

IN THIS HONORABLE COURT

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| STATE OF OHIO |) | SUPREME COURT CASE |
| |) | NO. 2015-1462 |
| Appellee, |) | |
| |) | |
| vs. |) | ON APPEAL FROM THE |
| |) | COURT OF APPEALS, |
| WILLIAM A. DEMBIE, JR. |) | NINTH APPELLATE |
| |) | DISTRICT 14CA010527 |
| Appellant. |) | |
| |) | LORAIN COUNTY COMMON |
| |) | PLEAS COURT CASE NO. |
| |) | 11CR083428 |

**MEMORANDUM OF APPELLEE IN
OPPOSITION TO JURISDICTION**

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**EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR GREAT
GENERAL INTEREST**

This Honorable Court should not accept jurisdiction for the following reasons:

1. The decision of the Ninth Judicial District Court of Appeals to uphold the decision of the trial court created no injustice as Appellant's arguments were addressed by existing case law.
2. No issue or substantial constitutional question exists in the Appellant's appeal to this Honorable Court. The attempted appeal further presents no viable question of general public interest so as to warrant the exercise of this Court's jurisdiction.

STATEMENT OF THE CASE

On September 15, 2011, the Lorain County Grand Jury indicted William Dembie for one count of Aggravated Murder, in violation of R.C. 2903.01(A); one count of Murder in violation of R.C. 2903.02(A); one count of Murder, in violation of R.C. 2903.02(B); one count of Felonious Assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree; one count of Felonious Assault, in violation of R.C. 2903.11(A)(2), a felony of the second degree, and one count of Domestic Violence, in violation of R.C. 2919.25(A), a misdemeanor of the first degree. (R. 3). Dembie entered a plea of not guilty to the charges and the matter proceeded through the pretrial process. (R. 5).

On December 3, 2013, Dembie waived his right to a trial by jury and the matter proceeded to a bench trial. (R. 42, 43). After a two day trial, the matter was taken under advisement by the trial judge. (R. 43, 44). The trial court found Dembie not guilty of Aggravated Murder, but guilty of all the remaining counts in the indictment. (R. 45). The trial court sentenced Dembie to life in prison with no possibility of parole for at least fifteen years for

count two, and five years in prison on count five, to be served consecutively. (R. 46). All the other counts were subject to merger. (R. 46).

Dembie filed an appeal from his conviction and sentence. Dembie alleged that the trial court erred in sentencing him to allied offenses, because he was not provided with sufficient notice that the State would argue that the Murder charge and the Felonious Assault charge were not subject to merger. The Ninth District Court of Appeals affirmed the judgment of the trial court. *State v. Dembie*, 9th Dist. Lorain No. 14CA010527, 2015-Ohio-2888, ¶ 20.

STATEMENT OF FACTS

Joiann Sanchez ran the dispatch center at the Lorain County Sheriff's Department on August 11, 2011. (Vol. I, Tr. 64-5, 68). At approximately 1:30 am, Ms. Sanchez received a call from William Dembie. (Vol. I, Tr. 68-9). At first, Ms. Sanchez thought Dembie was calling off for his next shift as a corrections officer. (Vol. I, Tr. 67, 70). However, Dembie told her that he beheaded his wife. (Vol. I, Tr. 70). Ms. Sanchez dispatched units to Dembie's house. (Vol. I, Tr. 72).

Deputy Todd Weegmann, Deputy Hudson, Deputy Lottman, and Sergeant McCurry were first to arrive at Dembie's residence. (Vol. I, Tr. 77-8). They formulated a plan on how to safely approach the house. (Vol. I, Tr. 86). Deputy Weegmann and Deputy Hudson approached the back of the residence, and Deputy Lottman went around to the front. (Vol. I, Tr. 80). When Deputy Weegmann got to the back of the residence, he saw Holly Dembie's body. (Vol. I, Tr. 81). Holly's body was near the residence under a window, with clothing laid over it. (Vol. I, Tr. 81-2). She had extensive neck wounds with blood around them and a large pool of blood underneath her body. (Vol. I, Tr. 82).

Dembie was found on the south side of the residence. (Vol. I, Tr. 82). Dembie had blood all over his shirt, shorts, and legs, but his hands were clean. (Vol. I, Tr. 83-4). At that time, Dembie was taken into custody. (Vol. I, Tr. 84). Dembie requested his property bag, which held white T-shirts, underwear, and socks for jail. (Vol. I, Tr. 85, 117).

