

No. 2017-8201

[CAPITAL CASE]

IN THE

SUPREME COURT OF THE UNITED STATES

JEFFREY WOGENSTAHL

Petitioner

vs.

STATE OF OHIO

Respondent

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT OF OHIO**

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QUESTIONS PRESENTED

I

THE EVIDENCE DID NOT ESTABLISH THAT AMBER'S MURDER OCCURRED IN INDIANA.

II.

NEITHER THE OHIO SUPREME COURT NOR OHIO R.C. 2901.11(D) SHIFTED THE BURDEN OF PROOF TO WOGENSTAHL TO PROVE OHIO LACKED JURISDICTION.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

There are no parties to the proceeding other than those listed in the caption. Under Rule 29.6, Respondent states that no parties are corporations.

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**ON PETITION FOR WRIT OF CERTIORARI
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OPINIONS BELOW

The Ohio Supreme Court opinion is *State v. Wogenstahl*, 150 Ohio St.3d 571, 84 N.E.3d 1008, 2017-Ohio-6873 (2017).

JURISDICTIONAL STATEMENT

The Ohio Supreme Court issued its opinion on the merits on July 25, 2017. The Ohio Supreme Court denied Wogenstahl's Motion for Reconsideration on December 20, 2017. This Court has jurisdiction over this cause under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following Amendments to the United States Constitution:

A. Sixth Amendment, which provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

B. Fourteenth Amendment, which provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

On September 1, 1992, the Hamilton County Grand Jury returned an indictment charging Jeffrey Wogenstahl with: one count of Aggravated Murder, with three death penalty specifications; one count of Kidnapping with a prior conviction specification; and one count of Aggravated Burglary, also with a prior conviction specification. Wogenstahl was arraigned on September 9, 1992, and entered a plea of not guilty.

Wogenstahl was tried to a jury beginning on February 8, 1993 and ending on February 25th. In *State v. Wogenstahl*, 75 Ohio St.3d 344, 345-51, 1996-Ohio-219, 662 N.E.2d 311, 314-18 (1996), the Court summarized the facts of this case as follows:

Peggy Garrett was first introduced to Jeffrey A. Wogenstahl, appellant, in October 1991. During October and November 1991, appellant and Peggy became casual acquaintances. At the time, Peggy resided in a two-bedroom apartment at 301 Harrison Avenue, Harrison, Ohio, with her five children: Eric Horn, age sixteen, Justin Horn, age fifteen, Amber Garrett, age ten, Matthew Garrett, age eight, and Shayna Perkins, age four. During October and November 1991, appellant visited the apartment on several occasions and came to know Peggy's family.

Appellant went to Peggy's apartment on Saturday afternoon, November 23, 1991. He asked Peggy if she had any plans for the evening. Peggy told appellant that she had no plans, and appellant left following a brief conversation. That night, Peggy put her three youngest children (Amber, Matthew and Shayna) to bed for the evening. At approximately 10:30 p.m., she decided to meet a friend, Lynn Williams, at a local bar. Justin was spending the weekend at a friend's house. Peggy left sixteen-year-old Eric in charge of the other children.

Peggy met Lynn Williams at the "Escape" bar sometime between 11:00 p.m. and midnight. From there, the women drove Lynn's car to the Miamitown Lounge, which was also known as "Hornsby's." At Hornsby's, Peggy and Lynn saw appellant at the bar. He was wearing a brown leather jacket and jeans. Appellant joined the women for drinks and conversation. Appellant asked Peggy where Justin was and what Eric and the other children were doing. Peggy told appellant that Justin was away for the weekend, and that Eric was home baby-sitting the children. At some point, the trio went outside to appellant's car to smoke marijuana.

On Sunday morning, at approximately 2:15 a.m., appellant, Peggy and Lynn drove Lynn's car to the Flicker Inn. Later, the women drove appellant back to Hornsby's, where appellant's car was parked. Appellant invited the women to his apartment to smoke marijuana, but Peggy and Lynn told appellant that they were going to the Waffle House restaurant. Peggy and Lynn then separated from appellant and drove directly to the Waffle House. After the women had arrived at the restaurant, a witness saw a car resembling appellant's dark-brown four-door 1978 Oldsmobile Omega pull into and then out of the restaurant parking lot.

At approximately 3:00 a.m., while the women were at the Waffle House, appellant drove to Peggy's apartment and spoke with Eric. According to Eric, appellant claimed that Peggy needed to see him (Eric) at Troy Beard's house. Beard was Peggy's friend who lived approximately three blocks from the apartment. Eric locked the door to the apartment, leaving the children unattended, and drove with appellant to the vicinity of Beard's residence. Appellant dropped Eric off approximately one block from Beard's apartment. According to Eric, appellant said that he would drive around the block and then pick Eric up to drive him home. When Eric arrived at the residence, Beard told Eric that he (Beard) had not seen Peggy at all that evening. Eric left Beard's apartment and waited for appellant to drive him home. Appellant did not return. Eventually, Eric walked home and found that the door to the apartment was unlocked. He checked on the children and noticed that ten-year-old Amber was missing. However, Eric mistakenly assumed that Amber might have been spending the night at a friend's house. Thus, he mentioned nothing to Peggy when she returned home later that morning.

On the morning of November 24, 1991, Vickie Mozena was working at a United Dairy Farmers store in Harrison, Ohio, near the Ohio-Indiana border. At approximately 3:15 a.m., Mozena saw a car resembling appellant's Oldsmobile drive past the store in the direction of Bright, Indiana. Mozena observed the silhouette of a man driving the vehicle, and what appeared to be a young girl next to him in the passenger's seat. Between 3:45 and 4:00 a.m., Mozena saw the same vehicle parked at a car wash across the street from the United Dairy Farmers store. The vehicle pulled out of the car wash and into the farthest corner of the United Dairy Farmers parking lot. The driver did not exit the vehicle for several minutes, and Mozena thought that she was about to be robbed. However, appellant exited the vehicle, came into the store, and purchased a pack of cigarettes. At that time, Mozena noticed what appeared to be dirt or blood under appellant's fingernails. Later that morning, Mozena once again saw appellant's car parked across the street at the car wash. According to Mozena, there was a man inside the car, presumably cleaning the interior.

Harold Borgman lived on Jamison Road between Harrison, Ohio, and Bright, Indiana. Borgman's home was located in a rural area of West Harrison, Indiana, approximately four miles from Harrison. At 3:13 a.m. on the morning of November

24, 1991, Borgman got out of bed to use the bathroom. Sometime later, he looked out the window and saw a car driving very slowly on Jamison Road toward the direction of Harrison. The driver pulled off to the side of Jamison Road, stopped, and turned off the headlights. Borgman continued to watch for several minutes, and observed two or three vehicles pass the parked car on Jamison Road.

On November 24, at approximately 3:40 a.m., Brian Noel was driving on Jamison Road toward Bright, Indiana. While driving near the location of Borgman's residence, Noel saw a late 1970s-model, dark-colored four-door vehicle parked off to the side of Jamison Road, the vehicle facing the opposite direction. Noel came to a rolling stop alongside the vehicle and observed a man apparently retrieving something from the trunk of the automobile. The man was wearing a dark jacket and blue jeans. Noel later identified appellant as the man he had seen on Jamison Road in the early morning hours of November 24. He also identified appellant's 1978 Oldsmobile as the car that had been pulled off to the side of Jamison Road.

On November 24, at approximately 3:40 a.m., Kathy Roth was driving on Jamison Road toward Bright, Indiana. While driving near the location of Borgman's residence, Roth saw a man wearing a brown leather jacket and blue jeans standing near a parked car off to the side of Jamison Road. As Roth drove past the vehicle, the man turned to face her, dropped his head, and then turned around to face the woods. Roth later identified appellant as the man she had seen on Jamison Road.

Frederick G. Harms was driving on Jamison Road on November 24, at approximately 3:40 a.m. Harms also saw the vehicle parked off to the side of Jamison Road. According to Harms, the vehicle resembled appellant's 1978 Oldsmobile Omega.

On Sunday afternoon, November 24, Peggy Garrett finally realized that Amber was missing. At that time, Eric told Peggy about appellant's 3:00 a.m. visit to the apartment. Peggy and others went to appellant's residence and knocked on the door for over an hour. When appellant finally answered, Peggy asked him why he had taken Eric to Troy Beard's apartment earlier that morning. Appellant stated that he had been "messaging with Eric's head," and claimed to have no knowledge of Amber's whereabouts. On the evening of November 24, 1991, appellant gave a similar statement to Officer Charles Lindsey of the Harrison Police Department.

On Monday, November 25, 1991, police executed a search warrant at appellant's residence. During the search, appellant was questioned concerning his movements on the morning of November 24. Appellant admitted to having visited the Harrison Avenue apartment on November 24 at approximately 3:00 a.m. Appellant told police that he had duped Eric out of the Harrison Avenue apartment as a practical joke. However, appellant stated that he went directly home to bed after having taken Eric to the vicinity of Troy Beard's apartment. Police then requested that appellant

accompany them to the Harrison Police Department. Appellant agreed to go to the police station and asked for his leather jacket. Officer Lindsey retrieved the jacket from the bedroom closet. Lindsey noticed that the jacket was soaking wet and that the lining was discolored. According to police, appellant explained that his cat had urinated on the jacket on Friday evening, November 22, 1991. Appellant further explained that he had washed the jacket on Friday night. Police were suspicious, since appellant had worn the jacket on Saturday night, November 23, 1991.

Police found several bloodstains in appellant's bathroom. However, it could not be determined whether the blood was human blood. The items seized from appellant's residence included drugs and drug paraphernalia. Police contacted appellant's parole officer, and a parole holder was placed against appellant. On November 25, 1991, police also attempted to search a dumpster near appellant's apartment. However, the dumpster had been emptied earlier that morning. Two witnesses had seen appellant near the dumpster on November 24, at approximately 5:15 a.m.

On the morning of November 27, 1991, appellant made another statement to law enforcement authorities. This time, appellant claimed that he had driven Eric to the vicinity of Troy Beard's apartment on November 24 because Eric had wanted to deliver marijuana to Peggy. Appellant once again asserted that he had proceeded directly home to sleep after dropping Eric off in the vicinity of Beard's residence.

Meanwhile, the search for Amber Garrett continued. On November 27, 1991, Harold Borgman reported to police that he had seen a suspicious vehicle on Jamison Road in the early morning hours of November 24. Borgman led police to the location near his house where he had seen the suspicious vehicle. Sergeant Kenneth J. Greves of the Indiana State Police searched the area and discovered Amber's partially frozen body down a steep embankment off to the side of Jamison Road.

The location where Amber's body was discovered was heavily wooded and overgrown with thorny bushes and vegetation. Amber was wearing a dress and a pair of panties. Her dress had been rolled up from behind and pulled down over her arms. She had been stabbed approximately eleven times, mostly in the chest and neck. Additionally, she had been repeatedly struck in the head with a blunt instrument. The blunt force injuries were consistent with having been caused by an automobile jack handle or some other blunt stick or rod. Superficial wounds on the body indicated that a knife had been held to the base of Amber's neck. The body was covered with postmortem scratches that had apparently been caused by the vegetation in the area. The evidence at the scene indicated that the murder had occurred at a different location and that the killer had carried Amber's body through the dense vegetation.

William L. Dean, a criminalist in the Trace Evidence Section of the Hamilton County Coroner's Laboratory, examined the leather jacket that appellant had been wearing on

the morning of Amber's abduction. Thorn tips or "prickles" were removed from small triangular tears in the jacket. Dean also examined a pair of appellant's shoes that were found to contain prickles and other plant material.

Douglas W. Deedrick, a special agent with the Federal Bureau of Investigation, compared the plant material recovered from appellant's jacket and shoes with known samples of vegetation collected from the area where the body was discovered. Deedrick found that the plant material from appellant's clothing was similar to the vegetation collected from the crime scene. Additionally, Dr. Robert D. Webster, a research botanist, concluded that there were no differences between the vegetation recovered from appellant's clothing and the type of vegetation in the area where the body was discovered.

Police found two car jacks in the trunk of appellant's Oldsmobile, a ratchet jack and a screw or "scissors" jack. The metal handle for the screw jack was missing. There were no identifiable fingerprints anywhere in the vehicle. The car was exceptionally clean, as if it had been thoroughly washed. However, criminalists in the Trace Evidence Section of the Hamilton County Coroner's Laboratory found a very small bloodstain in appellant's Oldsmobile. The specimen was sent to the Serological Research Institute in California for testing. DNA was extracted from the bloodstain and was tested using the HLA DQ (Haldo) Alpha genetic marker system. The HLA DQ Alpha classification of the blood removed from appellant's vehicle was consistent with the HLA DQ Alpha classification of a known sample of Amber's blood. According to Brian Wraxall, a forensic serologist, Amber's HLA DQ Alpha classification occurs in approximately 5.3 percent of the Caucasian population. The blood recovered from appellant's vehicle was not consistent with appellant's blood or blood samples taken from Eric and Justin Horn.

Special Agent Deedrick of the Federal Bureau of Investigation found a single pubic hair inside the crotch area of Amber's panties. Deedrick compared the pubic hair to known samples of pubic hair that had been combed and plucked from appellant's pubic region. According to Deedrick, appellant's pubic hairs exhibited the same microscopic characteristics as the pubic hair recovered from the victim's panties. Deedrick testified to a reasonable degree of scientific certainty that the pubic hair recovered from the victim's underpants had come from appellant. Amber was prepubescent and, thus, the hair could not have come from her. Pubic hair samples taken from Peggy Garrett, Eric Horn and Justin Horn did not match the pubic hair recovered from Amber's panties.

Appellant was indicted by the Hamilton County Grand Jury for the aggravated murder of Amber. Count One of the indictment charged appellant for the purposeful killing of Amber during the commission of an aggravated burglary and/or kidnapping. This count of the indictment carried three death penalty specifications.1

Appellant was also indicted, in Counts Two and Three, for kidnapping and aggravated burglary, respectively, with a specification alleging that appellant had a prior (1985) aggravated felony conviction.

Appellant was tried before a jury. Bruce Wheeler was the prosecution's final witness in the guilt/innocence phase of the trial. Wheeler and appellant had been fellow inmates in the same "pod" at the Hamilton County Justice Center. At trial, Wheeler testified that he had spoken with appellant on several occasions concerning appellant's involvement in the killing. According to Wheeler, appellant had said that there was very little evidence against him because he had been "too slick" and had "covered up" the evidence. Further, appellant allegedly admitted to Wheeler that he (appellant) had entered the Garrett apartment with a stolen key and had kidnapped Amber to have sex with her. Wheeler testified that appellant "said he stuck it in her but * * * [did not] ejaculate * * * so there would not be any evidence." Additionally, appellant told Wheeler that he had wanted to return Amber to the apartment because he thought he could get away with having removed her from the residence. However, someone was at the Garrett residence when appellant attempted to return Amber to her home. Thus, according to Wheeler, appellant said that he decided to have "sex" with Amber once again. Wheeler testified that appellant admitted stabbing Amber in the chest when she refused his further sexual advances. According to Wheeler, appellant admitted killing Amber, dumping the body, cleaning the car, and disposing of the evidence. Appellant also told Wheeler that police had planted Amber's blood in his (appellant's) car because appellant had "cleaned his car too well."

The defense presented several witnesses in the guilt phase of appellant's trial. Appellant testified on his own behalf and, among other things, denied the charges against him.

The jury found Wogenstahl guilty on all counts and all specifications. A mitigation hearing was held on March 2, 1993 and on the next day the jury recommended a sentence of death. On March 15, the trial court imposed a sentence of death on the aggravated murder count. A sentence of 15-25 years was imposed on both the kidnapping count and on the aggravated burglary count. These sentences were ordered to run consecutive to each other and to the sentence imposed on the aggravated murder count.

Wogenstahl unsuccessfully challenged his convictions in appeals to the First District, the Ohio Supreme Court, and this United States Supreme Court, *State v. Wogenstahl*, 1st Dist. Hamilton

No. C-930222, 1994 Ohio App. LEXIS 5321 (Nov. 30, 1994), *aff'd*, 75 Ohio St.3d 344, 662 N.E.2d 311 (1996), *certiorari denied*, *Wogenstahl v. Ohio*, 519 U.S. 895, 117 S.Ct. 240, 136 L.Ed.2d 169 (1996), and in postconviction proceedings filed in 1996, 1998, and 2003. *State v. Wogenstahl*, 1st Dist. Hamilton No. C-970238, 1998 Ohio App. LEXIS 2567 (June 12, 1998); *State v. Wogenstahl*, 1st Dist. Hamilton No. C-980175, 1999 Ohio App. LEXIS 546 (Feb. 19, 1999); *State v. Wogenstahl*, 2004-Ohio-5994, 970 N.E.2d 447 (1st Dist.). In 2007, the United States District Court for the Southern District of Ohio dismissed his petition for a writ of habeas corpus. *Wogenstahl v. Mitchell*, S.D. Ohio No. 1:99-cv-843, 2007 U.S. Dist. LEXIS 67388 (Sept. 12, 2007), *aff'd*, 668 F.3d 307 (6th Cir. 2012), *certiorari denied*, 133 S.Ct. 311, 184 L.Ed.2d 185 (2012).

In January 2014, Wogenstahl filed a Motion for a New Trial on the ground of newly discovered evidence. The trial court denied defendant a new trial and the judgment was affirmed on appeal. *State v. Wogenstahl*, 1st Dist. Hamilton No. C-140683 (Dec. 23, 2015).

In July of 2014, Wogenstahl filed a motion to reverse his conviction arguing, for the first time, that the trial court lacked jurisdiction over his aggravated murder charge. While that motion was pending before the trial court, Wogenstahl filed another motion asking the Ohio Supreme Court to vacate his execution date to re-open his appeal, raising the same argument. The Ohio Supreme Court granted that motion, stayed his execution date and ordered the parties to brief the issue of whether this Hamilton County Court of Common Pleas lacked jurisdiction with respect to the charge of aggravated murder with death penalty specifications.

On July 25, 2017, the Ohio Supreme Court ruled that the trial court did have jurisdiction over Wogenstahl's aggravated murder charge. *State v. Wogenstahl*, 150 Ohio St.3d 571, 2017-Ohio-6873.

The Ohio Supreme Court held that “[b]ecause we find that it cannot be determined whether Amber Garrett was murdered in Ohio or Indiana, we hold that Ohio had jurisdiction over the aggravated-murder charge under R.C. 2901.11(D).” *State v. Wogenstahl*, 150 Ohio St.3d 571, 571 (2017).

REASONS FOR DENYING THE WRIT

I

THE HAMILTON COUNTY COURT OF COMMON PLEAS HAD JURISDICTION OVER THE COUNT IN THE INDICTMENT CHARGING AGGRAVATED MURDER WITH DEATH PENALTY SPECIFICATIONS AS IT CANNOT BE REASONABLY DETERMINED WHERE THE FATAL BLOWS WERE STRUCK OR WHERE AMBER GARRETT’S DEATH OCCURRED.

II

OHIO LAW DOES NOT SHIFT THE BURDEN OF PROOF TO THE ACCUSED TO PROVE LACK OF JURISDICTION. OHIO HAS THE BURDEN OF PROOF TO ESTABLISH THAT:

- (1) EITHER THE ACT THAT CAUSES DEATH; OR THE PHYSICAL CONTACT THAT CAUSED DEATH, OR THE DEATH ITSELF OCCURRED IN OHIO. SEE OHIO REVISED CODE R.C. 2901.11(B).**

OR

- (2) THE EVIDENCE IS INSUFFICIENT TO SAY WITH CONFIDENCE IN WHICH STATE THE MURDER OCCURRED.” SEE OHIO R.C. 2901.11(D).**

Wogenstahl argues the evidence conclusively proved that Amber Garrett was killed in Indiana and therefore he was not subject to the territorial jurisdiction of the Hamilton County, Ohio Court of Common Pleas (violation of Sixth Amendment). He further claims that the Ohio Supreme Court improperly shifted the burden of proof to him to prove that Ohio lacked jurisdiction (violation of Fourteenth Amendment). The state maintains each claim is meritless.

I. OHIO HAD JURISDICTION

The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution provides that, in all criminal prosecutions, the accused is entitled to a speedy, public trial by an impartial jury of the county in which the crime is alleged to have been committed. This constitutional mandate regarding territorial jurisdiction has been codified at R.C. 2901.11.

Specifically, R.C. 2901.11(A)(1) provides that a person is subject to criminal prosecution in Ohio if he commits an offense under the laws of this state, any element of which takes place in this state. R.C. 2901.11(B) defines the element of a homicide offense which must be established as either the act causing the death, the physical contact which causes the death, or the death itself. This section also states that if any part of the body of a homicide victim is found in Ohio, the death is presumed to have occurred within this state. Finally, R.C. 2901.11(D) states:

“When an offense is committed under the laws of this state, and it appears beyond a reasonable doubt that the offense or any element thereof took place either in Ohio or in another jurisdiction or jurisdictions, *but it cannot reasonably be determined in which it took place*, such offense or element is conclusively presumed to have taken place in this state for purposes of this section.” (Emphasis added.)

Wogenstahl first argues that the inverse of the proposition contained in R.C. 2901.11(D) is likewise true. Specifically, if it can be reasonably determined in which jurisdiction the murder of Amber took place, and that jurisdiction is not Ohio, then the crime is properly prosecuted in that other jurisdiction (Indiana).

The Ohio Supreme Court considered Wogenstahl’s claim that the evidence established that Amber was murdered in Indiana. It rejected Wogenstahl’s claim, noting:

“... His argument is founded almost entirely upon the UDF employee’s testimony that she saw Amber alive at 3:15 a.m. in a car headed out of state. Because the state line bisects State Street, the vehicle was actually in Indiana at the moment

the UDF employee, standing in Ohio, saw it pass. And as Wogenstahl correctly points out, at no point south of the UDF does the Indiana side of State Street veer back into Ohio before becoming Jamison Road, which is entirely in Indiana. Therefore, according to Wogenstahl, since Amber was alive at 3:15 a.m., her murder must have occurred in Indiana.

There are two problems with Wogenstahl's argument. First, although the Indiana side of State Street itself does not enter Ohio, there are side streets that intersect State Street that do lead into Ohio, and Wogenstahl could have turned down one of them before returning to Indiana. Second, and more importantly, R.C. 2901.11(B) would allow Ohio to assert jurisdiction if the victim's death occurred in Ohio *or* if the fatal act occurred in Ohio, even if death ultimately occurred in another jurisdiction. The UDF employee's testimony may establish that Amber was *alive* at 3:15, but it does not show that she was *unharmed*. The fatal injuries may have been inflicted earlier.¹ Therefore, Wogenstahl has not shown that Ohio does not have jurisdiction....” *Wogenstahl, Id.*

The Ohio Supreme Court's factual finding (that the evidence established that the state in which Amber sustained her fatal injuries could not be determined.) is supported by competent credible evidence. There was sufficient evidence for a trier of fact to conclude that the State in which Amber was murdered could not be reasonably ascertained. Therefore, under R.C. 2901.11(D), the murder is presumed to have taken place in Ohio.

As such, Ohio had jurisdiction over Wogenstahl's aggravated murder charge.

II. OHIO LAW DOES NOT SHIFT THE BURDEN OF PROOF TO WOGENSTAHL TO DISPROVE JURISDICTION

The next issue raised by Wogenstahl is whether the Ohio Supreme Court unconstitutionally shifted the burden of proof to him to disprove jurisdiction. This claim was not briefed below

¹ Ohio can claim jurisdiction if the fatal blow was struck in Ohio even if she survived long enough to die in Indiana.

because it was not raised.² However, the State maintains the State retained the burden of proof and met it.

Wogenstahl's conviction under Ohio law did not deprive him of due process of law. The crime of Aggravated Murder and the jurisdiction³ of Ohio courts is defined by statutes. Under the statutes, the State is required to prove beyond a reasonable doubt the death, the intent to kill and the causation. Ohio can exercise jurisdiction if the State proves that any element of Aggravated Murder was committed in Ohio or if Ohio proves that it cannot be determined in what jurisdiction the Aggravated Murder (element) took place.

As the Ohio Supreme Court found, the State presented sufficient credible evidence to establish that the jurisdiction in which Amber was murdered (Ohio vs. Indiana) could not reasonably be determined. Therefore, the State met its burden of proof under R.C. 2901.11(D) and the offense could be presumed to have taken place in Ohio under R.C. 2901.11(D). The burden of proof never shifted to Wogenstahl.

² In a concurrence below, Judge French noted:

"There is at least a colorable argument that the conclusive presumption of jurisdiction in R.C. 2901.11(D) violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. A conclusive presumption is one type of mandatory presumption, the other type being a rebuttal presumption:

A conclusive presumption removes the presumed element from the case once the State has proved the predicate facts giving rise to the presumption. A rebuttable presumption does not remove the presumed element from the case but nevertheless requires the jury to find the presumed element unless the defendant persuades the jury that such a finding is unwarranted.

Francis v. Franklin, 471 U.S. 307, 314, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985), fn. 2. A mandatory presumption violates the Due Process Clause if it relieves the state of the burden of persuasion as to an element of an offense, either by creating an irrebuttable presumption or by shifting the burden of proof to the criminal defendant. *Id.* at 325, 105 S.Ct. 1965; *Sandstrom v. Montana*, 442 U.S. 510, 523-524, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979)."

³ Absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction. *State ex rel. Steffen v. Myers*, 143 Ohio St.3d 430, 39 N.E.3d 483, 2015-Ohio-2005 (May 27, 2015).

CONCLUSION

This case does not raise a federal constitutional issue or a compelling reason sufficient to invoke this Court's jurisdiction.

Respectfully submitted,

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