

NO.

**07-1640**

IN THE SUPREME COURT OF OHIO

APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 88759

STATE OF OHIO,

Plaintiff-Appellant

-vs-

RITA RODDY,

Defendant-Appellee

**MEMORANDUM IN SUPPORT OF JURISDICTION**

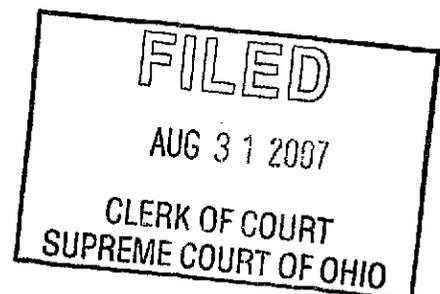
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*State v. Roddy*, Cuyahoga App. No. 88759, 2007-Ohio-4015

**EXPLANATION OF WHY THIS FELONY CASE INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION OR ISSUE OF GREAT PUBLIC INTEREST**

It is a fundamental principle that neither a judge nor a jury should acquit a criminal defendant for any reason beyond the controlling law and relevant evidence. But erroneous acquittals do happen with some frequency, and are capable of repetition while evading normal review.

So long as a true acquittal is not appealed, prosecutors do have one limited tool for a post-acquittal challenge to a trial court's erroneous evidentiary or substantive law rulings. *State v. Bistricky* (1990), 51 Ohio St.3d 157, 159, 555 N.E.2d 644. *Bistricky*, decided in the context of a pre-jury verdict Crim. R. 29(A) ruling, however, did not answer the Eighth District's question regarding review of a Crim. R. 29(C) judgment: does double jeopardy bar appellate review of an erroneous post-jury verdict Crim. R. 29(C) judgment—or the substantive law rulings upon which they are based?<sup>1</sup> Here, the Eighth District Court of Appeals answered the question in the affirmative, despite the United States Supreme Court having answered the exact same question in the negative in *United States v. Wilson* (1975), 420 U.S. 332, 353, 95 S.Ct. 1013, 1026 (“[w]hen a judge rules in favor of the defendant after a verdict of guilty has been entered by the trier of fact, the Government may appeal from that ruling without running afoul of the Double Jeopardy Clause”).

From a constitutional double jeopardy standpoint, the Eighth District and U.S. Supreme Court clearly part company on this issue. Indeed, this Honorable Court has previously recognized that “[t]he purpose of the Double Jeopardy Clause is to preserve for the defendant

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<sup>1</sup>A jury convicted Rita Roddy, the defendant in this case, of kidnapping. The trial court rejected the jury's verdict by granting the defendant's motion for judgment of acquittal pursuant to Crim. R. 29(C). The Eighth District initially granted the State leave to appeal the trial court's substantive law rulings, but then dismissed the appeal on the basis of double jeopardy. *State v. Roddy*, Cuyahoga App. No. 88759, 2007-Ohio-4015, at ¶ 13.

acquittals or favorable factual determinations but not to shield from appellate review erroneous legal conclusions not predicated on any factual determinations.” *State v. Calhoun* (1985), 18 Ohio St.3d 373, 377, 481 N.E.2d 624, 628. If federal double jeopardy principles do not bar appellate review of Fed. Crim. Rule 29(C) acquittal case, then Cuyahoga Law should not impose a double jeopardy standard greater than the U.S. Constitution for purposes of Ohio Crim. Rule 29(C).

Advancing transparency and accountability in Ohio’s legal system—including criminal trials that end in acquittal—tips the scales in favor of Supreme Court review. Apart from the rare situation that warrants an extraordinary writ or interlocutory appeal, trial courts have near absolute, unreviewable power to acquit. Prosecutors who represent the interests of the public and crime victims have few legal means to seek any review of the legal process that resulted in acquittal. While a second trial can never occur after a true acquittal, appellate review of a trial court’s legal rulings is still a worthwhile exercise in order to deter future repetition. “[W]hile defendants are entitled to every benefit of the doubt, and may even be entitled to jury nullification or acquittals against the evidence, surely they are not entitled to straight forward legal error. In other words, ‘society has an ‘interest’ in the government’s being able ‘to appeal from an erroneous conclusion of law[.]’” Hon. Stephen R. Shaw, *Prosecution Appeals Taken Midtrial and Following Acquittal: Changing the Trial and Review of Criminal Cases in Ohio*, 22 Ohio N.U. L. Rev. 729 (1996) (footnotes and citations omitted). “Indeed, the reason for allowing such appeals is precisely their practical importance; it is the only way the government can correct some kinds of ongoing, systematic legal errors by trial courts.” *Id.*