Lieutenant Donald Barker was informed of the incident that took place at Dembie's residence and called three detectives to report to the Sheriff's Department to assist with the investigation. (Vol. I, Tr. 91-2). After arriving at the scene, Lieutenant Barker received an update on the situation and learned that Dembie was in custody. (Vol. I, Tr. 92). After observing the scene and assigning the detectives their duties, Lieutenant Barker and Detective Lopez interviewed Dembie after reading him his Miranda rights. (Vol. I, Tr. 93, 99-101). Dembie stated that he and Holly had a rocky relationship, and were headed for divorce. (Vol. I, Tr. 102-4; State's EX 9). When Holly came home that night, she and Dembie got into a disagreement regarding details about the divorce. (Vol. I, Tr. 107; State's EX 9). They were in Holly's bedroom and she eventually told Dembie to leave her room and pushed him off of the bed. (Vol. I, Tr. 107; State's EX 9). Dembie then punched Holly in the face, causing her to bleed. (Vol. I, Tr. 108; State's EX 9).

After he hit Holly, Dembie went to his room and retrieved his knife because he knew that he would go to prison so he planned on hurting himself. (State's EX 9, counter number 9:55-10:19). Dembie then went downstairs with the knife to speak with Holly with the belief that she would listen to him with the weapon. (State's EX 9, counter number 10:44-10:57). The knife was in the scabbard. (State's EX 9, counter number 10:55). Holly began to appease Dembie by agreeing with what he said. (State's EX 9, counter number 10:44-10:57). This reaction angered Dembie, because he knew she was only agreeing with him so she could escape. (State's EX 9,

counter number 11:11). Holly tried to run upstairs, but Dembie stopped her. (State's EX 9, counter number 11:19).

At some point, both Holly and Dembie ended upstairs. Holly tried to get away from Dembie again by retreating downstairs, but he pulled her back upstairs and ripped off her shirt. (State's EX 9, counter number 11:28). Holly was able to get away from Dembie and retreated into her bathroom. (State's EX 9, counter number 11:35). Dembie then kicked in the bathroom door and went inside to find Holly attempting to escape from the window. (State's EX 9, counter number 11:35). Dembie then tried to pull her back into to the residence to prevent her from escaping again. (State's EX 9, counter number 11:58). Dembie pulled Holly's pants off in attempt to pull her back inside the bathroom and at that point stabbed her as she was hanging out the window. (State's EX 9, counter number 12:27). The scabbard was found next to the toilet. (Vol. I, Tr. 113). Dembie let her drop outside. (State's EX 9, counter number 12:27). Holly was still alive after she hit the ground. (State's EX 9, counter number 12:27). Instead of stopping his pursuit of Holly, Dembie made the decision go outside. It was outside that Dembie stabbed Holly repeatedly in her throat, causing her death. (State's EX 9, counter number 12:27).

Doctor John Daniels performed the autopsy on Holly Dembie's body. (Vol. II, Tr. 160). Dr. Daniels determined that the cause of Holly's death was stabbing wound which led to exsanguination. (Vol. II, Tr. 160-1). Holly had four penetrating wounds to her neck and three to her abdomen. (Vol. II, Tr. 164-176, 181). The wounds to her neck would have caused a great deal of hemorrhaging. (Vol. II, Tr. 165-6). One wound to the neck completely transected the external jugular vein, which is one of the four major vessels that drain blood from the head. (Vol. II, Tr. 167). Another wound transected the internal jugular vein, which is another major blood vessel, before hitting one of Holly's vertebrae. (Vol. II, Tr. 169-170). Holly had three

stab wounds in her abdominal area. (Vol. II, Tr. 173). Her liver was penetrated on both the right and left lobes. (Vol. II, Tr. 174-5). Although Dr. Daniels did find some internal bleeding because of these wounds, there was not a considerable amount of blood in her cavity because Holly was losing a lot of blood out of her neck. (Vol. II, Tr. 177). Furthermore, even though the type of wounds Holly had in her abdomen could have been lethal, if pressure was applied to the wounds, a person could have survived long enough to get to the hospital. (Vol. II, Tr. 185-6). Holly also had a hemorrhage in her right temporal muscle which is consistent with blunt force impact. (Vol. II, Tr. 171-2). There was also bruising at the inner part of the corner of the eye on the left side, consistent with blunt force impact. (Vol. II, Tr. 173).

LAW AND ARGUMENT

RESPONSE TO SOLE PROPOSITION OF LAW

Dembie argues that his right to Due Process was violated when the State changed its position at the sentencing hearing regarding allied offenses, and therefore, deprived him of the ability to properly establish that the charges against him should have merged for purposes of sentencing. This argument is without merit.

