns protect individuals from harassment by forbidding multiple trials); State v. Thompson, 241 Minn. 59, 62, 62 N.W.2d 512, 516 (1954) (stating that no one should be "unduly harassed" by the State's attempt to try the same offense multiple times).

28. *Martinez-Mendoza*, 804 N.W.2d at 13 (Gildea, C.J., dissenting).

29. Serfass v. United States, 420 U.S. 377, 388 (1975).

against double jeopardy into play."[30] "Thus, the time at which jeopardy attached is best viewed as the point at which 'the risks of injury are so great that the government should have to "shoulder" the "heavy" burden of showing manifest necessity for repetitious proceedings.'"[31]

Courts have consistently held that double jeopardy attaches in a jury trial when the jury is selected and sworn[32] or when the judge begins hearing evidence during a bench trial.[33] But courts across the country take various positions as to when jeopardy attaches in cases of guilty pleas.[34]

In *Ricketts v. Adamson*,[35] the U.S. Supreme Court considered the issue of "whether the Double Jeopardy Clause bars the prosecution of respondent for first-degree murder following his breach of a plea agreement under which he had pleaded guilty to a lesser offense, had been sentenced, and had begun serving a term of imprisonment."[36] The Court agreed with the State that "respondent's breach of the plea arrangement to which the parties had agreed removed the double-jeopardy bar to prosecution of respondent on the first-degree murder charge."[37] The Court simply assumed that "jeopardy attached at least when respondent was sentenced . . . on his plea of guilty."[38]

Ricketts did not consider whether jeopardy attaches prior to sentencing, such as upon acceptance of a guilty plea, because the vacation of the defendant's plea and the re-prosecution occurred after he was sentenced.[39] The trial court had sentenced the defendant, and he had begun serving time, thus invoking the policies of finality and prevention of prosecutorial overreaching

30. State v. Angel, 51 P.3d 1155, 1157 (N.M. 2002).

31. United States v. Santiago Soto, 825 F.2d 616, 618 (1st Cir. 1987) (quoting 3 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 24.1(c) (1984)).

32. *Serfass*, 420 U.S. at 388; *accord* Crist v. Bretz, 437 U.S. 28, 36 (1978); United States v. Martin Linen Supply Co., 430 U.S. 564, 569 (1977); Downum v. United States, 372 U.S. 734, 737–38 (1963).

33. 6 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 25.1(d) (3d ed. 2011); *see also Serfass*, 420 U.S. at 388; McCarthy v. Zerbst, 85 F.2d 640, 642 (10th Cir. 1936).

34. State v. Jeffries, 806 N.W.2d 56, 68–69 (Minn. 2011) (Gildea, C.J., dissenting).

35. 483 U.S. 1 (1987) (articulating the Court's only statement referring to when double jeopardy attaches in a guilty plea).

36. *Id.* at 3.

37. *Id.* at 8.

38. *Id.*

39. *Id.* at 4–8.

protected by the Double Jeopardy Clause.[40] But despite these double-jeopardy concerns, the Court held that the defendant's breach of the plea agreement barred a double-jeopardy defense.[41]

Several state and federal district courts have concluded that jeopardy does not attach prior to sentencing.[42] In *United States v. Santiago Soto*, the First Circuit Court of Appeals held that "jeopardy did not attach when the district court accepted the guilty plea to the lesser included offense and then rejected the plea without having imposed sentence and entered judgment."[43] The court reasoned that the "mere acceptance of a guilty plea does not carry the same expectation of finality and tranquility that comes with a jury's verdict or with an entry of judgment and sentence."[44]

In *State v. Angel*, the New Mexico Supreme Court held that "jeopardy did not attach when the magistrate court accepted Defendant's . . . plea . . . [but] dismissed the charges prior to sentencing."[45] The court stated that the defendant's subsequent prosecution did not violate the double-jeopardy concerns of finality or overreaching, because the court dismissed the charges to which he pled guilty to prior to sentencing.[46]

In *State v. Duval*, the Vermont Supreme Court addressed the issue of "whether double jeopardy prevents a judge from imposing a harsher sentence on defendant than that originally intended after acceptance of his plea."[47] The court held that the policy concern of governmental overreaching was not implicated and that the trial court "ought be able to correct a mistake."[48] The court concluded that jeopardy did not attach at the initial acceptance of the guilty plea, and even if it did, "it was not irrevocable."[49]

Other courts have held that "[j]eopardy attaches with the acceptance of a guilty plea."[50] In *United States v. Sanchez*, the Fifth

40. *Id.* at 4–6.
41. *Id.* at 10.
42. *See, e.g.*, United States v. Santiago Soto, 825 F.2d 616, 618 (1st Cir. 1987); State v. Angel, 51 P.3d 1155, 1157 (N.M. 2002); State v. Duval, 589 A.2d 321, 324 (Vt. 1991).
43. 825 F.2d at 620.
44. *Id.*
45. 51 P.3d at 1159.
46. *Id.* at 1158–59 (citing State v. Alingog, 877 P.2d 562 (N.M. 1994)).
47. 589 A.2d at 324.
48. *Id.* at 325.
49. *Id.*
50. United States v. Sanchez, 609 F.2d 761, 762 (5th Cir. 1980); *see also* United States v. Cambindo Valencia, 609 F.2d 603, 637 (2d Cir. 1979); United States v.

Circuit Court of Appeals clarified that a judge has wide discretion whether to accept, reject, or conditionally accept a plea agreement,[51] and it is only with an unconditional acceptance that jeopardy attaches.[52] In *Sanchez*, the judge temporarily accepted the plea "until she had studied the probation report" but then later rejected the plea agreement.[53]

In *United States v. Cambindo Valencia*, the Second Circuit Court of Appeals declared, "[I]t is axiomatic of the double jeopardy clause that jeopardy attached once . . . [the] guilty plea was accepted."[54] The issue of when jeopardy attached was not a primary issue in the case, though, which involved a complicated web of multiple defendants appealing multiple convictions for conspiracy to import and distribute cocaine, arising out of similar but distinct incidents.[55]

In *United States v. Bullock*, the Eighth Circuit Court of Appeals stated that while "the process of arraignment and pleading has not been viewed as amounting to jeopardy . . . , jeopardy would attach when a plea of guilty is accepted."[56] The government notified the defendants in this case that they had unlawfully taken "migratory birds over a baited area" and informed them "they could forfeit a bond of $100 in lieu of standing trial."[57] The defendants sent the $100 checks.[58] The government then dismissed the notice of violation, returned the checks, and charged the defendants under the United States Code and the Code of Federal Regulations.[59] The court concluded that under circumstances involving pretrial events, where a plea was offered but not accepted, jeopardy did not attach.[60]

Bullock, 579 F.2d 1116, 1118 (8th Cir. 1978) (per curiam).

51. 609 F.2d at 762.

52. *Id.*

53. *Id.* "Because the judge made it clear that she was taking the agreement under advisement, jeopardy did not attach and she acted within the bounds of her discretion in rejecting the agreement and the plea after full consideration of the case." *Id.*

54. 609 F.2d at 637.

55. *Id.* at 606–07.

56. 579 F.2d 1116, 1118 (8th Cir. 1978) (per curiam) (citation omitted).

57. *Id.* at 1117–18.

58. *Id.* at 1118.

59. *Id.* at 1117 (citing 16 U.S.C. § 703 (1976); 50 C.F.R. § 20.21 (1976)).

60. *Id.* at 1118.

The U.S. Supreme Court has held that retrial is barred only after jeopardy terminates.[61] In *Sattazahn v. Pennsylvania*, a jury convicted the defendant of murder but deadlocked while deciding whether to impose the death penalty.[62] The trial judge entered a life sentence.[63] The defendant successfully appealed and had his conviction set aside.[64] On retrial, the defendant was sentenced to death.[65] The defendant argued that to impose a death sentence after already having imposed a life sentence was double jeopardy.[66] The Court disagreed.[67] The Court reasoned that a conviction does not necessarily terminate jeopardy because a defendant can appeal the conviction, and the same jeopardy continues during the appeal process.[68]

Concerns regarding double jeopardy arise when the defendant develops "a crystallized expectation of finality in his sentence."[69] But, as discussed before, neither federal nor state precedent articulates a rule for when this expectation of finality occurs in guilty pleas.[70] Disagreement, in part, centers on whether convictions provide the same level of finality as acquittals[71] and whether convictions prior to sentencing provide the same level of finality as convictions after sentencing.[72]

61. Sattazahn v. Pennsylvania, 537 U.S. 101, 106 (2003); Richardson v. United States, 468 U.S. 317, 325 (1984) (discussing that double jeopardy "applies only if there has been some event . . . which terminates the original jeopardy").

62. 537 U.S. at 104.

63. *Id.*

64. *Id.* at 105.

65. *Id.*

66. *Id.* at 109.

67. *Id.*

68. *Id.* at 106; *see also* Creekpaum, *supra* note 25, at 1184.

69. State v. Borrego, 661 N.W.2d 663, 666 (Minn. Ct. App. 2003) (quoting State v. Garcia, 582 N.W.2d 879, 881 (Minn. 1998)). *See generally* 11 DUNNELL MINN. DIGEST CRIMINAL LAW § 4.17 (5th ed. 2004) (considering the finality of acquittals, convictions, and sentences).

70. State v. Jeffries, 806 N.W.2d 56, 68 (Minn. 2011) (Gildea, C.J., dissenting); *see, e.g.*, Ricketts v. Adamson, 483 U.S. 1 (1987).

71. *Compare* United States v. DiFrancesco, 449 U.S. 117, 132–33 (1980) (determining that finality of sentencing is less than finality of acquittals), *with* State v. Martinez-Mendoza, 804 N.W.2d 1, 8 (Minn. 2011) (concluding that a conviction should be treated the same as an acquittal).

72. *Compare* United States v. Bullock, 579 F.2d 1116, 1118 (8th Cir. 1978) (per curiam) (stating that jeopardy would attach when the court accepts the plea), *with* State v. Duval, 589 A.2d 321, 324 (Vt. 1991) (explaining that "attachment of jeopardy upon the court's acceptance of a guilty plea is neither automatic nor irrevocable").

C. Forfeiture of Double-Jeopardy Pleas

Double-jeopardy cases also confront the issue of whether a defendant can forfeit his or her right to plead double jeopardy.[73] Prior to the *Jeffries* decision, the Minnesota Supreme Court held that if a defendant did not assert a double-jeopardy claim at the appropriate time, he or she waived the right to plead double jeopardy.[74] Minnesota case law[75] had relied on the U.S. Supreme Court's holdings that defendants could waive their constitutional rights.[76]

In *Menna v. New York*, the U.S. Supreme Court explained that prior precedent did not stand for the principle that all counseled guilty pleas waive all constitutional rights.[77] "[W]here the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty."[78] In *Menna*, the Double Jeopardy Clause barred the State from bringing the defendant into court to begin with, so any subsequent guilty plea did not waive his right to plead double jeopardy.[79] Similarly, *Blackledge v. Perry* dealt with the same issue and held that if a defendant asserted "the right not to be haled into court at all . . . [, then t]he very initiation of the proceedings against him in the Superior Court thus operated to deny him due process of law."[80]

73. 11 DUNNELL MINN. DIGEST CRIMINAL LAW, *supra* note 69, § 4.17(a). *Compare* Menna v. New York, 423 U.S. 61, 62 (1975) (holding that a guilty plea does not waive a claim if the State cannot constitutionally prosecute), *with* State *ex rel.* Boswell v. Tahash, 278 Minn. 408, 415, 154 N.W.2d 813, 817 (1967) (holding that a double-jeopardy claim is waived if the defendant does not enter the plea at the appropriate time).

74. *Boswell*, 278 Minn. at 414, 154 N.W.2d at 817.

75. *E.g.*, State *ex rel.* Dunlap v. Utecht, 206 Minn. 41, 48, 287 N.W. 229, 232 (1939) (citing Johnson v. Zerbst, 304 U.S. 458, 465 (1938) (stating that a defendant can waive the constitutional right to assistance of counsel)).

76. *See* Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.").

77. 423 U.S. at 62 n.2.

78. *Id.* at 62 (citing Blackledge v. Perry, 417 U.S. 21, 30 (1974)).

79. *Id.*

80. 417 U.S. at 30–31.

Jeffries presented the Minnesota Supreme Court with the issue of when jeopardy attaches and terminates in a guilty plea.[81] *Jeffries* also presented the court with the issue—in light of conflicting precedent—of whether a defendant can forfeit his or her constitutional right to plead double jeopardy.[82]

III. THE *JEFFRIES* DECISION

A. *Facts and Procedural Posture*

On January 22, 2008, Erik Jeffries threw a glass egg at his girlfriend during an argument.[83] The egg hit his girlfriend's daughter in the face, causing lacerations that required stitches.[84] The State charged Jeffries with domestic assault, which was enhanced to a felony because he had at least two prior domestic assault convictions within the previous ten years.[85]

Jeffries reached a negotiated plea deal with the State, and a plea hearing was held on June 13, 2008.[86] Jeffries entered a guilty plea for felony domestic assault.[87] The court responded by saying, "[B]ased upon the facts on the record, I'll accept your plea of guilty and find you guilty."[88] The court conditionally released Jeffries, ordering him to appear for sentencing and attend meetings with probation to facilitate completion of the pre-sentence investigation (PSI).[89]

On the sentencing date, the court decided to no longer accept the plea agreement because of Jeffries's extensive criminal history and the information contained in the PSI report.[90] The court vacated the guilty plea and set a trial date.[91] The court asked if

81. State v. Jeffries, 806 N.W.2d 56, 61 (Minn. 2011).
82. *Id.*
83. Appellant's Brief at 5, *Jeffries*, 806 N.W.2d 56 (No. A09-1391), 2011 WL 7415262 [hereinafter Appellant's Brief].
84. *Jeffries*, 806 N.W.2d at 58.
85. *Id.* "Whoever violates the provisions of this section . . . within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony . . . ." MINN. STAT. § 609.2242, subdiv. 4 (2010).
86. *Jeffries*, 806 N.W.2d at 58–59.
87. *Id.*
88. *Id.* at 59.
89. *Id.*
90. *Id.* The plea agreement had been a forty-eight-month stayed sentence. *Id.* at 58.
91. *Id.* at 60.

Jeffries's attorney wanted to respond or put anything on the record.[92] The attorney did not object on the record to the court's vacation of Jeffries's plea.[93]

The parties reached a second plea deal, and a plea hearing was held on March 31, 2009.[94] Jeffries pled guilty to felony domestic assault.[95] The court accepted the plea and conditionally released Jeffries until the sentencing date.[96] Two days after being released, the police arrested Jeffries for possessing marijuana, which violated his conditional release.[97] The court executed the sixty-month sentence, pursuant to the plea agreement.[98]

Jeffries argued on appeal that double jeopardy forbade the State from prosecuting him for the same offense a second time and that he had ineffective counsel.[99] The court of appeals held that Jeffries waived his double-jeopardy claim by entering a second guilty plea and that he failed to show deprivation of effective assistance of counsel.[100] The court of appeals did not rule on the double-jeopardy question.[101]

B. The Minnesota Supreme Court's Decision

After granting review, the Minnesota Supreme Court framed the first issue as whether Jeffries was convicted at his first plea hearing.[102] The court explained that the Double Jeopardy Clause prohibits subsequent prosecutions after a conviction.[103] The court determined that the trial court unconditionally accepted the first plea and recorded the plea.[104] Based on these two factors, the court concluded that Jeffries was convicted at the first plea hearing.[105]

92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.* The plea agreement consisted of "an executed sentence of 22 months if he complied with the conditions of release or a 60-month executed sentence if he did not." *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. State v. Jeffries, 787 N.W.2d 654, 661–62 (Minn. Ct. App. 2010), *rev'd*, 806 N.W.2d 56 (Minn. 2011).
101. Respondent's Brief and Appendix at 15, *Jeffries*, 806 N.W.2d 56 (No. A09-1391), 2010 WL 8435269 [hereinafter Respondent's Brief].
102. *Jeffries*, 806 N.W.2d at 61.
103. *Id.* at 60–61 (citing Brown v. Ohio, 432 U.S. 161, 165 (1977)).
104. *Id.* at 63–64.
105. *Id.* at 64. "'Conviction' means any of the following accepted and

