[Cite as *State v. Harris*, 2025-Ohio-4927.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 25CA4
v.	:	
LADARIUS HARRIS,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Scott P. Wood, Lancaster, Ohio, for appellant.

Jeffrey C. Marks, Ross County Prosecuting Attorney, and Alisa Turner, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:10-16-25
ABELE, J.

{¶1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. Ladarius Harris, defendant below and appellant herein, assigns the following error for review:

> "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED AGAINST HIM AS A RESULT OF A SEARCH WARRANT."

{¶2} In early January 2024, law enforcement officers

obtained a warrant to search the hotel room where appellant was believed to be staying. The search warrant affidavit stated that South Carolina State Patrol contacted the Chillicothe Police Department (CPD) and advised officers that appellant "was wanted for a weapons possession by a felon," had been "involved in a shooting in Spartansburg, S.C[.] and is believed to have a firearm in his possession." The affidavit indicated that appellant's "phone was being 'pinged' and showed his location at Americas Best Value Inn . . . ." The affidavit further explained that officers spoke with the hotel owner, and the owner confirmed that appellant had been staying in the hotel room. The affidavit reported that, after confirming appellant as the occupant, officers kept the hotel room under surveillance. The affidavit attested that, based upon the foregoing information, officers believed that appellant would be found in the room and be in possession of "any firearm, ammunition, firearm accessory, [or] article of firearm possession."

{¶3} After officers had taken appellant into custody pursuant to the search warrant, officers also obtained a warrant to search the motor vehicle that had been parked in front of appellant's hotel room. The search warrant affidavit stated that a search of appellant's hotel room uncovered evidence of

narcotics, but officers did not discover a firearm inside the hotel room. The affidavit thus suggested that a search of the motor vehicle would uncover evidence of a firearm. The inventory sheet reveals that officers discovered 16 items, including drugs, ammunition, and "gun parts."[1]

{¶4} On February 16, 2024, a Ross County Grand Jury returned an indictment that charged appellant with having weapons while under disability, in violation of R.C. 2923.13, a third-degree felony. On March 1, 2024, a Ross County Grand Jury returned a second indictment that charged appellant with (1) aggravated drug possession, in violation of R.C. 2925.11, a first-degree felony, with a major-drug-offender specification;[2]

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[1] The record before this court is limited due to the nature of appellant's motion to suppress evidence. Appellant did not submit any testimony from the officers who obtained or executed the search warrant. Instead, he informed the trial court that his motion was limited to the "four corners" of the search warrant. Thus, we likewise are limited to the four corners of the search warrant and have listed only the items from the inventory sheet that are completely legible.

[2] The specification charged that appellant "did obtain, possess, or use Methamphetamine in an amount at least one hundred times the amount that is necessary to commit a felony of the third degree pursuant to" R.C. 2925.11.

R.C. 2929.01(W) defines a "major drug offender" to mean, as relevant here,

> an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains . . . at least one hundred times the amount of any other schedule I or II controlled substance . . . that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(2) aggravated drug trafficking, in violation of R.C. 2925.03, a first-degree felony; and having weapons while under disability, in violation of R.C. 2923.13(A)(3), a third-degree felony.

{¶5} On May 17, 2024, appellant filed a motion to suppress the evidence that law enforcement officers discovered as a result of executing the search warrants upon the hotel room and motor vehicle. Appellant asserted that probable cause did not exist to issue the search warrants. More specifically, he claimed that the search warrant for the hotel room was defective for the following reasons: (1) "neither the affidavit nor the search warrant identified the criminal offenses" that appellant allegedly committed; (2) the affidavit did not include any dates "regarding when [appellant] allegedly committed any offense in South Carolina," or when Chillicothe police were "contacted by South Carolina"; (3) the search warrant and affidavit lacked a "factual basis that [appellant] was still in possession of a firearm" or that "the firearm would be located in the hotel room."

{¶6} Appellant contended that the search warrant for the motor vehicle was defective because it (1) did not list any dates "regarding when [appellant] allegedly committed any offense in South Carolina," or "when the CPD was contacted by South Carolina," and (2) lacked a "factual basis why the firearm

or any drugs would be located in the motor vehicle."

{¶7} On November 15, 2024, the trial court held a hearing to consider appellant's motion to suppress evidence. At the hearing, appellant stated that he would not be presenting any witnesses. Instead, he indicated that the court should consider the "four corners" of the search warrants to determine whether they established probable cause to search the hotel room and the motor vehicle.

{¶8} The trial court subsequently overruled appellant's motion to suppress. The court recognized that the search warrant affidavit for the hotel room did not cite a specific criminal statute. Instead, the affidavit stated that appellant "was wanted for 'weapons possession by a felon,' had an 'active warrant within extradition radius,' and was 'believed to have a firearm in his possession.'" The court concluded that this information "substantially stated an offense in relation to the warrant."

{¶9} The trial court also found that the affidavit "set for[th] a factual basis for the affiant's belief that [appellant], and potentially a firearm, would be located in the hotel room to be searched." The court likewise concluded that the second search warrant was valid.

{¶10} On January 15, 2024, appellant entered no-contest pleas to the three counts of the March 1, 2024 indictment.[3] In exchange for his pleas, the State agreed to amend counts one and two of the indictment to charge a "regular F1" and to "dismiss the specification on [count] one." The court then found appellant guilty of each offense.

{¶11} Next, the trial court sentenced appellant. Before it imposed sentence, the court observed that the State asked the court to (1) amend counts one and two of the indictment to charge that the weight of the drug was 50 times the bulk amount, but less than 100 times the bulk amount, and (2) dismiss the specification attached to count one. The court granted the State's request to amend the indictment and to dismiss the specification. The court recited that the State "amended the indictment as to Counts One and Two." The court thus found appellant "[g]uilty as charged in the amended indictment."

{¶12} The trial court noted that counts one and two of the indictment merged, and the State elected to proceed to sentencing on count one, aggravated drug possession. The court

[3] We note that a no-contest plea "'does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence.'" *State v. Hill*, 2022-Ohio-4544, ¶ 7, quoting Crim.R. 12(I).

sentenced appellant to serve a mandatory minimum prison term of 9 years to a maximum indefinite term of 13.5 years for aggravated drug possession. The court also sentenced appellant to serve a 24-month prison term for the offense of having weapons while under disability, with the prison terms to be served concurrently to one another. This appeal followed.

{¶13} Before we may review the merits of appellant's assignment of error, we first must determine whether we have jurisdiction to do so. *See Ames v. Rootstown Twp. Bd. of Trustees*, 2022-Ohio-4605, ¶ 15, fn.1 ("a court has an independent obligation to assure itself of its authority to decide a case"). Courts of appeals have jurisdiction to "affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district." Section 3(B)(2), Article IV, Ohio Constitution; *State v. Jackson*, 2016-Ohio-5488, ¶ 46; *State v. Thompson*, 2014-Ohio-4751, ¶ 37. "As a result, '[i]t is well-established that an order [or judgment] must be final before it can be reviewed by an appellate court. If an order [or judgment] is not final, then an appellate court has no jurisdiction.'" *Gehm v. Timberline Post & Frame*, 2007-Ohio-607, ¶ 14, quoting *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989); *see Jackson* at ¶ 46 (stating that courts lack "jurisdiction over

orders that are not final and appealable"). In the event that the parties involved in an appeal do not raise this jurisdictional issue, the appellate court must raise it sua sponte. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86 (1989), syllabus; *Whitaker-Merrell v. Geupel Co.*, 29 Ohio St.2d 184, 186 (1972).

{¶14} "'[I]n order to decide whether an order issued by a trial court in a criminal proceeding is a reviewable final order, appellate courts should apply the definitions of 'final order' contained in R.C. 2505.02.'" *State v. Baker*, 2008-Ohio-3330, ¶ 6, modified on other grounds in *State v. Lester*, 2011-Ohio-5204, quoting *State v. Muncie*, 91 Ohio St.3d 440, 444 (2001), citing *State ex rel. Leis v. Kraft*, 10 Ohio St.3d 34, 36 (1984). R.C. 2505.02(B) defines the characteristics of a final order and states, in relevant part, as follows:

> An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment . . . .

"Undoubtedly, a judgment of conviction qualifies as an order that 'affects a substantial right' and 'determines the action and prevents a judgment' in favor of the defendant." *Baker* at ¶ 9.

{¶15} Crim.R. 32(C) outlines the elements that a final, appealable judgment of conviction must contain. *Jackson*, 2016-Ohio-5488, at ¶ 47; *Thompson*, 2014-Ohio-4751, at ¶ 38. Crim.R. 32(C) states:

> A judgment of conviction shall set forth the fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

{¶16} Thus, "a judgment of conviction is a final order subject to appeal under R.C. 2505.02 when the judgment entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk." *Lester*, 2011-Ohio-5204, at ¶ 14; *accord Jackson* at ¶ 47; *Thompson* at ¶ 38.

{¶17} "This court consistently has stated that a trial court's judgment of conviction is not final and appealable if any counts of the indictment remain unresolved." *State v. McKinney*, 2023-Ohio-1587, ¶ 11 (4th Dist.); *e.g., State v. Gillian*, 2016-Ohio-3232, ¶ 6 (4th Dist.); *State v. Wyant*, 2009-Ohio-5200, ¶ 10 (4th Dist.); *see State v. Brooks*, 1991 WL 81473,

* 1 (8th Dist. May 16, 1991), citing *State v. Brown*, 59 Ohio App.3d 1, 2 (8th Dist.1989) (trial court possesses "a mandatory duty to deal with each and every charge prosecuted against a defendant," and "[t]he failure of a trial court to comply renders the judgment of the trial court substantively deficient under Crim.R. 32[(C)]"); *accord State v. Pippin*, 2016-Ohio-312, ¶ 5 (1st Dist.) ("An order in a criminal case is not final where the court fails to dispose of all the charges that are brought against a criminal defendant in an action."). To be final, a court's judgment need not, however, reiterate counts that "'"were resolved in other ways, such as dismissals, nolled counts, or not guilty findings."'" *State ex rel. Rose v. McGinty*, 2011-Ohio-761, ¶ 3, quoting *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 2010-Ohio-4728, ¶ 2, quoting *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 2010-Ohio-1066, ¶ 8 (8th Dist.). Instead, the court's judgment must fully resolve "'"those counts *for which there were convictions*."'" (Emphasis in original) *Id.*, quoting *State ex rel. Davis*, 2010-Ohio-4728, at ¶ 2, quoting *State ex rel. Davis*, 2010-Ohio-1066 at ¶ 8; *accord State ex rel. Snead v. Ferenc*, 2014-Ohio-43, ¶ 13 ("[n]othing in Crim.R. 32(C) or [the supreme] court's jurisprudence requires a trial court to include as part of its sentencing entry the disposition of charges that were

previously dismissed by the prosecution"). For example, in *Rose*, the court held that the "sentencing entry did not need to include the dispositions of the counts that Rose was originally charged with but that were not the basis for his convictions and sentence" when "[t]hose counts were nolled." *Id.* at ¶ 3.

{¶18} Accordingly, a proper Crim.R. 32(C) judgment of conviction need not reiterate charges that "were resolved in other ways." *Id.* Before the judgment of conviction may become final and appealable, however, the record must reflect that all counts of the indictment actually were resolved in some manner. *See State v. Craig*, 2020-Ohio-455, ¶ 21 ("a conviction on one count of a multicount indictment is not a final, appealable order when other counts remain pending . . ."); *accord State v. Marcum*, 2012-Ohio-572, ¶ 6 (4th Dist.); *State v. Brewer*, 2013-Ohio-5118, ¶ 6 (4th Dist.); *State v. Pruitt*, 2012-Ohio-1535, ¶ 5 (8th Dist.). A failure to properly terminate these so-called "'hanging charges' prevents the conviction from being a final order under R.C. 2505.02(B) because it does not determine the action, i.e., resolve the case." *Marcum* at ¶ 6, citing Painter and Pollis, *Ohio Appellate Practice* (2011–2012 Ed.), Section 2.9; *accord State v. Goodwin*, 2007-Ohio-2343, ¶ 7 (9th Dist.) ("a trial court's failure to dispose of any of the charges against a defendant in a single case renders the trial court's

journal entry non-final in regard to all of the charges against him"); *State v. Allman*, 2012-Ohio-413, ¶ 6 (2d Dist.) ("when the trial court fails to dispose of each charge in the defendant's case, the trial court's sentencing entry as to some charges is merely interlocutory"); *State v. Heavilin*, 2016-Ohio-1284, ¶ 9 (9th Dist.), quoting *State v. Roberson*, 2009-Ohio-6369, ¶ 6 (9th Dist.), quoting *Goodwin* at ¶ 13 (a court "'"must dispose of all charges brought in a single case against a defendant in order to be final"'").

