**[Cite as *State v. Durst*, 2026-Ohio-4316.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

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| State of Ohio | Court of Appeals No. S-26-016 |
| Appellee | Trial Court No. 15 CR 1204 |
| v. | |
| McClain L. Durst | **DECISION AND JUDGMENT** |
| Appellant | Decided: October 30, 2026 |

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Beth Tischler, Prosecuting Attorney, and
Alexis M. Otero, Assistant Prosecuting Attorney, for appellee.

Anthony J. Richardson II, for appellant.

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**Zmuda, J.**

## I. Introduction

**{¶ 1}** This matter is before the court on appeal of the judgment of the Sandusky County Court of Common Pleas, denying appellant McClain L. Durst's motion seeking discovery following dismissal of the indictment and return of Durst's seized property. Finding no error, we affirm.

## II. Background and Procedural History

**{¶ 2}** In October 2015, police obtained a warrant for Durst's Black Samsung Galaxy S4 cell phone, based on allegations that the phone contained photos and text messages related to an alleged rape. On November 17, 2015, Durst was charged with rape in violation of R.C. 2907.02 based on the investigation that included a search of the phone. On December 14, 2018, the rape case was dismissed, without prejudice, at the request of the State. The State indicated that the case could not proceed because the alleged victim was unwilling to return to Ohio to testify.

**{¶ 3}** Between May and July, 2024, Durst filed pro se motions for release and return of his phone, with a request for copies of the warrant and the records retention schedule, and a motion for court-appointed counsel. The trial court denied the motion for court-appointed counsel.[1] The trial court scheduled a hearing on the motion for return of property and granted the motion for return of the cell phone. Additionally, the trial court granted the motion for an order to provide records, ordering the State and the Sandusky County Clerk of Court to provide all documentation in Durst's case file to Durst.

**{¶ 4}** Following the order to return his phone, Durst filed a motion for a hearing to verify the phone was operational and to obtain public records. Durst also sought civil contempt sanctions for the State's failure to comply with the court's order to produce the phone and documents. The trial court held a hearing on the motion, the phone was

[1] Initially, the trial court denied Durst's pro se motions for return of his phone and production of case file records. The trial court denied these motions without hearing, Durst appealed, and we reversed and remanded for hearing in *State v. Durst,* 2025-Ohio-3103 (6th Dist.).

produced in open court, and Durst and his counsel viewed the device to verify identity and operational status. The trial court also ordered the State to produce any materials that were represented as public records or that the State agreed to provide, including the extraction report for the cell phone. During the hearing, Durst informed the trial court he was filing additional motions after viewing the phone, and the hearing was continued at Durst's request.

**{¶ 5}** On January 20, 2026, Durst filed a motion to compel evidence. The trial court held an additional hearing on February 24, 2026. Following the hearing, the trial court entered a judgment entry, denying Durst's motion to compel evidence. The trial court noted that it had previously ordered the release of Durst's cell phone, ordered the Clerk and the State to produce records within their possession and control, ordered production of any "outstanding materials represented as public records or agreed to be provided, including the phone extraction report," and hearings were held to address compliance with the trial court's orders.

**{¶ 6}** The trial court further noted that the discovery requested by Durst included "broad categories of materials relating to investigations in multiple counties." Because the present case was no longer an active prosecution, the trial court determined its authority was "limited to enforcing its own prior orders and to matters within the possession, custody, or control of Sandusky County entities that are parties before this Court." Finding Durst's motion to compel discovery was "overbroad, speculative, and beyond this Court's jurisdiction in this case number" and sought relief against non-parties and counties and agencies beyond the Court's jurisdiction, with an additional finding that

the State and Clerk had complied with all prior orders, the trial court denied the motion and stated, "This matter is CLOSED."

**{¶ 7}** Durst filed an appeal of this judgment.

## III. Assignment of Error

**{¶ 8}** Durst challenges the denial of his motion to compel discovery, asserting a single assignment of error:

> Reversal is proper where trial court abused its discretion and violated due process by denying discovery necessary to determine the identity, chain-of-custody, and functionality of the seized cell phone.

## IV. Analysis

**{¶ 9}** In his appeal, Durst argues that de novo review of the trial court's judgment is necessary, because determination of his request for discovery requires consideration of "whether the requested information was in fact material to [Durst's] guilt or punishment[.]" Durst frames the issue as falling under Crim.R. 16, governing discovery in criminal proceedings. In response, appellee, the State of Ohio, argues that the trial court had no authority to grant Durst's motion to compel discovery after dismissal.

**{¶ 10}** As noted by the State, the law is well-settled regarding a court's continuing jurisdiction after dismissal of a criminal indictment. *State v. West,* 2018-Ohio-4981, (4th Dist.). Pursuant to Crim.R. 48(A), the effect of dismissal of an indictment by the prosecutor is termination of the prosecution. "When the state voluntarily dismisses a case, it is terminated. Terminated means done, finished, over, kaput." *State v. West,* 2018-Ohio-4981, ¶ 6 (4th Dist.), quoting *State ex rel. Flynt v. Dinkelacker,* 2004-Ohio-1695, ¶ 23 (1st

Dist.). Thus, a motion seeking discovery after dismissal "is considered a nullity, and any judgment or order entered on the motion is a nullity." *West* at ¶ 6, citing *Dinkelacker* at ¶ 22; *see also State v. Johnson,* 2025-Ohio-2691, ¶ 24 (8th Dist.) ("Without the proper invocation of the court's continuing jurisdiction….the court lacked authority to do anything but deny the motion in that case.").

**{¶ 11}** Upon review of the judgment on appeal, the trial court declined to address Durst's discovery requests as beyond its authority and jurisdiction within the terminated criminal case. We find no error in the trial court's application of the law in this case, as Durst's motion seeking post-termination discovery was a nullity and the trial court had no authority beyond denying the motion. Accordingly, Durst's sole assignment of error is not well-taken.

## V. Conclusion

**{¶ 12}** Based on the foregoing, we affirm the judgment of the Sandusky County Common Pleas Court. Durst is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J.

JUDGE

Gene A. Zmuda, J

JUDGE

Charles Sulek, J
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.