This case can therefore serve to resolve whether the double jeopardy principles contained in the Ohio and Federal Constitutions prevent the State from appealing a trial court’s evidentiary

and substantive law rulings after a Crim. R. 29(C) acquittal. Supreme Court review in this case can serve to clarify that (1) State appeals from erroneous Crim. R. 29(C) verdicts are not barred by double jeopardy, and (2) so long as the State complies with *Bistricky, supra*, and R.C. 2945.67(A), the Courts of Appeals should exercise their discretionary jurisdiction and give careful consideration to the State's substantive law ruling appeals.

The State strongly believes that this case is worthy of Supreme Court review, and submits that it will resolve a substantial constitutional question as well as an issue of great general or public interest. The State respectfully requests that this Honorable Court accept jurisdiction to hear this case on its merits.

#### **STATEMENT OF THE CASE AND RELEVANT FACTS**

The indictment in this case charged defendant Rita Roddy ("defendant"), with one count of Kidnapping in violation of R.C. 2905.01, and a second count of Felonious Assault in violation of R.C. 2903.11. Defendant moved for acquittal at the end of the State's case pursuant to Crim. R. 29(A), and then renewed the motion pursuant to Crim. R. 29(B), arguing on both occasions that the victim's testimony was not credible. The trial court overruled both motions because witness credibility was not a proper inquiry pursuant to *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184. Following trial, the jury returned a verdict of guilty on the Kidnapping count, and not guilty on the Felonious Assault count. Defendant filed a "Motion for Judgment of Acquittal or, In the Alternative, For a New Trial" fourteen days after the jury verdict. Defendant's motion re-alleged that the testimony of the victim was not credible, and therefore the State's evidence was not sufficient. The trial court conducted a hearing on the motion and granted defendant's motion for judgment of acquittal on the Kidnapping count pursuant to Crim. R. 29(C). The trial court stated that it was granting judgment of acquittal due to the arguments in

defendant's motion, as well as based on information that the victim had written in the victim impact statement submitted for sentencing purposes.

The State then filed before the Eighth District Court of Appeals its notice of appeal and motion for leave to appeal the trial court's substantive law rulings that had led to judgment of acquittal. Specifically, the State assigned error to two substantive law rulings, alleging: (1) the trial court erroneously based a Crim. R. 29 sufficiency of the evidence inquiry on witness credibility without viewing the evidence in a light most favorable to the prosecution, and (2) the trial court erroneously based a guilt-phase verdict on an unsworn and unopposed sentencing-phase victim impact statement.<sup>2</sup> The State did not appeal the acquittal itself.

The Eighth District granted the State's motion for leave to appeal on October 18, 2006. In its August 9, 2007 opinion, however, the Eighth District then concluded that the State's appeal "does not present an evidentiary ruling, such as admissibility of evidence or other decision and instead is an appeal from the final resolution of the matter. We therefore conclude that the constitutional principle of double jeopardy precludes this court's review of the state's assignments of error." *State v. Roddy*, Cuyahoga App. No. 88759, 2007-Ohio-4015, at ¶ 13. "Therefore, as a matter of law, we decline to hear this matter." *Id.*

Now before the Court is the State's request that Honorable Court accept jurisdiction to consider this case on its merits.

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<sup>2</sup> Although the State has not raised its assignments of error before the Eighth District as independent Propositions of Law before this Honorable Court, the State submits these issues have great importance because they implicate systematic trial court errors that are capable of repetition while evading review. The first assignment of error argued that a court reviewing the sufficiency of evidence pursuant and viewing the evidence in a light most favorable to the prosecution should not consider the credibility of a complaining witness, pursuant to *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. The second assignment of error addressed the trial court's improper consideration of unopposed sentencing phase victim-impact evidence to resolve guilt-phase issues, in violation of *State v. Fautenberry*, 72 Ohio St.3d 435, 440, 650 N.E.2d 878, 883, 1995-Ohio-209.

