

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2024-1608
	:	
Plaintiff-Appellant,	:	
	:	
vs.	:	On Appeal from the
	:	Cuyahoga County Court of Appeals,
DIAMOND KING,	:	Eighth Appellate District
	:	
Defendant-Appellee.	:	C.A. Case Nos. 114315, 114317

BRIEF OF *AMICUS CURIAE* OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF APPELLEE DIAMOND KING

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A trial court’s judgment of acquittal entered pursuant to Crim.R. 29(B) following a jury’s guilty verdict is not a “final verdict” within the meaning of R.C. 2945.67(A) and does not implicate Double Jeopardy Clauses of the United States and Ohio Constitutions.....	3
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INTRODUCTION

Criminal Rule 29(A) and (C) judgments of acquittals are final verdicts under R.C. 2945.67(A). This has been the law in Ohio since at least 1987 when this Court decided *State ex rel. Yates v. Court of Appeals for Montgomery Cnty.*, 32 Ohio St.3d 30 (1987). In *Yates*, this Court held that there was no distinction between Crim.R. 29(A) and (C) motions, especially in light of R.C. 2945.67(A)'s plain language that the State is prevented from appealing "any final verdict and is not tied to the Double Jeopardy Clause." (Emphasis in original.) *Id.* at 32. This Court further held,

Respondent makes the unpersuasive argument that a judgment of acquittal under Rule 29(A) is a final verdict but a judgment of acquittal under Rule 29(C) is not, even if both are grounded on a determination by the trial judge that the state produced insufficient evidence to convict. We reject such an incongruous result. The judgment of acquittal in the case *sub judice*, though entered after a jury verdict and upon the authority of Crim.R. 29(C), was grounded upon insufficiency of evidence. It is a factual determination of innocence and as much a final verdict as any judgment of acquittal granted pursuant to Crim.R. 29(A).

Id. at 32-33.

The State and its amicus briefing plainly argue that this Court should overrule *Yates* and allow the State to appeal post-verdict judgment of acquittals. *Yates* and its progeny ensure predictability and resolve any ambiguity in the statutes. The parties and courts know how to treat Crim.R. 29(C) judgments under the current state of the law and adopting the State's proposition of law will lead to widespread confusion and disparate results. Moreover, the State and its amicus briefing exaggerate how often courts are granting Crim.R. 29(C) motions. Contrary to the opposing briefing, these favorable rulings are few and far between. Finally, the opposing briefs cite to Marsy's Law and victim's rights as an avenue to overcome stare decisis. However, Crim.R. 29(C) judgments do not implicate victim's rights, thus this is an invalid reason to abandon *Yates*. As such, this Court should affirm the Eighth District Court of Appeals.

STATEMENT OF THE CASE AND FACTS

Amicus curiae adopts and incorporates the statement of the case and facts as set forth by the State of Ohio in its merit brief.

STATEMENT OF INTEREST OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER

The Office of the Ohio Public Defender (“OPD”) is a state agency that represents indigent criminal defendants and coordinates criminal-defense efforts throughout Ohio. The OPD also plays a key role in the promulgation of Ohio law and procedural rules. A primary focus of the OPD is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The OPD also keeps abreast of legislative developments affecting criminal defendants throughout the state. The mission of the OPD is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems. As amicus curiae, the OPD offers this court the perspective of experienced practitioners who routinely observe the lived experiences of incarcerated individuals in Ohio.

ARGUMENT

Appellant State of Ohio's Proposition of Law: A trial court's judgment of acquittal entered pursuant to Crim.R. 29(B) following a jury's guilty verdict is not a "final verdict" within the meaning of R.C. 2945.67(A) and does not implicate Double Jeopardy Clauses of the United States and Ohio Constitutions

I. Strict construction of R.C. 2945.67 is required to ensure predictability and resolve any ambiguity

The current state of law provides consistency and predictability when resolving Crim.R. 29 motions. Previously, this Court held that the same standard and procedures apply to successful motions under any subsection of Crim.R. 29. *Yates*, 32 Ohio St.3d at 33. As noted above, this Court held that the sufficiency standard and the State's bar to appeal apply to both Crim.R. 29(A) and (C) motions equally. *Id.* This rule allows for predictability for the parties and courts when faced with these motions either at the trial or appellate level. To allow the State to appeal these judgments will result in confusion, disparate treatment, and lack of consistency that will take years to remedy, if ever.

Moreover, the State's ability to appeal must be clearly and unambiguously authorized by statute, and any ambiguity must be resolved in favor of the defendant. *State v. Young*, 62 Ohio St.2d 370, 374 (1980), quoting *United States v. Bass*, 404 U.S. 336, 348 (1971). Revised Code Section 2945.67 is ambiguous as to whether the State can appeal a successful Crim.R. 29(B-C) motion as demonstrated solely by the prior decisions on this issue and the briefs submitted in this case. This Court has previously found that the State cannot appeal these successful motions, and the State and its amicus briefing in this case suggests that this Court got it wrong. *See Yates* at 33. On its face, there is ambiguity as to whether the State can appeal a post-verdict judgment of acquittal, which requires resolution in the defendant's favor. *Young*.

