

COURT OF APPEALS

STATE OF OHIO

COUNTY OF LORAIN

STATE OF OHIO

Appellee

v.

WILLIAM DEMBIE

Appellant

FILED  
LORAIN COUNTY

2015 JUL 20 P 1:49

COURT OF COMMON PLEAS  
TOM ORLANDO

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

C.A. No. 14CA010527

OH APPELLATE DISTRICT

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No. 11CR083428

DECISION AND JOURNAL ENTRY

Dated: July 20, 2015

HENSAL, Presiding Judge.

{¶1} William Dembie appeals from his convictions in the Lorain County Court of Common Pleas. For the reasons set forth below, we affirm.

I.

{¶2} On August 11, 2011, a call came in on the direct line of the Lorain County Sheriff's Office, and Joiann Sanchez, a dispatcher, answered the call. Mr. Dembie, a correctional officer at the Lorain County Jail, identified himself and told Ms. Sanchez that he had killed his wife, Holly Dembie. Deputies went to Mr. Dembie's house and took him into custody. Following his arrest, Mr. Dembie spoke with detectives about the events that led to the death of Mrs. Dembie.

{¶3} A grand jury indicted Mr. Dembie for aggravated murder, domestic violence, and two counts each of murder and felonious assault. Mr. Dembie's counsel requested a bill of particulars, but the State declined to provide one, instead providing open discovery to counsel.

## ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN SENTENCING APPELLANT, WILLIAM DEMBIE, BY FAILING TO RUN CONCURRENT SENTENCES ON THE COURT'S GUILTY VERDICT ON TWO COUNTS OF MURDER, TWO COUNTS OF FELONIOUS ASSAULT, AND DOMESTIC VIOLENCE IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS.

## ASSIGNMENT OF ERROR V

THE TRIAL COURT ERRED IN SENTENCING APPELLANT, WILLIAM DEMBIE, BY FAILING TO RUN CONCURRENT SENTENCES ON THE COURT'S GUILTY VERDICT ON TWO COUNTS OF MURDER, TWO COUNTS OF FELONIOUS ASSAULT, AND DOMESTIC VIOLENCE IN VIOLATION OF R.C. 2941.25 SINCE THE RECORD BEFORE THE TRIAL COURT ESTABLISHES THAT THE OFFENSES ARE ALLIED EVEN ABSENT ANY STATEMENT BY THE STATE AS TO ITS THEORY OF THE CASE.

{¶6} In Mr. Dembie's first, second, and fifth assignments of error, he argues that the trial court erred by sentencing him for allied offenses of similar import.<sup>1</sup> Specifically, he argues that his murder and felonious assault convictions are allied offenses pursuant to Revised Code Section 2941.25. He also argues that the State should have been prevented from arguing against the merger of the charges based upon statements made by the prosecutor prior to trial.

{¶7} "Whether multiple punishments imposed in the same proceeding are permissible is a question of legislative intent." *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, ¶ 10, citing *Missouri v. Hunter*, 459 U.S. 359, 365 (1983). "Absent a more specific legislative statement, R.C. 2941.25 is the primary indication of the General Assembly's intent to prohibit or

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<sup>1</sup> Although Mr. Dembie's assignments of error repeatedly state that the trial court erred by not running his sentences concurrently to each other, he does not argue that the trial court failed to comply with Revised Code Section 2929.14(C)(4), which governs the imposition of consecutive sentences. Instead, he confines his arguments to the issue of allied offenses, and, therefore, we similarly confine our analysis to that issue. See *State v. Young*, 9th Dist. Summit No. 26725, 2014-Ohio-1715, ¶ 28 (noting that it was appropriate to confine analysis to issues raised by appellant).

bathroom. Mr. Dembie kicked in the bathroom door and a new struggle occurred as Mrs. Dembie attempted to escape out the second-story window. While Mrs. Dembie was outside the window, Mr. Dembie stabbed her in the abdomen and thereafter, Mrs. Dembie fell to the ground below. Mr. Dembie proceeded down the steps and outside to where Mrs. Dembie lay. He stabbed her repeatedly and cut her throat, killing her.