“R.C. 2941.25 is the primary indication of the General Assembly’s intent to prohibit or allow multiple punishments for two or more offenses resulting from the same conduct.” *State v. Washington*, 137 Ohio St. 3d 427, 2013-Ohio-4982, 999 N.E.2d 66, ¶ 11, citing *State v. Childs*, 88 Ohio St.3d 558, 561, 2000 Ohio 425, 728 N.E.2d 379 (2000). Courts “must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus.” *Id.* at ¶ 24. A “defendant bears the burden of establishing his entitlement to the protection, provided by R.C. 2941.25, against multiple punishments for a single criminal act.” *Id.* quoting *State v. Mughni*, 33 Ohio St.3d 65, 67, 514 N.E.2d 870 (1987).

“Merger is a sentencing question, not an additional burden of proof shouldered by the state at trial.” *Washington, supra*, at ¶ 18. *State v. Johnson*, 128 Ohio St. 3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, “did not ‘shift the burden to the State to neatly frame at the time of trial all issues which arise, if at all, only at sentencing.’” *Id.* at ¶ 18, citing *State v. Washington*, 9th Dist. Lorain No. 11CA010015, 2012-Ohio-2117, ¶ 24 (Carr, J., concurring in part and dissenting in part). Thus, parties are not bound to the theories they presented at trial. *Id.* at ¶ 21.

Washington, supra, allows the State to alter its theory of the case at sentencing based upon the issues that arose during trial. Here, the State based its representation at the beginning

of trial on the theory that Dembie acted with prior calculation and designed to prove the charge of Aggravated Murder. However, the trial court rejected the State's theory that Dembie's actions were a part of a premeditated plan to kill Holly in support of the Aggravated Murder charge. (Vol. II, Tr. 269-270). Instead, the trial judge indicated a belief that Dembie's actions in the upstairs bathroom may be separate from those that took place outside. (Vol. II, Tr. 268). As such, the State was able to tailor its arguments at sentencing to reflect this issue that arose during trial, and argue that Dembie's charges for Murder and Felonious Assault were not subject to merger.

Dembie argues that the State's change in position at the sentencing hearing deprived him of the ability to properly establish that the charges against him were allied offenses during the trial. However, Dembie fails to acknowledge that the issue of merger is addressed at sentencing, and not during trial. *Washington, supra*. Additionally, Dembie had the opportunity to present evidence regarding merger at the sentencing hearing, which was the appropriate time for him to make such arguments because merger is an issue at sentencing, and not at trial. *Washington, supra*. Therefore, the merger determination took place only after both sides had the ability to make additional arguments to the trial court regarding that specific issue.

Dembie argues that the defense was reasonably led to assume that it did not need to present arguments at sentencing regarding whether the charges of Murder and Felonious Assault were allied offenses. However, Dembie was put on notice ten days prior to the sentencing hearing by the trial court that it was contemplating whether some of his charges were subject to merger. When discussing its thought process in coming to a decision regarding the Aggravated Murder charge, the trial court stated that one factor it contemplated was the time lapse between the events that occurred in the bathroom and those that took place outside the residence. (Vol. II,

Tr. 268). The trial court ultimately rejected the State's argument that Dembie had prior calculation and design to kill Holly. (Vol. II, Tr. 269-270). After issuing the verdict, the trial court stated it wanted additional time to research the issue of sentencing Dembie on more than one count for which he was found guilty. (Vol. II, Tr. 271). The trial court pointed out that "factually at least there's an argument that the Court can issue separate sentences regarding a felonious assault in light of the fact that there was a felonious assault that occurred in the bathroom and another one that occurred downstairs." (Vol. II, Tr. 273). Because there was an option to issue separate sentences, the trial court provided both parties with the opportunity to present authority regarding the issue of allied offenses as it pertained to this matter. (Vol. II, Tr. 273). The trial court provided Dembie with notice that it was contemplating issuing sentences for more than one of the charges in the indictment. Therefore, Dembie had the opportunity and the requirement to establish that he was entitled to merger of the Murder and Felonious Assault charges, regardless of any theory of the case presented by the State at trial. As such, Dembie was afforded Due Process.