{¶19} In the case sub judice, on February 16, 2024, the State charged appellant with one count of having weapons under disability. On March 1, 2024, the State filed a second indictment, in the same case, that added one count of aggravated drug possession and one count of aggravated drug trafficking; the indictment also reiterated the having-weapons-under-disability offense that had appeared in the earlier indictment. Thus, the State filed two indictments against appellant, and the offense alleged in both indictments (i.e., having weapons under disability) seemingly involved the same criminal act.

{¶20} R.C. 2941.32 governs the procedure when "two or more indictments or informations are pending against the same defendant for the same criminal act." In that instance, "the prosecuting attorney must elect upon which [the State] will

proceed, and upon trial being had upon one of them, the remaining indictments or information shall be quashed." "The purpose of this section is to prevent multiple prosecutions of an accused for the identical offense growing out of the same criminal act." *Rodriguez v. Sacks*, 173 Ohio St. 456, 457 (1962).

{¶21} In the case at bar, before appellant entered his no-contest pleas, two or more indictments were pending against him for the same criminal act, i.e., having weapons under disability. We could surmise that the State intended the March 1, 2024 indictment to replace the first indictment. Nothing in the record indicates, however, that the State affirmatively made an election under R.C. 2941.32 or that the remaining indictment was quashed.

{¶22} We further note that Ohio courts often, without elaboration, refer to these subsequent indictments as "superseding" indictments.[4] *See, e.g., State v. Group*, 2002-

[4] Most Ohio courts do not explicitly discuss the effect of superseding indictments. Instead, some courts summarily conclude, without citation to authority, that superseding indictments replace or amend previous indictments. *See, e.g., In re T.D.S.*, 2022-Ohio-525, ¶ 27 (8th Dist.) ("The state issued a superseding indictment after the probable-cause hearing, mooting any issues with respect to the allegations advanced in the original indictment.").

Ohio-7247, ¶ 37; *State v. Richmond*, 2025-Ohio-2393, ¶ 5 (3rd Dist.); *State v. Figueroa*, 2025-Ohio-1997, ¶ 6 (7th Dist.); *State v. Green*, 2025-Ohio-611, ¶ 3 (4th Dist.); *State v. Osborne*, 2020-Ohio-226, ¶ 2 (9th Dist.). "The term 'superseding indictment' refers to a second indictment issued in the absence of a dismissal of the first." *United States v. Rojas-Contreras,* 474 U.S. 231, 237 (1985) (Blackmun, J., concurring); *see Black's Law Dictionary* (12th ed. 2024) ("superseding indictment" generally means "[a] second or later indictment that includes additional charges or corrects errors in an earlier one"). A superseding indictment "may be returned at any time before a trial on the merits of an earlier indictment." *United States v. Bowen*, 946 F.2d 734, 736 (10th Cir. 1991).

{¶23} A few federal courts have held that "[f]iling a superseding indictment has the same effect as dismissing an original indictment and filing a new indictment." *See United States v. McKay*, 30 F.3d 1418, 1420 (11th Cir. 1994); *United States v. Rangel*, 2009 WL 1212206, *1 (D.Ariz. May 4, 2009), fn. 1 (because "the superseding indictment completely 'supersedes' the original indictment, the [c]ourt does not find that a formal dismissal of the original indictment is required"); *United States v. Goff*, 187 F. App'x 486, 491 (6th Cir. 2006) ("a superseding indictment supplants the earlier indictment and

becomes the only indictment in force").