## LAW AND ARGUMENT

**PROPOSITION OF LAW: THE DOUBLE JEOPARDY PRINCIPLES CONTAINED WITHIN THE UNITED STATES CONSTITUTION AND OHIO CONSTITUTION ALLOW THE GOVERNMENT TO APPEAL, AND ALLOW THE COURT OF APPEALS TO REVIEW, A TRIAL COURT'S SUBSTANTIVE LAW RULINGS AFTER THE TRIAL COURT ENTERS JUDGMENT OF ACQUITTAL PURSUANT TO CRIMINAL RULE 29(C).**

**1. Introduction and summary of Argument.**

Prosecution appeals following acquittal serve an important function because they give prosecutors tools with which to challenge trial-level errors that are capable of repetition while evading normal review. After a factfinder has found a defendant guilty and the trial judge has issued a post-verdict ruling in favor of the defendant, double jeopardy should not bar State appeals that will not cause retrial. While this Honorable Court's precedent does allow State appeals from substantive law rulings that resulted in acquittal, the State cannot statutorily appeal the final verdict itself. Nevertheless, the Eighth District erred when it dismissed the State's appeal from the substantive issues of law the trial court's Rule 29(C) ruling as double jeopardy barred. Supreme Court review in this case can serve to clarify that (1) State appeals from erroneous Crim. R. 29(C) verdicts are not barred by double jeopardy, and (2) so long as the State complies with *Bistricky, supra*, and R.C. 2945.67(A), the Courts of Appeals should exercise their discretionary jurisdiction and give careful consideration to the State's substantive law ruling appeals.

**2. Double Jeopardy does not bar appellate review of a Crim. R. 29(C) acquittal.**

The Court of Appeals erroneously concluded that the State's appeal from a Crim. R. 29(C) judgment was barred by double jeopardy.

The first mechanical issue concerns whether double jeopardy bars prosecutors from appealing erroneous Crim. R. 29(C) acquittals. The United States Supreme Court has already determined that double jeopardy does not bar government appeals from erroneous Crim. R. 29(C) acquittals. In *United States v. Wilson* (1975), 420 U.S. 332, 352-3, 95 S.Ct. 1013, 1026, the United States Supreme Court<sup>3</sup> held:

Correction of an error of law at that stage would not grant the prosecutor a new trial or subject the defendant to the harassment traditionally associated with multiple prosecutions. We therefore conclude that when a judge rules in favor of the defendant after a verdict of guilty has been entered by the trier of fact, the Government may appeal from that ruling without running afoul of the Double Jeopardy Clause.

Judge Shaw has similarly observed that “\* \* \* the double jeopardy cases are concerned not with whether the government can take an appeal, but whether it can retry the defendant following an appeal.” Hon. Stephen R. Shaw, *Prosecution Appeals Taken Midtrial and Following Acquittal: Changing the Trial and Review of Criminal Cases in Ohio*, 22 Ohio N.U. L. Rev. 729 (1996) (footnotes and citations omitted), at p. 745. “Where a new trial is not contemplated or required the Double Jeopardy Clause is not invoked.” *Id.*

Even if the State had the statutory right to appeal the final Crim. R. 29(C) verdict, defendant Rita Roddy would never have faced retrial. Because a jury had already found her guilty, an appeal from a trial judge’s post-verdict error of law would only have reinstated the prior guilty verdict. As the *Wilson* Court observed, the double jeopardy analysis in a case where no retrial could result should be “relatively straightforward.” *Id.* From a double jeopardy standpoint, there is no real jeopardy bar to a government appeal following a trial court’s Crim. R. 29(C) acquittal. Accordingly, the Eighth District’s conclusion in this case that double jeopardy

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<sup>3</sup> This Honorable Court has determined that the Double Jeopardy Clause of the Ohio Constitution is equivalent in scope and effect to the federal clause. *State v. Thomas* (1980), 61 Ohio St.2d 254, 400 N.E.2d 897.

principles barred the State's appeal is a clearly erroneous application of United States Supreme Court precedent.

The fact that the State did not appeal the acquittal itself, but rather the substantive rulings of law that resulted in acquittal, should have further insulated this case from double jeopardy concerns. "Since acquittals are not being overturned, there is no double jeopardy review." *Shaw, supra*, at p. 754. Indeed, this Honorable Court has previously recognized that "[t]he purpose of the Double Jeopardy Clause is to preserve for the defendant acquittals or favorable factual determinations but not to shield from appellate review erroneous legal conclusions not predicated on any factual determinations." *State v. Calhoun* (1985), 18 Ohio St.3d 373, 377, 481 N.E.2d 624, 628.

Under Ohio Law, the State currently has no statutory right of appeal from a post-verdict judgment of acquittal, including Crim. R. 29(C) verdicts. See R.C. 2945.67(A) (the State may not appeal from "the final verdict."); *State, ex rel. Yates, v. Court of Appeals for Montgomery Cty.* (1987), 32 Ohio St.3d 30, 512 N.E.2d 343, syllabus. Generally, the state may not appeal from an acquittal, even an erroneous one. "The State has no right to appeal from a judgment of acquittal, even if that acquittal was erroneous." *Gump, supra*, at ¶ 27 (McMonagle, J., dissenting), citing *Foo v. United States* (1962), 369 U.S. 141, 82 S.Ct. 671. Yet the court of appeals has the discretion pursuant to R.C. 2945.67(A) to review "substantive law rulings made in a criminal case which results in a judgment of acquittal so long as the verdict itself is not appealed." *Bistricky, supra*. Consistent with *Bistricky*, the State appealed the trial court's substantive law rulings that resulted in a judgment of acquittal, rather than the judgment of acquittal itself.

The Court of Appeals initially exercised its discretion pursuant to R.C. 2945.67(A) by granting the State leave to appeal the trial court's substantive law rulings. The Court of Appeals then reversed course and determined that the State's appeal was really from the acquittal itself, rather than the substantive issues of law resulting in acquittal (which is expressly contradicted by the State's Notice of Appeal and Motion for Leave to Appeal in this case). As explained by the foregoing, the State's appeal from the trial court's erroneous Crim. R. 29(C) ruling was neither jeopardy barred nor in violation of R.C. 2945.67(A) or *Bistricky, supra*.

One retort to the State's request that this Honorable Court accept jurisdiction and hear this case on its merits would be that *Bistricky* does not need clarification. If this were the case, however, the Eighth District would not have dismissed the State's appeal for violating double jeopardy. It is clear from the Eighth District's opinion that Supreme Court review will clarify that (1) State appeals from erroneous Crim. R. 29(C) verdicts are not barred by double jeopardy, and (2) so long as the State complies with *Bistricky, supra*, and R.C. 2945.67(A), Courts of Appeals should seriously consider the issues raised in prosecutors' post-acquittal appeals because they are the only tool available to correct issues which are capable of repetition yet evading review.

**3. The State complied with the statutory prohibition against government appeals from final verdicts.**

It is from R.C. 2945.67(A) that appellate courts have discretionary jurisdiction to consider State appeals following acquittal. R.C. 2945.67(A) provides in relevant part:

(A) A prosecuting attorney, village solicitor, city director of law, or the attorney general may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief pursuant to sections 2953.21 to 2953.24 of the Revised Code, and may appeal by leave of the court to which the appeal

**is taken any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case.** In addition to any other right to appeal under this section or any other provision of law, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general may appeal, in accordance with section 2953.08 of the Revised Code, a sentence imposed upon a person who is convicted of or pleads guilty to a felony.

(Emphasis added). It is therefore Ohio statute, and not any principle of constitutional law, that bars prosecutors from appealing Rule 29(C) judgments of acquittal because they are “final verdicts” within the meaning of R.C. 2945.67(A). *State, ex rel. Yates, v. Court of Appeals for Montgomery Cty.* (1987), 32 Ohio St.3d 30, 512 N.E.2d 343, syllabus.

In this case, the State filed its notice of appeal containing an explicit proviso that the matter under appeal was “the substantive issues of law surrounding the trial court’s August 31, 2006 decision to grant judgment of acquittal pursuant to Crim. R. 29(C).” (September 18, 2006 Notice of Appeal). The State did not appeal the verdict itself, in compliance with *Bistricky, supra*, and R.C. 2945.67(A). It was on that basis that the Court of Appeals granted the State’s Motion for Leave to Appeal on October 24, 2006. Despite the State’s compliance with R.C. 2945.67(A) and *Bistricky*, the Court of Appeals then erroneously held that “this matter does not present an evidentiary ruling, such as admissibility of evidence, or other decision and instead is an appeal from the final resolution of this matter.” *Roddy, supra*, at ¶ 13. The Court of Appeals cursory dismissal of the State’s appeal stands in marked contrast to Judge Shaw’s observation that “\* \* \* intermediate appellate courts can no longer simply reject those appeals automatically and must evaluate seriously properly filed prosecution motions for leave to appeal following a verdict of acquittal.” Hon. Stephen R. Shaw, *Prosecution Appeals Taken Midtrial and Following Acquittal: Changing the Trial and Review of Criminal Cases in Ohio*, 22 Ohio N.U. L. Rev. 729 (1996), at p. 754. “Indeed, the reason for allowing such appeals is precisely their practical

importance; it is the only way the government can correct some kinds of ongoing, systematic legal errors by trial courts.” *Id.*

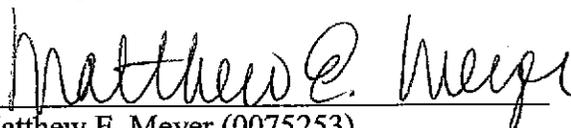
It is clear that the Eighth District gave short shrift to the State’s compliance with R.C. 2945.67(A) and *Bistricky*, and erroneously dismissed the State’s appeal (which raised important issues of law concerning the trial court’s substantive law rulings that resulted in acquittal). This Case is worthy of Supreme Court review in order to correct the Court of Appeals’ erroneous judgment that deprived the State of any real means to raise post-acquittal appeals from trial judges’ erroneous substantive law rulings that result in judgment of acquittal.

**CONCLUSION**

The State respectfully requests that this Honorable Court exercise its discretionary power to grant jurisdiction and consider this appeal on its merits. Supreme Court review in this case can serve to clarify that (1) State appeals from erroneous Crim. R. 29(C) verdicts are not barred by double jeopardy, and (2) so long as the State complies with *Bistricky, supra*, and R.C. 2945.67(A), the Courts of Appeals should exercise their discretionary jurisdiction and give careful consideration to the State’s substantive law ruling appeals.

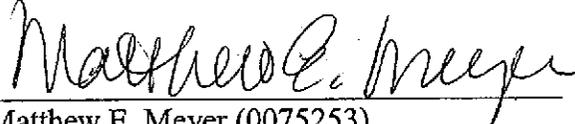
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Support of Jurisdiction was sent by regular U.S. mail this 30<sup>th</sup> day of August, 2007, to George L. Forbes, Esq., and Dennis N. LoConti, Esq., 700 Rockefeller Building, 614 W. Superior Ave., Cleveland, Ohio 44113-1318.

  
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# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 88759

**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**RITA RODDY**

DEFENDANT-APPELLEE

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**JUDGMENT:  
DISMISSED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-472586

**BEFORE:** Dyke, J., Sweeney, P.J., McMonagle, J.

**RELEASED:** August 9, 2007

**JOURNALIZED:** AUG 20 2007

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**FILED AND JOURNALIZED**  
PER APP. R. 22(E)

**AUG 20 2007**

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

ANNOUNCEMENT OF DECISION  
PER APP. R. 22(B), 22(D) AND 26(A)

**AUG - 9 2007**

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

CA06088759

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-COSTS TAXED

ANN DYKE, J.:

Pursuant to R.C. 2945.67, the State of Ohio appeals from the judgment of acquittal entered by the trial court following the discharge of the jury. For the reasons set forth below, we conclude that the state is appealing a final verdict, which is not permitted under the statute, and we therefore dismiss this appeal.

On November 2, 2005, defendant was indicted for kidnapping and felonious assault following an alleged altercation with an individual whom she suspected of harming her son. The matter proceeded to a jury trial on July 12, 2006. The state's evidence indicated that defendant's son complained that the victim had harmed him and also complained that the victim took video game components from him. According to the state's witnesses, the victim, who had a troubled relationship with his mother, was lured to a garage by defendant and then assaulted. The defense denied that the altercation took place and focused on various inconsistencies in the state's evidence. The jury subsequently acquitted defendant of felonious assault but convicted her of the kidnapping charge.

Following the discharge of the jury, the defense moved for a judgment of acquittal of the kidnapping charge pursuant to Crim.R. 29(C) and focused upon the victim's difficulties with his mother and inconsistencies among the state's witnesses. The trial court granted the motion and stated:

“ \* \* \* [F]or all the reasons that you’ve stated and the jury verdict of not guilty on felonious assault when all the testimony was that there was not a mark on this young man and in fact the Hudaks viewed him naked, he returned a victim impact statement indicating that [sic] – the following: That he suffered bruises to his ribs, back and hips, and had suffered some bleeding cuts.”

The state now appeals and assigns two errors for our review.