Moreover, Dembie's reliance on *Lankford v. Idaho*, 500 U.S. 110, 127 S.Ct. 1723, 114 L.E.2d 173 (1991) is misplaced. In *Lankford*, Bryan Lankford and his brother were charged in the murders of Robert and Cheryl Bravence. *Id.* at 112. A trial was held and the jury found Lankford guilty. *Id.* at 112, 113. Prior to sentencing, "the trial court entered an order requiring the State to notify the court and petitioner whether it would ask for the death penalty, and if so, to file a statement of the aggravating circumstances on which it intended to rely." *Id.* at 114. The State responded by filing notice that it did not intend to seek the death penalty. *Id.* The matter proceeded to the sentencing hearing. *Id.* at 115. At that hearing, the State relied solely upon the evidence introduced at trial, while the defense presented several witnesses who testified

that Lankford was a nonviolent person, but was under the influence of his brother. *Id.* at 116. Neither the State nor the defense presented evidence regarding the death penalty. *Id.* Instead, the parties advanced arguments regarding the length of the defendant's incarceration. *Id.* At the close of the evidence, the trial court made a statement indicating that he did not believe Lankford, and felt that Lankford's actions warranted a more severe punishment than was recommended by the State. *Id.* Furthermore, the trial court also made a statement about the possible punishments available to it, including the possibility of a death sentence. *Id.* at 117. The matter was taken under advisement. *Id.* At a later hearing, the trial court announced that it would impose the death penalty. *Id.*

The United States Supreme Court accepted Lankford's case to resolve the issue, "whether, at the time of petitioner's sentencing hearing, he and his counsel had adequate notice that the judge might sentence him to death." *Id.* at 111. The Supreme Court found that Lankford was not provided with sufficient notice that the judge was contemplating the imposition of the death penalty. *Id.* at 127. In making this finding, the Supreme Court pointed to the fact that "[d]uring the hearing, while both defense counsel and the prosecutor were arguing the merits of concurrent or consecutive, and fixed or indeterminate, terms, the silent judge was the only person in the courtroom who knew that the real issue that they should have been debating was the choice between life or death." *Id.* at 120. Furthermore, the Supreme Court equated the court's presentencing order requiring the State to give Lankford notice of its intention to pursue the death penalty to a pretrial order limiting the issues to be tried. *Id.* at 120. As such, "it was surely reasonable for the defense to assume that there was no reason to present argument or evidence directed at the question whether the death penalty was either appropriate or permissible." *Id.*

Without notice that the trial court was contemplating the death penalty, Lankford was “denied the benefit of the adversary process.” *Id.* at 127. Thus, Lankford was denied Due Process. *Id.*

The facts of Dembie’s case are distinguishable from those in *Lankford*. Here, at the reading of the verdict on December 6, 2013, the trial court brought up that the events inside the residence could be viewed as separate and distinct from those that occurred outside. (Vol. II, Tr. 259, 271). The trial court specifically brought to the attention of both sides the potential issue regarding merger of the counts and told the parties it was researching authority regarding its ability to sentence Dembie on more than one count for which Dembie was found guilty. (Vol. II, Tr. 271, 273). As such, the trial court also informed the parties that it would consider any authority provided by the parties regarding allied offenses. (Vol. II, Tr. 271, 273). Thus, Dembie was aware of the potential that the trial court viewed Dembie’s actions inside the residence as separate and distinct from those that occurred outside, not only through his request for direction on allied offenses, but also through its verdict, rejecting the State’s argument that Dembie’s action were a part of a premeditated plan to kill his wife. (Vol. II, Tr. 269, 270, 271, 273). Unlike the defendant in *Lankford*, Dembie had the ability to prepare, and did present evidence and argument at his sentencing hearing regarding the allied offense issue. (Vol. II, Tr. 276, 278-279). Dembie was not denied Due Process.

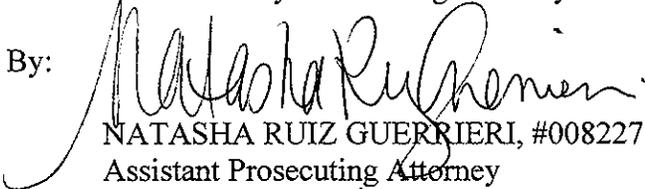
Therefore, Dembie’s argument is without merit, because he was not denied Due Process when the State argued that the Murder and Felonious Assault charges were not allied offenses for purposes of sentencing.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests that this Honorable Court decline jurisdiction over the instant matter.

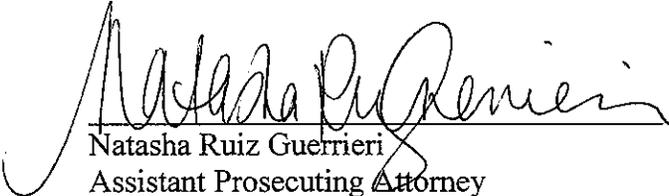
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memo in Opposition to Jurisdiction was sent via regular U.S. Mail this 16th day of September, 2015 to Brian J. Darling, Counsel for Appellant, 23823 Lorain Road, Suite 270, North Olmsted, Ohio 44070.


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