Thus, "[t]he second prosecution for the same offense violated the Double Jeopardy Clause and must be set aside, unless . . . Jeffries forfeited his double-jeopardy claim" by entering a second guilty plea.[106]

The court decided the forfeiture issue in the face of conflicting precedent. Minnesota precedent indicated that double jeopardy constituted an affirmative defense, which was forfeited if not raised.[107] Conversely, U.S. Supreme Court precedent preserved a defendant's ability to raise a double-jeopardy claim on appeal, even if the defendant entered a counseled guilty plea.[108] The Minnesota Supreme Court overruled state precedent and concluded that *Menna* was binding.[109] The court held that "a counseled guilty plea does not bar a defendant from raising a double-jeopardy claim on appeal if that claim can be decided on the existing record at the time the defendant pleads guilty."[110]

The court determined that Jeffries's double-jeopardy claim could be decided on the existing record and the claim was not forfeited by his second counseled guilty plea.[111] The court reversed the conviction based on Jeffries's second guilty plea, reinstated the initial plea, and remanded the case to the trial court for resentencing pursuant to the first plea agreement.[112]

IV. ANALYSIS

The analysis that follows argues that the court erred in holding that the unconditional acceptance at the first plea hearing barred the subsequent vacation of the guilty plea. First, this section discusses when guilty pleas should implicate double-jeopardy concerns and whether the situation in *Jeffries* warranted such concerns. Then, this section argues that the policy of accuracy must be weighed against the policy of finality, especially in domestic violence cases involving high risks to victim safety[113] and

recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court." MINN. STAT. § 609.02, subdiv. 5 (2010).

106. *Jeffries*, 806 N.W.2d at 64.

107. State *ex rel.* Boswell v. Tahash, 278 Minn. 408, 415, 154 N.W.2d 813, 817–18 (1967).

108. Menna v. New York, 423 U.S. 61, 62 (1975).

109. *Jeffries*, 806 N.W.2d at 65.

110. *Id.*

111. *Id.*

112. *Id.* at 65–66.

113. RANA SAMPSON, U.S. DEP'T OF JUSTICE OFFICE OF CMTY. ORIENTED POLICING

offender recidivism.[114] The analysis of the double-jeopardy issue concludes by suggesting the court should allow judges to vacate guilty pleas when it is "fair and just to do so."[115] This section ends by supporting the court's holding that a defendant cannot forfeit a double-jeopardy claim by pleading guilty when the Double Jeopardy Clause prohibits the State from bringing the defendant into court in the first place.[116]

A. When Guilty Pleas Implicate Double-Jeopardy Concerns

In *Ricketts v. Adamson*, the U.S. Supreme Court discussed attachment of jeopardy in guilty pleas, but the situation in *Ricketts* differed from *Jeffries* because Jeffries had not been sentenced yet and had not begun to serve a sentence.[117] Thus, *Jeffries* required the Minnesota Supreme Court to decide the issue of when jeopardy attaches prior to sentencing.

The majority in *Jeffries* erred by simply determining whether the trial court convicted Jeffries at the first plea hearing.[118] The court should have questioned whether that conviction barred the trial court from later vacating the plea agreement.[119] The court's opinion promoted the policy of finality, but the *Jeffries* decision will have a negative impact on the accuracy of sentences in future cases. The standard applied to defendants' motions to withdraw guilty pleas[120] should also apply to trial judges' decisions to vacate guilty pleas.

SERVS., PROBLEM-ORIENTED GUIDES FOR POLICE PROBLEM-SPECIFIC GUIDES SERIES NO. 45: DOMESTIC VIOLENCE 1 (2007), *available at* http://www.cops.usdoj.gov/Publications/e12061550.pdf ("[D]omestic violence accounts for about 20 percent of the nonfatal violent crime women experience.").

114. *Id.* at 24 ("[F]or the most part, recidivism remains high.").

115. Extending the standard set forth in MINN. R. CRIM. P. 15.05, subdiv. 2.

116. *Jeffries*, 806 N.W.2d at 65 (overruling state precedent and adopting Menna v. New York, 423 U.S. 61 (1975)).

117. *Compare* Ricketts v. Adamson, 483 U.S. 1, 3 (1987) (explaining that the defendant "had been sentenced, and had begun serving a term of imprisonment"), *with Jeffries*, 806 N.W.2d at 59 (describing that the judge indicated he would no longer accept the plea agreement prior to sentencing).

118. *Jeffries*, 806 N.W.2d at 64.

119. *Id.* at 71 (Gildea, C.J., dissenting) (arguing that a defendant's conduct can continue jeopardy in a proceeding, even if convicted, if he consents to the vacation of his guilty plea and the continuation of the proceedings).

120. MINN. R. CRIM. P. 15.05, subdiv. 2 (articulating that defendants may withdraw their guilty pleas prior to sentencing if it would be "fair and just to do so").

Jeopardy must attach in order to bar a second prosecution of the same offense.[121] The Minnesota Supreme Court recently held that a conviction occurs at the time the trial court accepts a guilty plea and adjudicates guilt on the record.[122] In that case, the court concluded, "[I]t would be anomalous to treat a conviction . . . differently than an acquittal."[123] The court has held that an acquittal cannot be subject to appeal, even if erroneous, because the Double Jeopardy Clause prohibits retrial.[124] Therefore, the court has said a conviction carries similar weight as acquittals in double-jeopardy cases.[125]

But there are many ways that convictions through plea negotiations are treated differently than acquittals. Defendants can withdraw their pleas prior to sentencing when it is "fair and just to do so."[126] Defendants can appeal their convictions.[127] Various jurisdictions have come to different conclusions regarding when jeopardy attaches in plea deals,[128] while every jurisdiction affords the same standard to acquittals.[129] As the First Circuit Court of

121. Richardson v. United States, 468 U.S. 317, 325 (1984).

122. State v. Martinez-Mendoza, 804 N.W.2d 1, 7 (Minn. 2011). *But see* United States v. Combs, 634 F.2d 1295, 1298 (10th Cir. 1980) (concluding that a defendant was not formally convicted until sentencing of an accepted guilty plea).

123. *Martinez-Mendoza*, 804 N.W.2d at 8 n.9 (explaining that "an acquittal may be accorded more weight for policy reasons" but that "does not change the . . . prohibition of a second prosecution for the same offense after conviction").

124. State v. Large, 607 N.W.2d 774, 779–80 (Minn. 2000).

125. *Martinez-Mendoza*, 804 N.W.2d at 8.

126. MINN. R. CRIM. P. 15.05, subdiv. 2. Defendants can also withdraw their pleas post-sentencing if they show "manifest injustice." *Id.* subdiv. 1.

127. MINN. R. CRIM. P. 28.02, subdiv. 2 (stating that a "defendant may appeal as of right from any adverse final judgment").

128. *Compare* United States v. Santiago Soto, 825 F.2d 616, 620 (1st Cir. 1987) (holding that jeopardy did not attach prior to sentencing), State v. Angel, 51 P.3d 1155, 1157 (N.M. 2002) (stating that "jeopardy did not attach to Defendant's no-contest plea prior to sentencing"), *and* State v. Duval, 589 A.2d 321, 325 (Vt. 1991) (reasoning that a court should be able to erase a plea acceptance in order to correct a mistake without implicating the Double Jeopardy Clause), *with* United States v. Sanchez, 609 F.2d 761, 762 (5th Cir. 1980) (stating that temporary acceptance did not implicate the Double Jeopardy Clause but that unconditional acceptance of a guilty plea would), United States v. Cambindo Valencia, 609 F.2d 603, 637 (2d Cir. 1979) (declaring that jeopardy attached once the defendant's guilty plea was accepted), *and* United States v. Bullock, 579 F.2d 1116, 1118 (8th Cir. 1978) (per curiam) (finding that the events in this case were pretrial proceedings, not implicating the Double Jeopardy Clause, but stating that jeopardy would have attached if the plea had been accepted).

129. *See* Benton v. Maryland, 395 U.S. 784, 795 (1969). The Court quoted Blackstone,

Appeals has stated, in a case in which "the judge initially accepted the guilty plea but then rejected it within the same proceeding, defendant was not placed in jeopardy in any meaningful sense."[130] But it is hard to imagine a case in which a judge could acquit a defendant but then "un-acquit" him in the same proceeding, without implicating the Double Jeopardy Clause.

The trial court has three options when confronted with a plea agreement. The court can accept the plea, reject the plea, or conditionally accept the plea.[131] Based on the language used by the trial court in *Jeffries*, the Minnesota Supreme Court concluded the plea was unconditionally accepted and therefore constituted a conviction.[132] But the use of unconditional language should not prohibit a fair and just revision of the plea agreement, based on troublesome information contained in the PSI.[133]

In *State v. Duval*, the Vermont Supreme Court concluded that "the rule is only that jeopardy 'generally' attaches at the time of acceptance of the guilty plea," but that the rule has exceptions.[134] The court described the issue in *Duval* as "much narrower and simpler" than typical double-jeopardy issues, phrasing it as "whether the court ought be able to correct a mistake."[135] The Minnesota Supreme Court should have recognized the same difference in *Jeffries*.

> [G]iven the false assumptions preceding the "acceptance" of the plea, the acceptance should have no more legal significance than the mistake that led to it. The court

> "[T]he plea of autrefoits acquit, or a former acquittal," he wrote, "is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life more than once for the same offence." Today, every State incorporates some form of the prohibition in its constitution or common law.

Id.

130. *Santiago Soto*, 825 F.2d at 620. *Jeffries* differs from *Santiago Soto* because the judge did not accept and then reject the plea agreement within the same hearing, but the First Circuit did not require acceptance and rejection to be during the same hearing, only before the sentencing hearing. *See id.*

131. MINN. R. CRIM. P. 15.04, subdiv. 3(1). "When a plea is entered and the defendant questioned, the trial court judge must reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation." *Id.*

132. State v. Jeffries, 806 N.W.2d 56, 63 (Minn. 2011).

133. *Id.* at 59–60. The trial court accepted the guilty plea and said Jeffries was convicted of felony domestic assault, but then the court ordered a pre-sentence investigation and *continued* the matter for sentencing. *Id.* at 59.

134. 589 A.2d 321, 324 (Vt. 1991).

135. *Id.* at 325.

> simply corrected the mistake by erasing the plea acceptance and proceeded to treat the case as it should have been treated from the outset.[136]

The Vermont Supreme Court made the policy decision "to encourage more probing by judges and to allow reasonable room to correct mistakes."[137]

If the Minnesota Supreme Court had ruled that a judge could vacate a guilty plea for fair and just reasons, then jeopardy would not have attached, the proceeding would have continued, and an appropriate sentence would have resulted.

1. Convictions: Courts Must Balance Finality Against Accuracy

Finality is an important policy that courts must guard closely.[138] But it is not an absolute rule, especially in plea negotiations.[139] An exception to the finality rule is a defendant's right to withdraw a guilty plea.[140] Also, a conviction may not concern finality if a trial court accepts a guilty plea but imposes conditions on the defendant prior to sentencing. If a defendant fails to comply with a condition, the State has "the authority to vacate the underlying conviction. Once the underlying conviction has been vacated, the defendant is in the same position as if the conviction had been reversed on appeal."[141]

Neither the State nor Jeffries relied on the finality of the plea agreement,[142] even though the court accepted the plea and said, "[Y]ou are convicted."[143] Both parties agreed that if Jeffries violated the conditions of his release,[144] the deal would be off.[145] One

136. *Id.*
137. *Id.*
138. Creekpaum, *supra* note 25, at 1190.
139. *See* United States v. Santiago Soto, 825 F.2d 616, 620 (1st Cir. 1987); *Duval*, 589 A.2d at 325.
140. MINN. R. CRIM. P. 15.05.
141. THOMAS, *supra* note 20, at 224; *see, e.g.*, Ricketts v. Adamson, 483 U.S. 1 (1987).
142. State v. Jeffries, 806 N.W.2d 56, 74–75 (Minn. 2011) (Anderson, G. Barry, J., dissenting).
143. *Id.* at 59.
144. Jeffries's conditions included appearing for PSI meetings, giving information to the probation officer, and appearing for sentencing. *Id.*
145. *Id.* The attorneys disagreed about what would happen if Jeffries failed to comply with his conditions, but they both agreed that the deal would change. *Id.* The court referenced the prosecutor's statement, "[D]efendant's appearance at sentencing and his cooperation with the [(PSI)] is a condition of the deal" and the defense's reply, "[I]f the deal is off, then the deal should be off." *Id.*

condition of Jeffries's release prior to sentencing was to attend appointments related to completing the PSI report,[146] which compiles information influential to determining an appropriate sentence.[147] The rules should "provide that a trial judge error—even one in the defendant's favor—can be reversed . . . . The game need not end—jeopardy may continue—until an error-free result is obtained."[148]

Decisions regarding when jeopardy attaches "represent a policy choice" between finality and accuracy.[149] This case note argues that courts must balance finality with accuracy.[150] Chief Justice Gildea correctly favored accuracy over finality in her dissenting opinion, stating that the trial court had the "discretion to withdraw its acceptance of a guilty plea once it learned of additional information about Jeffries's criminal history that caused the court to believe the plea agreement was not in the interest of justice."[151] The rules provide that a court "may accept a plea agreement of the parties when the interest of justice would be served."[152] Also, precedent indicates that an agreement that "'is injurious to the interests of the public or contravenes some established interest of society' is void."[153] The court's authority to determine whether a plea agreement promotes justice should continue even after the court accepts a plea agreement.[154] Accuracy promotes justice; a court must have discretion to correct

146. *Id.* at 75 (Anderson, G. Barry, J., dissenting).

147. MINN. STAT. § 609.2244, subdiv. 1 (2010) requires a PSI when a defendant is convicted of a domestic violence-related offense as described in MINN. STAT. § 518B.01, subdiv. 2.

148. Amar, *supra* note 6, at 1841.

149. Creekpaum, *supra* note 25, at 1184.

150. *See id.* at 1187–88 (advocating for a "framework of accuracy and finality, with the goal of maximizing the gain accorded accuracy while minimizing the violence inflicted on finality").

151. *Jeffries*, 806 N.W.2d at 71 (Gildea, C.J., dissenting).

152. MINN. R. CRIM. P. 15.04, subdiv. 3(2).

153. State v. Martinez-Mendoza, 804 N.W.2d 1, 16 (Minn. 2011) (Anderson, G. Barry, J., dissenting) (quoting Isles Wellness, Inc. v. Progressive N. Ins. Co., 725 N.W.2d 90, 92–93 (Minn. 2006) (discussing contracts void for public policy violations)); *see also* Wade v. Hunter, 336 U.S. 684, 689–90 (1949) (demonstrating that courts have the authority to prohibit a jury from giving a certain verdict when "the ends of public justice would . . . be defeated").

154. *Martinez-Mendoza*, 804 N.W.2d at 14 (Gildea, C.J., dissenting) (stating that if the court gains new information, which leads the court to believe that the interests of justice are not served by the plea deal, the court may withdraw its acceptance).

an inappropriate plea agreement, prior to sentencing.[155]

Some courts have decided that jeopardy does not attach when acceptance of a guilty plea is based on inaccurate information about prior convictions,[156] misinformation about the facts of a plea,[157] or a misunderstanding about the terms of the plea agreement.[158] These courts recognize that accuracy must prevail over finality in situations involving erroneous plea agreements.

2. Accuracy Is Particularly Important in Domestic Assault Cases

Accuracy in judgments and appropriateness of sentences are essential in domestic violence cases, where criminal history is particularly important.[159] Legal interventions are necessary to break the cycle of abuse, because domestic violence is likely to continue and escalate if law enforcement and the justice system do not respond and hold offenders accountable.[160] "Unlike participants in a barroom brawl or street skirmish, perpetrators of domestic violence present a particularly high risk for continuing, even escalating violence against the complainant as they seek further control over her choices and actions."[161]

Domestic abusers are more likely to re-offend than other types of perpetrators.[162] "Domestic violence is the number one source of injury to women in the United States, 'causing more injuries than

155. *Cf.* State v. Robledo-Kinney, 615 N.W.2d 25, 32 (Minn. 2000) (holding that when a plea agreement is based on a mutual mistake of fact, the plea may be withdrawn).