II. Trial courts are resolving Crim.R. 29(C) motions *against* defendants far more often than in their favor

The plethora of amicus briefs filed in this case overstate the number of successful Crim.R. 29 motions in an attempt to frame such examples as a rampant problem. This narrative, however, is exaggerated. A review of case law where Crim.R. 29(C) motions have arisen demonstrates that trial courts are following the law.

The following is a non-exhaustive list of cases where the trial court properly denied a Crim.R. 29(C) motion: *State v. Manes*, 2025-Ohio-35 (9th Dist.); *State v. Saunders*, 2024-Ohio-4580 (8th Dist.); *State v. Sanon*, 2023-Ohio-2742 (1st Dist.); *State v. Scott*, 2023-Ohio-4051 (4th Dist.) (denied the motion despite finding the state failed to introduce any evidence “regarding chemical analysis determining the THC content of the substance at issue”); *State v. Grinstead*, 2011-Ohio-3018 (12th Dist.); *State v. Disabato*, 2019-Ohio-3542 (3rd Dist.); *State v. Miller*, 2019-Ohio-92 (4th Dist.); *State v. Mason*, 2018-Ohio-3329 (5th Dist.); *State v. Robinson-Bey*, 2018-Ohio-5224 (9th Dist.); *State v. Harris*, 2017-Ohio-5594 (1st Dist.); *State v. Mitchell*, 2016-Ohio-7674 (4th Dist.); *State v. Mays*, 2013-Ohio-1952 (12th Dist.); *State v. Willis*, 2010-Ohio-4404 (12th Dist.); *State v. Sanders*, 2004-Ohio-6320 (12th Dist.); *State v. Baker*, 2000 WL 569531 (6th Dist. May 12, 2000). These examples demonstrate that—contrary to the State and amicus arguments—trial courts are properly considering Crim.R. 29 motions and are rarely entering post-verdict judgment of acquittals.

III. A victim’s right to appeal and State’s right to appeal are not one in the same

The State and its amicus briefing argue that Marsy’s Law is a sufficient basis for this Court to overcome stare decisis to strike down *Yates*. (State Merit Brief at 45; Amicus Brief of Hamilton County Prosecutor Office’s at 4-7; Amicus Brief of Ohio Prosecuting Attorneys Association at 3-4). This Court may abandon prior precedent when “(1) the decision was wrongly decided at that

time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it.” *Westfield Ins. Co. v. Galatis*, 2003-Ohio-5849, ¶ 48. However, the opposing briefs conflate the State’s right to appeal with a victim’s right to appeal pursuant to Marsy’s Law. Victim’s rights are not implicated in a successful Crim.R. 29(C) motion, thus this is an invalid basis to abandon stare decisis.

Under R.C. 2930.19(A)(1), a victim can only challenge an order impacting their rights as victims provided by law, and the prosecutor can only assert that challenge if requested by the victim. In contrast, R.C. 2945.67(A) gives the State authority to appeal as a matter of right certain trial court decisions, as well as authority to appeal by leave of court any other trial court decision but for the final verdict. R.C. 2945.67(A).

Contrary to the State’s assertions, a victim’s right to appeal is wholly separate from the State’s right to appeal. Victims do not get an automatic right to appeal like the State does and their appeals are limited to the rights specifically enumerated under Marsy’s Law. R.C. 2930.19(A)(1); R.C. 2945.67(A). The appeal of a successful Crim.R. 29(C) motion does not implicate Marsy’s Law or victim’s rights based on the plain language of the statute and constitutional provision. *See* Ohio Const., art. I, § 10a; R.C. Ch. 2930.

Additionally, this Court and the legislature have had ample opportunity to amend either Crim.R. 29 or R.C. 2945.67 since Marsy’s Law came into effect. Art. 1, §10a of the Ohio Constitution became effective on February 5, 2018. Marsy’s Law was codified in the Ohio Revised code in 2023. R.C. 2930. Since its adoption, Crim.R. 29 has only been amended once in 2022, a full four years after Marsy’s Law was amended to the Ohio Constitution, with no additional language regarding Marsy’s Law or victim’s rights. Crim.R. 29. Moreover, the legislature has

declined to amend R.C. 2945.67 since its enactment, thus signaling that the legislature takes no issue with the wording of the statute in light of Marsy's Law either.

Marsy's Law and victim's rights are insufficient to overcome stare decisis. Since victim's rights are not implicated when a trial court enters a post-judgment of acquittal, this cannot be grounds to overturn stare decisis. As such, this Court should reject this basis in overturning *Yates* and its progeny.

CONCLUSION

For the reasons set forth above and in Ms. King's merit brief, this Court should affirm the Eighth District's judgment below.

Respectfully submitted,

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A copy of the foregoing **BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO**

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