The state’s assignments of error assert that the trial court erred in granting the judgment of acquittal pursuant to Crim.R. 29(C) because it failed to view the evidence in a light most favorably to the state, impermissibly weighed the credibility of the victim, and considered a post-trial victim impact statement.

R.C. 2945.67 provides in relevant part as follows:

“A prosecuting attorney \* \* \* may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case \* \* \*.” (Emphasis added.)

Pursuant to this statute, “A court of appeals has discretionary authority pursuant to R.C. 2945.67(A) to review substantive law rulings made in a criminal case which result in a judgment of acquittal so long as the judgment itself is not appealed.” *State v. Bistricky* (1990), 51 Ohio St.3d 157, 555 N.E.2d 644, syllabus. Thus, even in a case resulting in a judgment of acquittal, the

prosecution may appeal from evidentiary rulings, such as admissibility of evidence, as such rulings fall within the language of "any other decision, except the final verdict" in R.C. 2945.67(A), and the appellate court may exercise its discretion to decide whether it will accept or decline review of the matters of substantive law presented. *State v. Arnett* (1986), 22 Ohio St.3d 186, 489 N.E. 2d 284.

Nonetheless, "[p]erhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that "[a] verdict of acquittal... could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution." *United States v. Martin Linen Supply Co.* (1977), 430 U.S. 564, 570, 51 L.Ed. 2d 642, 97 S.Ct. 1349, citing *United States v. Ball* (1896), 163 U.S. 662, 671. As explained by the *Martin Linen* Court, "one thing that had always been clear was that no appeal could be taken by the Government from an acquittal no matter how erroneous the legal theory underlying the decision."

That is, where the basis of the state's appeal is that the trial court improperly acquitted the defendant of the charge, the defendant may not be retried even where "the acquittal was based upon an egregiously erroneous foundation." See *Fong Foo v. United States* (1962), 369 U.S. 141, 143, 7 L.Ed. 2d 629, 82 S.Ct. 671. In that case, the government asserted that the trial court

granted the judgment of acquittal by improperly relying upon “a supposed lack of credibility in the testimony of the witnesses for the prosecution who had testified up to that point.” (Emphasis added). In rejecting the government’s appeal, the Court stated, “the verdict of acquittal was final, and could not be reviewed . . . without putting [the petitioners] twice in jeopardy, and thereby violating the Constitution.” Id, citing *United States v. Ball* (1896), 163 U.S. 662, 671, 16 S.Ct. 1192, 41 L.Ed. 300.

Similarly, with regard to appeals brought pursuant to R.C. 2945.67, a directed verdict of acquittal by the trial judge in a criminal case is a “final verdict” within the meaning of R.C. 2945.67(A) which is not appealable by the state as a matter of right or by leave to appeal pursuant to that statute. *State v. Keeton* (1985), 18 Ohio St. 3d 379, 481 N.E. 2d 629. Likewise, a judgment of acquittal, entered by the trial court pursuant to Crim. R. 29(C), made after verdict or discharge of jury is a “final verdict” within the meaning of R.C. 2945.67(A) which is not appealable by the state as a matter of right or by leave to appeal pursuant to that statute. *State ex rel. Yates v. Court of Appeals* (1987), 32 Ohio St.3d 30, 512 N.E.2d 343.

In this matter, the state maintains that the trial court “misapplied the legal standard for a judgment of acquittal because it considered the victim’s credibility.” The state further asks this court to review this case de novo, and

substitute its judgment for the trial court where appropriate. We conclude that this matter does not present an evidentiary ruling, such as admissibility of evidence, or other decision and instead is an appeal from the final resolution of this matter. We therefore conclude that the constitutional principle of double jeopardy precludes this court's review of the state's assignments of error. Therefore, as a matter of law, we decline to hear this matter.

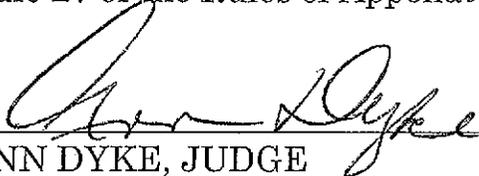
Appeal dismissed.

It is ordered that appellee recover from 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 common pleas court to carry this judgment into execution.

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

  
ANN DYKE, JUDGE

JAMES J. SWEENEY, P.J., and  
CHRISTINE T. MCMONAGLE, J., CONCUR