{¶24} Other courts, however, have rejected the argument that "a superseding indictment instantaneously nullifies the original indictment." *United States v. Vavlitis*, 9 F.3d 206, 209 (1st Cir. 1993); *see United States v. Bowen*, 946 F.2d 734, 736 (10th Cir. 1991) (finding "no authority" for the notion "that a superseding indictment zaps an earlier indictment to the end that the earlier indictment somehow vanishes into thin air"); *United States v. Drasen*, 845 F.2d 731, 732 n.2 (7th Cir. 1988) ("The superseding indictment does not affect our review of the original indictment. It is well established that two indictments may be outstanding at the same time for the same offense if jeopardy has not attached to the first indictment. The government may then select the indictment under which to proceed at trial."); *see also United States v. Cerilli,* 558 F.2d 697, 700 fn. 3 (3d Cir. 1977) (when two indictments are pending against defendants, "the government may select one of them with which to proceed to trial"); *Ceasar v. Campbell*, 236 Ariz. 142, 145-46 (Ariz.App. 2014), ¶ 12 ("An indictment issued by a prior grand jury is not automatically nullified or voided by an indictment issued by a subsequent grand jury."). In these cases, the "original indictment remains pending prior to trial,

even after the filing of a superseding indictment, unless the original indictment is formally dismissed." *United States v. Yielding*, 657 F.3d 688, 703 (8th Cir. 2011); *accord United States v. Brown*, 973 F.3d 667, 698–99 (7th Cir. 2020); *United States v. Rupp*, 994 F.3d 946, 949–50 (8th Cir. 2021), quoting *United States v. Hickey*, 580 F.3d 922, 929-30 (9th Cir. 2009) ("'The requirement that the government obtain leave of the court to dismiss would be superfluous if the government could, in effect, dismiss a charge by simply omitting it from a subsequent indictment . . . . Either the charges remain pending or they have been dismissed, and the only way for the government to achieve dismissal is via leave of the court, which did not occur here.'"); *United States v. Strewl,* 99 F.2d 474, 477 (2d Cir.1938) ("[A]lthough a second indictment is often said to 'supersede' the first, it does not dispose of it without an express quashal.").

{¶25} In view of the existence of R.C. 2941.32, Ohio law appears to endorse the position that a superseding indictment does not automatically nullify a previously filed indictment. Instead, as we noted above, R.C. 2941.32 states,

> "[i]f two or more indictments . . . are pending against the same defendant for the same criminal act, the prosecuting attorney must elect upon which [the State] will proceed, and upon trial being had upon one of them, the remaining indictments or information shall be

quashed."

{¶26} In the case at bar, the March 1, 2024 indictment did not nullify the February 16, 2024 indictment. Thus, two indictments were pending against appellant for the same criminal act. The State did not affirmatively elect to proceed with the March 1, 2024 indictment. Moreover, nothing in the record indicates that the February 16, 2024 indictment was quashed. Thus, although the trial court's judgment of conviction and sentence disposes of the three counts contained in the March 1, 2024 indictment, the record fails to show that the trial court disposed of the charge contained in the February 16, 2024 indictment. Consequently, the existence of this charge prevents the trial court's judgment from attaining the status of a final order. *See State v. Jackson*, 2025-Ohio-322, ¶ 10-11 (4th Dist.) (when the State filed two indictments, the trial court's failure to dispose of counts charged in the first indictment required the court to dismiss the appeal for a lack of a final, appealable order); *State v. Nesbitt*, 2023-Ohio-1276, ¶ 10 (4th Dist.) (although the trial court and the parties appeared to have treated the first indictment as if it had been dismissed and replaced by the second indictment, the trial court did not dispose of the counts in the first indictment via a journal

entry, so the judgment was not a final, appealable order); *State v. Gutierrez*, 2024-Ohio-1404, ¶ 9 (4th Dist.) (same).[5]

{¶27} Accordingly, based upon the foregoing reasons, we lack jurisdiction to review appellant's assignment of error, and, therefore, we dismiss this appeal.

APPEAL DISMISSED.

[5] We additionally observe that the trial court's judgment indicates that the State amended the March 1, 2024 indictment to reflect the parties' plea agreement. The record does not contain an amended indictment, however.

JUDGMENT ENTRY

It is ordered that the appeal be dismissed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of 60 days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the 60-day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the 45-day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.