156. *E.g.*, State v. Burris, 40 S.W.3d 520, 526–27 (Tenn. Crim. App. 2000).

157. *E.g.*, Gilmore v. Zimmerman, 793 F.2d 564, 569–70 (3d Cir. 1986).

158. *E.g.*, State v. Angel, 51 P.3d 1155, 1157 (N.M. 2002); State v. Duval, 589 A.2d 321, 324 (Vt. 1991).

159. *See* WATCH, PROMOTING VICTIM SAFETY AND OFFENDER ACCOUNTABILITY: IMPROVING THE RESPONSE TO MISDEMEANOR DOMESTIC VIOLENCE CASES 9 (2011), *available at* http://www.watchmn.org/sites/default/files/Suburban%20FINAL.pdf (describing domestic violence as "a repeated pattern of abuse used to control an intimate partner," which indicates a high likelihood of repeat offenses).

160. *Id.* at 1. "Domestic violence is a crime that more often than not escalates without intervention and how the justice system responds to initial assaults and calls for help can significantly impact whether or not battering will continue or be deterred." *Id.*

161. Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach*, 27 W. ST. U. L. REV. 1, 4 (2000).

162. *Id.* at 4 n.10 ("The recidivism rate for crimes of violence between intimates is two and one-half times that for violence between strangers." (citing Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 344 n.83 (1994))).

rapes, auto accidents and muggings combined.'"[163] Regardless of these safety risks, sentences for domestic assaults remain lenient relative to other crimes such as controlled substance or DUI offenses.[164]

Battering is a learned behavior.[165] When men[166] choose to batter and face no consequences for their actions, they will continue the behavior that works.[167] Every year the Minnesota Coalition for Battered Women issues a Femicide Report, documenting the deaths caused by domestic violence in Minnesota.[168] In the 2011 report, the Coalition made this decree: "When mistakes are made, people can and do lose their lives. The stakes are too high for us to get it wrong. We must prioritize safety."[169]

Chief Judge of the State of New York and Chief Judge of the New York Court of Appeals, Judith S. Kaye, along with her colleague Susan K. Knipps, advocates for judicial officers to take a problem-solving approach when confronted with domestic violence cases.[170] "If we handle them inadequately, tragedies occur. Lives

163. *Id.* at 3 (quoting Tonya McCormick, Note and Comment, *Convicting Domestic Violence Abusers When the Victim Remains Silent*, 13 BYU J. PUB. L. 427, 428 (1999)).

164. CAROLINE BETTINGER-LOPEZ ET AL., VIOLENCE AGAINST WOMEN IN THE UNITED STATES AND THE STATE'S OBLIGATION TO PROTECT: CIVIL SOCIETY BRIEFING PAPERS ON COMMUNITY, MILITARY AND CUSTODY 52 (2011), *available at* http://www.law.virginia.edu/vaw ("Yet, sentences—even for recidivist batterers—remain relatively lenient. The results of those light dispositions may greatly endanger victims." (footnote omitted) (citing Cynthia D. Cook, *Triggered: Targeting Domestic Violence Offenders in California*, 31 MCGEORGE L. REV. 328, 333 (2000))).

165. MINN. COAL. FOR BATTERED WOMEN, HANDBOOK FOR ELECTED OFFICIALS ON BATTERED WOMEN'S ISSUES 11 (2006) [hereinafter HANDBOOK], *available at* http://www.mcbw.org/files/u1/Elected_Official_Handbook.pdf. The definition of "batter" is "to beat with successive blows so as to bruise, shatter, or demolish; . . . to subject to strong, overwhelming, or repeated attack; . . . to strike heavily and repeatedly." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 104 (11th ed. 2003).

166. Women batter as well, but the vast majority of abusers are male. *See* HANDBOOK, *supra* note 165, at 8 (citing U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS SELECTED FINDINGS: VIOLENCE BETWEEN INTIMATES (1994) ("90–95% of domestic violence victims are women.")).

167. *Id.* at 11. "Men use physical, emotional, and/or sexual abuse to maintain power and control over their relationships with their female partners. They have learned that violence works to achieve this end." *Id.*

168. At least thirty-four people died as a result of domestic violence in 2011 in Minnesota. MINN. COAL. FOR BATTERED WOMEN, FEMICIDE REPORT 3 (2011) [hereinafter FEMICIDE REPORT], *available at* http://www.mcbw.org/files/images/2011_Femicide_Report_FINAL_1.pdf.

169. *Id.* at 18.

170. Kaye & Knipps, *supra* note 161, at 5–6.

are lost. And public confidence in our justice system moves down yet another notch. If we refuse to take action, refuse to change, we may preserve our traditions and decorum. But at what cost?"[171]

Coming to a simplistic conclusion that an acceptance of a guilty plea constitutes a conviction, thus barring a subsequent re-evaluation of a plea agreement, does nothing to solve the problem of domestic violence and fails to promote victim safety, offender accountability, or public confidence in our criminal system.[172] The *Jeffries* decision will force trial courts to inadequately handle domestic violence cases in the future. Prosecutors, law enforcement, and victim advocates are keenly aware that program intervention and appropriate sentences can encourage rehabilitation, increase safety for the victim, and lead to a more effective justice system.[173] Accurate sentences must be treated as a matter of public concern and safety,[174] especially in cases where the judge recognizes that an abuser will not be successful on probation.[175] Allowing a judge to vacate a guilty plea in this type of situation, despite his use of unconditional language in accepting the plea, furthers the public safety goals of reducing domestic violence in our community. The Minnesota Supreme Court's decision does not further this goal.

3. Pre-Sentence Investigations Are Valuable Resources

The trial court in *Jeffries* relied on the information in the PSI to evaluate the appropriateness of the sentence contained in the plea agreement.[176] Courts should have the discretion to change an inappropriate sentence after learning new information from the PSI.[177]

171. *Id.* at 12.

172. *Id.*

173. *See* SAMPSON, *supra* note 113, at 26–28 (discussing the benefits of a "graded response" to domestic violence).

174. See HANDBOOK, *supra* note 165, at 8–9, for a statistical illustration of the impact domestic violence has on the public.

175. State v. Jeffries, 806 N.W.2d 56, 59–60 (Minn. 2011) (quoting the judge explaining on the record his reasons for no longer accepting the plea agreement).

176. *Id.* at 75 (Anderson, G. Barry, J., dissenting) (pointing out that the trial court based its decision to vacate the guilty plea on information in the PSI).

177. *Id.* at 71 (Gildea, C.J., dissenting); *see* Carl Edman & Cynthia E. Richman, *Double Jeopardy*, 89 GEO. L.J. 1439, 1478 (2001) (explaining that a post-conviction sentence can be modified if "the defendant has no legitimate expectation of finality in the original sentence").

The intent of the statute requiring a PSI in domestic violence cases[178] is to recognize the importance of accurate sentences in these types of cases where repeat offenses and escalating violence are not only common but predicted and expected.[179] As the court of appeals has stated, "[A]ny behavior indicating an individual's propensity for violence is related to domestic violence."[180]

A study on the handling of misdemeanor domestic violence cases in the suburban Hennepin County courts found that, in some cases, *pre*-sentence investigations were not ordered until *after* sentencing.[181] "Conducting a PSI after sentencing minimizes its importance, disregards victim input, and makes revocations difficult. As one probation officer put it, this practice is akin to a doctor writing a prescription without an exam."[182] For the same reason, a judge should not be able to lock in a certain sentence—regardless of the language used at the plea hearing—because the plea hearing takes place prior to ordering the PSI.[183] The *Jeffries* decision will result in a practice akin to doctors not being able to change the prescriptions they wrote after receiving the results of the exam.