{¶10} The trial court acquitted Mr. Dembie of aggravated murder but found him guilty of the remaining charges. The trial court requested that the parties prepare arguments for the sentencing hearing regarding whether all of the offenses should merge. At the sentencing hearing, the State urged for the court to conclude that the felonious assault that occurred as Mrs. Dembie attempted to flee out the bathroom window to have happened with an animus separate from that of the subsequent killing. Mr. Dembie on the other hand argued that the evidence at trial demonstrated that Mr. Dembie had not formed a separate animus between when he stabbed Mrs. Dembie while she attempted to flee out the bathroom window and when he subsequently killed her. The trial court remarked, “I saw at least two occasions in which [Mr. Dembie] was guilty of felonious assault; when he stabbed [Mrs. Dembie] in the bathroom, and when he stabbed her downstairs repeatedly.” It further stated that it “saw two separate animuses” in the attack on Mrs. Dembie as she attempted to flee out the bathroom window and the attack that resulted in Mrs. Dembie’s death. Ultimately, the trial court determined that the murder counts should merge with each other and that the remaining counts should merge. The State elected to proceed to sentencing on the charge of murder in violation of Revised Code Section 2903.02(A) (purposefully causing the death of another) and felonious assault in violation of Section 2903.11(A)(2) (knowingly causing physical harm by means of a deadly weapon). The trial court

which the state obtained a conviction under R.C. 2919.22(B)(1) for abuse that caused serious physical harm. And the conviction for the second sequence of events under R.C. 2919.22(B)(1) is the basis for the predicate offense of felony murder under R.C. 2903.02(B).”). Thus, to the extent the lead opinion in *Johnson* is persuasive in this case, it is in favor of affirming the trial court.

{¶13} Mr. Dembie also argues that the trial court was required to merge all of his convictions because the State, through statements made prior to trial, had induced Mr. Dembie not to present evidence that the offenses did merge. He suggests that the doctrines of equitable and judicial estoppel require this outcome.

{¶14} We initially note, with regard to Mr. Dembie’s suggestion that the doctrine of equitable estoppel should be applied in this case, that he has not cited a single authority where that doctrine applies in a criminal proceeding. Indeed, the Supreme Court has noted that a criminal defendant’s attempt to rely on such a doctrine is “misplaced.” *State v. Fry*, 125 Ohio St.3d 163, 2010-Ohio-1017, ¶ 54. Furthermore, the suggestion that he was induced to not put forth evidence is purely speculative as there is no suggestion in the brief or in the record as to what additional evidence he declined to pursue. Under the circumstances, we cannot conclude that Mr. Dembie has demonstrated reversible error.

{¶15} Turning to Mr. Dembie’s argument regarding judicial estoppel, “for that doctrine to prohibit a party from raising an argument, the argument in question must be inconsistent with one *successfully* and ‘*unequivocally*’ asserted by the same party earlier.” (Emphasis added.) *Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, at ¶ 22, quoting *State ex rel. Motor Carrier Serv., Inc. v. Rankin*, 135 Ohio St.3d 395, 2013-Ohio-1505, ¶ 33. Mr. Dembie, focusing solely on the second prong, argues that the State had unequivocally taken the position in its pretrial

the evening were evidence of premeditation, which was an element of aggravated murder. In other words, the assistant prosecutor was arguing that the stabbing as Mrs. Dembie attempted to flee Mr. Dembie through the bathroom window was evidence that Mr. Dembie had developed a plan to kill Mrs. Dembie, making Mr. Dembie guilty of aggravated murder. However, the trial court found Mr. Dembie not guilty of aggravated murder; thus, the State did not succeed in its argument. *See Washington* at ¶ 22. Accordingly, judicial estoppel would not apply in this case to prevent the State from arguing against merger at sentencing. *See id.*

{¶17} Based on the foregoing, we cannot conclude that Mr. Dembie met his burden and established that the State relied upon the same conduct to convict him of allied offenses of similar import. *See id.* at ¶ 18. *See also Ruff*, \_\_\_ Ohio St.3d \_\_\_, 2015-Ohio-995, paragraphs one and three of the syllabus. Accordingly, his first, second, and fifth assignments of error are overruled.

#### ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN SENTENCING APPELLANT, WILLIAM DEMBIE, BY FAILING TO RUN CONCURRENT SENTENCES ON THE COURT'S GUILTY VERDICT ON TWO COUNTS OF MURDER, TWO COUNTS OF FELONIOUS ASSAULT, AND DOMESTIC VIOLENCE IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION.

#### ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED IN SENTENCING APPELLANT, WILLIAM DEMBIE, BY FAILING TO RUN CONCURRENT SENTENCES ON THE COURT'S GUILTY VERDICT ON TWO COUNTS OF MURDER, TWO COUNTS OF FELONIOUS ASSAULT, AND DOMESTIC VIOLENCE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

{¶18} In Mr. Dembie's third and fourth assignments of error, he argues that his right to due process and his right to know the charges against him were violated because the State

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.



JENNIFER HENSAL  
FOR THE COURT

CARR, J.  
SCHAFFER, J.  
CONCUR.

APPEARANCES:

BRIAN J. DARLING, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellee.