

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-220108
	:	TRIAL NO. B-1903714
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TYSHAWN MAYERS,	:	
Defendant-Appellant.	:	

The court sua sponte places this case on the accelerated calendar, 1st Dist. Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E).

Defendant-appellant Tyshawn Mayers was charged with two counts of murder with specifications and one count of tampering with evidence. He exercised his right to a jury trial on all three counts. At the conclusion of the state's case, the trial court granted a Crim.R. 29 motion for acquittal as to count two, which was one of the murder charges. Thereafter, the jury deliberated as to the two remaining counts and reached a verdict that was never announced because Mayers and the state reached a plea agreement. In its judgment entry memorializing that plea agreement and sentencing Mayers, the trial court indicated that count two had been dismissed, not that Mayers had been acquitted.

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In a single assignment of error, Mayers challenges the trial court’s failure to record a judgment of acquittal as to count two in its judgment entry. The state concedes that this was error.

As Mayers correctly notes, the plain terms of Crim.R. 29 require a trial court to enter a judgment of acquittal if the evidence presented by the state is insufficient to sustain a conviction. “[A] dismissal is not equivalent to an acquittal.” *State v. Soto*, 158 Ohio St.3d 44, 2019-Ohio-4430, 139 N.E.3d 889, ¶ 13. Because the trial court speaks through its entries, the trial court’s pronouncement of an acquittal in open court as to count two does not negate the judgment entry’s failure to record that Mayers was acquitted of that count. *See State v. Bailey*, 1st Dist. Hamilton No. C-040739, 2006-Ohio-1218, ¶ 9 (citing *State ex rel. Worcester v. Donnellon*, 49 Ohio St.3d 117, 118, 551 N.E.2d 183 (1990)).

We accordingly sustain the assignment of error, reverse the trial court’s judgment entry insofar as it indicates a dismissal rather than an acquittal on count two, and remand the cause to the trial court with instructions that the judgment entry be corrected.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CROUSE, P.J. ZAYAS, and KINSLEY, JJ.

To the clerk:

Enter upon the journal of the court on April 26, 2023
per order of the court _____
Presiding Judge