The Minnesota Court Information System (MNCIS)[184] indicates that Erik Jeffries was convicted of misdemeanor domestic assault in 2006.[185] The original complaint[186] in that case charged Jeffries with felony domestic assault by strangulation.[187] Later in

178. MINN. STAT. § 609.2244 (2010).
179. WATCH, *supra* note 159, at 1.
180. State v. Moen, 752 N.W.2d 532, 535 (Minn. Ct. App. 2008).
181. WATCH, *supra* note 159, at 12.
182. *Id.*
183. MINN. STAT. § 609.2244, subdiv. 1 (requiring a PSI for defendants convicted of a domestic violence-related offense, therefore making it impossible to order a PSI prior to acceptance of a guilty plea).
184. The Minnesota court website offers public access to statewide electronic case records and the calendar management system. MINN. JUD. BRANCH, MINN. COURT INFO. SYS., http://www.mncourts.gov/publicaccess (last visited Sept. 16, 2012) [hereinafter MNCIS].
185. MNCIS, *supra* note 184 (read through "Required Acknowledgement"; then click "I Accept"; then select "Criminal/Traffic/Petty Case Records"; then provide the required "CAPTCHA" security authorization and case number 27-CR -06-057311; then click "search").
186. Complaint for State v. Jeffries, No. 27-CR-06-057311 (Aug. 22, 2006) (on file at the WATCH office).
187. MINN. STAT. § 609.2247 (2010). Passed in 2005, this statute made domestic assault by strangulation a felony-level offense because "[p]rior to the law's passage, most domestic strangulation cases were charged as misdemeanors even though strangulation is one of the most dangerous forms of domestic

2006, Jeffries was again convicted of domestic assault, enhanced to a gross misdemeanor because of the prior domestic-qualified conviction.[188] Jeffries violated his conditions of probation in this case and a revocation hearing was held in 2007.[189] Also in 2007, Jeffries was convicted of disorderly conduct, and upon closer review of the MNCIS report, that case was originally charged as a violation of an order for protection as well as disorderly conduct.[190]

These are just some examples of what the judge may have learned upon reviewing the PSI that were unknown at the time of the acceptance of the first plea agreement. These examples do not include Jeffries's other felony and misdemeanor convictions.[191] A

violence and, according to the Hennepin County Fatality Review and other experts, is frequently a precursor to domestic homicide." HEATHER WOLFGRAM, WATCH, THE IMPACT OF MINNESOTA'S FELONY STRANGULATION LAW 2 (2007) (footnote omitted), *available at* http://www.watchmn.org/files/reports/Strangulation%20cover%20final%201-24-07.pdf. "All batterers should be viewed as potentially lethal, though there are well-documented indicators of lethality of which everyone should be aware. Included in the factors that have been identified as possible lethality indicators [is] . . . attempted strangulation." FEMICIDE REPORT, *supra* note 168, at 6.

188. MNCIS, *supra* note 184 (read through "Required Acknowledgement"; then click "I Accept"; then select "Criminal/Traffic/Petty Case Records"; then provide the required "CAPTCHA" security authorization and case number 27-CR-06-083944; then click "search"). "Whoever violates subdivision 1 within ten years of a previous qualified domestic violence-related offense conviction . . . is guilty of a gross misdemeanor." MINN. STAT. § 609.2242, subdiv. 2 (2010).

189. MNCIS, *supra* note 184 (read through "Required Acknowledgement"; then click "I Accept"; then select "Criminal/Traffic/Petty Case Records"; then provide the required "CAPTCHA" security authorization and case number 27-CR-06-083944; then click "search").

190. MNCIS, *supra* note 184 (read through "Required Acknowledgement"; then click "I Accept"; then select "Criminal/Traffic/Petty Case Records"; then provide the required "CAPTCHA" security authorization and case number 27-CR-07-026258; then click "search"). An order for protection is a civil order granting the petitioner relief from domestic violence in the form of no physical harm, no contact, and/or coordination of supervised child visitation, among other protective conditions. If the order is violated, it is a criminal offense. MINN. STAT. § 518B.01, subdiv. 4, 6, 14 (2010).

191. In addition to the domestic violence-related offenses, Jeffries was also convicted of the following (listed are only convictions on the public MNCIS record for Hennepin County, Minnesota): four counts of felony controlled substance crime in the fifth degree—possession (Case No. 27-CR-98-064348, 27-CR-99-094531, 27-CR-00-067377, and 27-CR-03-058933); one count of felony sale of simulated controlled substance (Case No. 27-CR-02-056290); one count of felony forgery (Case No. 27-CR-06-041788); five counts of misdemeanor trespass (Case No. 27-CR-97-110680, 27-CR-98-032484, 27-CR-00-044706, 27-CR-02-095768, and 27-CR-03-081437); one count of misdemeanor loitering with intent to buy or sell narcotics (Case No. 27-CR-98-043356); and one count of misdemeanor disorderly conduct (Case No. 27-CR-99-085929). According to MNCIS, throughout these

defendant that seemingly has two prior misdemeanor domestic assaults looks very different than a defendant with three cases involving possibly serious domestic violence (including strangulation and violation of an order for protection), as well as numerous misdemeanor and felony convictions spanning a decade. The judge failed to defer his acceptance of the plea agreement on the record, but that does not mean a convicted felon and chronic domestic abuser should be sentenced to a probationary sentence that was accepted based on incomplete information at the plea hearing.

The importance of PSIs should make it impossible for judges to lock themselves into a plea agreement without first reviewing the PSI.[192] To do otherwise, such as the ruling in *Jeffries*, is to render the PSI worthless. The judge acted for fair and just reasons when he vacated the guilty plea because he knew he could not properly adhere to the previously accepted probationary sentence after learning the extent of Jeffries's criminal history in the PSI.

4. *The Court Should View a Judge's Right to Vacate a Guilty Plea the Same as a Defendant's Right to Withdraw a Guilty Plea*

The trial court vacated Jeffries's plea agreement in an effort to rectify an inappropriate sentence, because the PSI indicated that Jeffries would not have been successful on probation.[193] It would have been more appropriate for the court to explain on the record

cases, there were seven probation violations hearings (this number does not account for every violation, just the violations that resulted in a hearing before the court). *See* MNCIS, *supra* note 184 (read through "Required Acknowledgement"; then click "I Accept"; then select "Criminal/Traffic/Petty Case Records"; then provide the required "CAPTCHA" security authorization and one of the cited case numbers; then click "search").

192. PSIs include sections recommending sentences and treatment for defendants. MINN. STAT. § 609.2244, subdiv. 2 (2010).

193. State v. Jeffries, 806 N.W.2d 56, 60 (Minn. 2011). According to the State, Jeffries's criminal history included eight prior felony and eleven gross misdemeanor or misdemeanor convictions. Respondent's Brief, *supra* note 101, at 2. Jeffries also violated his conditional release twice before his first sentencing hearing and then again by having contact with the victim prior to the second plea agreement. *Id.* Jeffries was also charged in 2009 with four counts of felony-level violations of a no-contact order that were dismissed when Jeffries was sentenced to his executed sixty-month sentence on the felony domestic assault case. *See* MNCIS, *supra* note 184 (read through "Required Acknowledgement"; then click "I Accept"; then select "Criminal/Traffic/Petty Case Records"; then provide the required "CAPTCHA" security authorization and case number 27-CR-09-5620; then click "search").

that it would not go along with the negotiated sentence and give Jeffries a choice whether to withdraw his plea or to continue with sentencing.[194] This case note recognizes the poor choice of words used by the trial court when it said Jeffries was "convicted" at the plea hearing.[195] But the trial court's inaccurate word usage should not result in an inaccurate sentence for a defendant guilty of felony domestic assault. Nor should the trial court be barred from correcting an inaccurate sentence when faced with new information about multiple prior convictions and probation violations—indicating high risks for recidivism and victim safety.

Prior to sentencing, a defendant has a right to withdraw his or her guilty plea if the trial court determines it is "fair and just to do so."[196] After sentencing, the court must allow a defendant to withdraw a guilty plea if "necessary to correct a manifest injustice."[197] The fair and just standard is a lower standard than the manifest injustice standard,[198] but "it does not allow a defendant to withdraw a guilty plea 'for simply any reason.'"[199] Requiring a fair and just reason promotes the policies of finality as well as accuracy. Not allowing defendants to back out of a plea for just any reason promotes finality of judgments, while allowing room to withdraw guilty pleas for fair and just reasons[200] promotes the policy of accuracy in sentences.

In 1987, the Minnesota Supreme Court reiterated, "[I]f an unqualified promise is made on the sentence to be imposed, a

194. *See* State v. Wolske, 280 Minn. 465, 473, 160 N.W.2d 146, 152 (1968) ("[I]n the event the agreement is not fulfilled by the prosecutor or not acceptable to the court, the defendant should be afforded the option of either withdrawing or reaffirming his plea . . . .").

195. *Jeffries*, 806 N.W.2d at 59.

196. MINN. R. CRIM. P. 15.05, subdiv. 2 ("In its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so. The court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea.").

197. *Id.* subdiv. 1.

198. The fact that it is easier for a defendant to withdraw a guilty plea before sentencing rather than after indicates that acceptance of a guilty plea does not carry the same level of finality as a sentence.

199. State v. Theis, 742 N.W.2d 643, 646 (Minn. 2007) (quoting State v. Farnsworth, 738 N.W.2d 364, 372 (Minn. 2007)).

200. For example, a fair and just reason to allow withdrawal of a guilty plea would be if the parties agreed to, and the court accepted, an unfair or unjust sentence, before review of all of the information. *See* State v. Kunshier, 410 N.W.2d 377, 379 n.1 (Minn. 1987).

defendant should be allowed to withdraw his guilty plea if that promise is not fulfilled."[201] The trial court in *Jeffries* promised to impose the agreed-upon sentence pursuant to the plea deal when it accepted the guilty plea at the first plea hearing.[202] When the trial court later indicated that it was not willing to impose that sentence,[203] it did not fulfill its promise, thus allowing Jeffries to withdraw his guilty plea.[204]

Acceptance of plea agreements is not final because defendants "do not forfeit their right to withdraw those pleas of guilty and stand trial if, because of later events, the trial court or the prosecution ethically change their minds about previous agreements that were reached."[205] In cases such as this, the result is the same regardless of whether the judge vacates the plea because it is fair and just to do so (instead of imposing a sentence the defendant had not contemplated when pleading guilty) or whether the judge gives the defendant the option to withdraw his plea because the judge has the sole discretion to determine whether withdrawal would be fair and just.[206]

The Connecticut Supreme Court has held that double jeopardy does not attach when a defendant does not have a

201. *Id.* at 379 (citing State v. Trott, 338 N.W.2d 248, 252 (Minn. 1983); Kochevar v. State, 281 N.W.2d 680, 687 (Minn. 1979)); *see also* Santobello v. New York, 404 U.S. 257, 262–63 (1971) (stating that when the prosecution fails to keep a promise with regard to an accepted plea agreement, the case should be remanded to the trial court to determine whether specific performance of the agreement or withdrawal of the plea best serves the interests of justice); Olness v. State, 290 Minn. 198, 202, 186 N.W.2d 706, 709 (1971) ("Although a plea of guilty may be set aside where an unqualified promise is made as part of a plea bargain and is thereafter dishonored, a plea of guilty should not be set aside merely because the accused has not achieved his unwarranted hope.").

202. State v. Jeffries, 806 N.W.2d 56, 59 (Minn. 2011).

203. *Id.* at 59–60.

204. The court has previously explained:

> Trial judges at sentencing even have the right to change their minds about a previous plea agreement they earlier deemed acceptable. For instance, a presentence investigation may turn up facts unknown to all parties. The point is that, whenever a defendant has pleaded guilty pursuant to his understanding that there is a plea bargain as to the charges or to the ultimate sentence, the defendant must be offered the right to withdraw that plea of guilty and stand trial if, for any reason, the trial judge exercises the discretion that is his not to follow the proposed agreement.

Kunshier, 410 N.W.2d at 379 n.1.

205. *Id.* at 380 (citing State v. Wolske, 280 Minn. 465, 474–75, 160 N.W.2d 146, 153 (1968)).

206. MINN. R. CRIM. P. 15.05, subdiv. 2 (2010).

reasonable expectation of finality in the plea agreement because his sentence is conditioned on review of the PSI and victim input.[207] The Connecticut rules of practice allow a trial court to vacate an accepted plea agreement based on new information within a PSI and impose a different sentence or offer the defendant the choice to withdraw his plea.[208] The court reasoned that plea agreements often do not involve "the kind of prosecutorial overreaching that the double jeopardy clause was designed to prevent" if the State did not break the plea agreement after gaining a benefit or if a second prosecution did not start anew.[209] This reasoning aligns with the continuing jeopardy principle, which is based on a combination of interests, including "fairness to society, lack of finality, and limited waiver."[210]

When a defendant withdraws a plea, the same jeopardy continues and the defendant is not at risk of twice being put in jeopardy.[211] If the court had Jeffries withdraw his plea on the record, instead of saying "I'm giving your pleas back,"[212] then jeopardy would have continued and double-jeopardy concerns would not have been implicated. But the result is the same and the policies the Double Jeopardy Clause seeks to protect were not at risk.[213] By vacating the guilty plea, the court did not subject Jeffries to two trials, two sentences, or two punishments.

5. Advocating for an Alternative Rule: Extending the Fair and Just Standard

The rules should allow judges to vacate a defendant's guilty plea when it is "fair and just to do so,"[214] extending the standard

207. State v. Thomas, 995 A.2d 65, 76–77 (Conn. 2010). *See generally* Mark L. Hammond, Note, *United States v. Patterson: When Does the Double Jeopardy Clause Protect Defendants in Federal Court?*, 29 AM. J. TRIAL ADVOC. 467, 470–74 (2005).

208. *Thomas,* 995 A.2d at 77 n.14.

209. *Id.* at 78; *see also* LAFAVE, *supra* note 33, § 25.1(d) n.68.

210. Price v. Georgia, 398 U.S. 323, 329 n.4 (1970) (discussing Green v. United States, 355 U.S. 184 (1957); Kepner v. United States, 195 U.S. 100 (1904)).

211. *See* Smith v. Phillips, No. 02–CV–6329, 2012 WL 1340070, at *9 (E.D.N.Y. Apr. 17, 2012) (citing United States v. Olmeda, 461 F.3d 271, 279 n.7 (2d Cir. 2006); United States v. Podde, 105 F.3d 813, 816–17 (2d Cir. 1997)); *see also* Ricketts v. Adamson, 483 U.S. 1, 11 (1987) ("[T]he Double Jeopardy Clause . . . does not relieve a defendant from the consequences of his voluntary choice." (quoting United States v. Scott, 437 U.S. 82, 98–99 (1978))).

212. State v. Jeffries, 806 N.W.2d 56, 60 (Minn. 2011).

213. See *supra* notes 25–28 and accompanying text.

214. MINN. R. CRIM. P. 15.05, subdiv. 2. For an explanation of the requirements of the fair and just standard, see *State v. Raleigh*, 778 N.W.2d 90, 97

applied to defendants' motions for plea withdrawal prior to sentencing.[215] When the information in the PSI indicated Jeffries would not be successful on probation,[216] the judge's decision to no longer adhere to the agreed-upon plea deal was appropriate in the interests of safety, accountability, and justice.[217] Knowing that the sentence, which Jeffries relied upon in pleading guilty, would change, the judge fairly and justly vacated Jeffries's guilty plea.[218]

The fair and just standard maintains the finality principle at the heart of the Double Jeopardy Clause,[219] yet allows for maximizing the accuracy of sentences in plea agreements by allowing the judge to change a sentence or vacate a guilty plea when necessary in the interests of fairness and justice.[220] If this were the standard, when the judge vacated the guilty plea because of the information in the PSI, it would have been a fair and just action, allowing for continuation of the same jeopardy and therefore not implicating double-jeopardy concerns.

Requiring judges to adhere to a fair and just standard promotes finality by not allowing judges to simply change their minds after a defendant may have relied on a particular agreement when pleading guilty.[221] But it also encourages judges to impose accurate, appropriate, and just sentences after review of the PSI. This standard would better serve future cases concerning plea agreements.

(Minn. 2010) ("The 'fair and just' standard requires district courts to give 'due consideration' to two factors: (1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the State given reliance on the plea.").

215. MINN. R. CRIM. P. 15.05, subdiv. 2.

216. *Jeffries*, 806 N.W.2d at 60.

217. See *supra* Part IV.A.2 for a discussion of the importance of accountability in domestic violence cases. The Minnesota Supreme Court should have held that the trial judge can vacate a guilty plea when it is for a fair and just reason, such as ensuring appropriate sentences for repeat domestic abusers.

218. *Jeffries*, 806 N.W.2d at 60.

219. See *Crist v. Bretz*, 437 U.S. 28, 33 (1978) and *Green v. United States*, 355 U.S. 184, 188 (1957), for the U.S. Supreme Court's articulation of the finality policy.

220. *See* Creekpaum, *supra* note 25, at 1188 ("A system of justice has no credibility without accuracy."); *id.* at 1190 ("The acceptable level of accuracy will always be a value judgment, and it can only be achieved in balance with a competing value: finality.").

221. *See* State v. Lopez, 794 N.W.2d 379, 382 (Minn. Ct. App. 2011) (stating that "more than a change of heart is needed to withdraw a guilty plea"); *see also* Kim v. State, 434 N.W.2d 263, 266 (Minn. 1989) (discussing the need to protect the integrity of guilty pleas).

B. Entering a Guilty Plea Does Not Forfeit a Double-Jeopardy Plea

In *State ex rel. Boswell v. Tahash*, the Minnesota Supreme Court held that double jeopardy was an affirmative defense that was forfeited if not raised at the appropriate time.[222] The U.S. Supreme Court ruled eight years later, in *Menna v. New York*, that a guilty plea does not prohibit a defendant from raising a double-jeopardy claim on appeal.[223] In *Menna*, the U.S. Supreme Court reasoned that the Double Jeopardy Clause prohibits the government from convicting a defendant a second time because the government lacks the authority to bring a defendant into court a second time.[224] Thus, a guilty plea does not bar a double-jeopardy claim when the defendant asserts the right not to be twice put in jeopardy.[225] If the double-jeopardy claim were valid, it would bar the government from initiating new proceedings against the defendant, therefore necessitating the defendant's right to assert such a claim.[226]

On review of the *Jeffries* case, the Minnesota Court of Appeals concluded that *Menna* was not binding on Minnesota courts because "the scope of waiver by guilty plea is a matter of state law, not federal constitutional law."[227] The court of appeals held that double jeopardy is an affirmative defense that was "waived by Jeffries's subsequent counseled plea of guilty."[228] The Minnesota Supreme Court reversed the court of appeals' decision and adopted the *Menna* rule,[229] concluding that Jeffries did not forfeit his double-jeopardy claim by pleading guilty.[230]

The State argued that *Menna* was not binding because state law controls procedural issues such as forfeiture.[231] The U.S. Supreme

222. 278 Minn. 408, 415, 154 N.W.2d 813, 817–18 (1967).

223. 423 U.S. 61, 62 (1975) (per curiam).

224. *Id.*; *see* Long v. McCotter, 792 F.2d 1338, 1343 (5th Cir. 1986); Edman & Richman, *supra* note 177, at 1475 n.1431.

225. *Menna*, 423 U.S. at 62.

226. Blackledge v. Perry, 417 U.S. 21, 30–31 (1974).

227. State v. Jeffries, 787 N.W.2d 654, 660–61 (Minn. Ct. App. 2010), *rev'd*, 806 N.W.2d 56 (Minn. 2011) (relying on State v. Kelty, 716 N.W.2d 886, 894 (Wis. 2006)).

228. *Id.* at 661.

229. *Menna*, 423 U.S. at 62 n.2 ("We simply hold that a plea of guilty to a charge does not waive a claim that judged on its face the charge is one which the State may not constitutionally prosecute.")

230. *Jeffries*, 806 N.W.2d at 65.

231. Respondent's Brief, *supra* note 101, at 17 (citing Danforth v. Minnesota, 552 U.S. 264, 290 (2008)). "[The] state procedural requirement that an appellant must raise an affirmative defense below or forfeit it for purposes of appeal is a matter of state law. The Supreme Court's procedural exception in *Menna* is

Court declared in *Danforth v. Minnesota*, "[T]he availability or nonavailability of remedies . . . is a mixed question of state and federal law.'"[232] The State maintained in *Jeffries* that "Minnesota's waiver rule is simply a limit on the availability of a remedy to a litigant, a process left to state law."[233] Relying on *Danforth*, the State advocated that the court view waiver as "a procedural requirement controlled by state law and distinct from the nature of the right itself."[234] The State explained in its brief to the court, "[T]he court of appeals found that the procedural consequences attendant to a waiver of a constitutional right (as opposed to the existence of a constitutional right) is a matter of state law."[235] The State maintained that the court of appeals correctly held that Jeffries "waived the benefit of that original deal when he negotiated a new one."[236]

But the Minnesota Supreme Court agreed with Jeffries's interpretation of *Menna* as not "grounded in waiver, but in the defendant's constitutional right not to be haled into court on a charge."[237] The U.S. Supreme Court's reasoning in *Blackledge v. Perry* supports this interpretation.[238] In *Blackledge*, the Court declared that the defendant could not waive certain due process rights that go "to the very power of the State to bring the defendant into court."[239] Likewise, in *Robinson v. Neil*, the Court stated, "[T]his guarantee . . . is a constitutional right of the criminal defendant [and] its practical result is to prevent a trial from taking place at all, rather than to prescribe procedural rules that govern the conduct of a trial."[240] Thus, the Minnesota Supreme Court correctly interpreted *Menna* as a substantive rule based on constitutional and federal law, not as a procedural rule.[241]

inapplicable." *Id.* at 15.

232. *Danforth*, 552 U.S. at 291 (quoting Am. Trucking Ass'ns, Inc. v. Smith, 496 U.S. 167, 205 (1990) (Stevens, J., dissenting)).

233. Respondent's Brief, *supra* note 101, at 16.

234. *Id.* at 17 ("A distinct application of a remedy available in state court 'does not imply that there [was] no right and thus no violation of that right at the time of trial—only that no remedy will [be provided in federal habeas courts].'" (quoting *Danforth*, 552 U.S. at 291)).

235. *Id.* at 15 (citing State v. Jeffries, 787 N.W.2d 654, 660–61 (Minn. Ct. App. 2010), *rev'd*, 806 N.W.2d 56 (Minn. 2011)).

236. *Id.* at 18.

237. Appellant's Brief, *supra* note 83, at 13.

238. 417 U.S. 21, 30–31 (1974).

239. *Id.* at 30.

240. 409 U.S. 505, 509 (1973).

241. State v. Jeffries, 806 N.W.2d 56, 65 (Minn. 2011).

While the State incorrectly characterized Jeffries's second guilty plea as forfeiting a double-jeopardy plea, its argument points persuasively to the fact that Jeffries was not in danger of double jeopardy because Jeffries's second plea was the continuation of plea negotiations after the first deal was rejected.[242] He was not punished twice—rather he was trying to "mitigate his risk" within the one and only negotiation of his sentence, prior to any finality of judgment.[243] The court was correct that non-assertion of a double-jeopardy claim could not forfeit the right to plead double jeopardy on appeal, but it was incorrect to decide that the conviction at the first plea hearing raised double-jeopardy concerns and barred subsequent vacation of that plea.

V. CONCLUSION

The court correctly adopted the U.S. Supreme Court's holding in *Menna*, concluding that Jeffries's second guilty plea did not bar a double-jeopardy claim.[244] *Jeffries* appropriately brought Minnesota precedent in line with U.S. Supreme Court precedent. However, the court incorrectly analyzed Jeffries's double-jeopardy claim.

The majority failed to analyze whether the conviction at the first plea hearing should have barred the second guilty plea under the Double Jeopardy Clause. Chief Justice Gildea's dissenting opinion correctly criticized the majority's analysis as "overly simplistic."[245] The majority ignored important policy analysis in determining whether a violation of the Double Jeopardy Clause occurred, and its favoritism of finality will have far-reaching consequences on the accuracy of future sentences based on plea agreements. Especially in domestic violence cases, the goal of imposing appropriate sentences should outweigh any sense of finality attached to acceptances of plea agreements. To further the policies of both finality and accuracy, the court should have extended the fair and just standard to judges who seek to vacate a guilty plea when new information regarding the defendant convinces them that a plea agreement is inappropriate.

242. Respondent's Brief, *supra* note 101, at 17–18.
243. *Id.* at 18.
244. *Jeffries*, 806 N.W.2d at 65.
245. *Id.* at 70 (Gildea, C.J., dissenting).