ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	*	Case No. 2011-0740
	*	
Plaintiff-Appellee,	*	On Appeal from the Warren
	*	County Court of Appeals,
v.	*	Twelfth Appellate District
	*	
SHANNON N. SMITH,	*	Court of Appeals Case No.
	*	CA2010-05-047
Defendant-Appellant.	*	
	*	

THE STATE OF OHIO'S RESPONSE TO THE DEFENDANT-APPELLANT'S MOTION AND MEMORANDUM IN SUPPORT OF JURISDICTION

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

The Appellee, State of Ohio, herein responds to Appellant, Shannon N. Smith, on the issue of jurisdiction, pursuant to S.Ct.Prac.R.[1] III § 2(B). This is not a case of public or great general interest. The Appellant is not a public figure, nor is this case in the public eye. In addition, this case does not pose any substantial constitutional question that would affect the public. Moreover, this Court should not grant leave to appeal this felony case since the Appellant's propositions of law simply lack merit.

STATEMENT OF THE CASE AND FACTS

In May 2009, the Appellant, Shannon N. Smith, was indicted by a Warren County Grand Jury and charged with Murder, R.C.[2] § 2903.02(B). Indictment, T.d. 07, p. 1. The Appellant was also indicted and charged with Voluntary Manslaughter, R.C. § 2903.03(A), a felony of the first degree, and with Tampering With Evidence, R.C. § 2921.12(A)(1), a felony of the third degree. *Id.* at 2-3.

On January 25, 2010, the Appellant's case proceeded to a four-day jury trial. Trial, 1/25/2010-1/28/2010, T.p. At trial, Detective Jeff Stewart of the Franklin Police Department testified for the State. *Id.* at 190-275. On January 29, 2009, Detective Stewart went to the Appellant's apartment in Franklin, Ohio to investigate a stabbing. *Id.* at 193-196. Shortly after the stabbing, the detective arrived at the apartment and made contact with the Appellant. *Id.* at 196-197. Upon contact, the detective noticed that the Appellant appeared calm, with no evidence that she had been crying. *Id.* at 197. Detective Stewart did not notice any redness about the Appellant's face or her neck and did not notice any other type of injury about the Appellant's

[1] Rules of Practice of the Supreme Court of Ohio.

[2] Ohio Revised Code.

person. *Id.* at 197 & 205. The Appellant accompanied the detective to the Franklin Police Department. *Id.* at 206. After the detective informed the Appellant of her *Miranda* rights, the detective conducted an audio taped interview with her. *Id.* at 206-209.

The Appellant explained that she had known the victim, Robert Takach, for approximately ten years and they had dated for approximately five years. *Id.* at 222. However, she explained that they had not dated for a year prior to the stabbing. *Id.* According to the Appellant, on January 29, 2009, she was attempting to put her and the victim's two young children down for a nap. *Id.* at 218. The Appellant asked Takach for help with the children, but he did not respond. *Id.* at 219-220. The Appellant told the victim that she was going to take the children and visit her mother. *Id.* at 220. According to the Appellant, Takach "freaked out" and told her that she was not leaving just so she could call the father of her then-unborn child. *Id.* at 220-221. The Appellant was approximately three months pregnant on the day in question. *Id.* at 221. The Appellant told the detective that the victim began pushing on her stomach and "he was just saying things, saying I was nasty and, you know, how could I, how could I do this to him?" *Id.* at 221. According to the Appellant, the victim meant how could she leave the victim and get pregnant by another man. *Id.* at 222. Later in the interview, the Appellant told the detective that the victim was forcefully pushing on her stomach because he was angry that she was pregnant with another man's child. *Id.* at 224-225.

The Appellant told the detective that the victim grabbed her by the throat from behind with his left arm and attempted to pull her into the bedroom. *Id.* at 224. The Appellant indicated that she was holding onto the refrigerator to prevent the victim from pushing her any further because it would have been "absolutely no good" had they entered the bedroom. *Id.* The Appellant told the detective that the victim was choking her so hard that she could neither breathe nor talk. *Id.* at 228. Yet, after telling the detective that she was unable to speak, the Appellant told the detective

that she grabbed a knife and that she told the victim that he was leaving her no choice because he was endangering their children and her unborn child. *Id.* at 229. According to the Appellant, while the victim still had his left arm around her neck, she had her right arm free and she tried to cut his left arm but missed and "cut down further." *Id.* at 233-234. The Appellant told Detective Stewart that the victim then released her and ran from the apartment. *Id.* at 234.

At trial, Dr. Lee Lehman, a forensic pathologist and the Chief Deputy Coroner for Montgomery County, Ohio, testified for the State. *Id.* at 97-136. Dr. Lehman testified that the victim died from a stab wound caused by a thin-bladed knife. *Id.* at 113. The victim had been stabbed in the heart, causing it to stop. *Id.* According to Dr. Lehman, the knife entered the victim's chest by his left nipple, traveled four and a half inches, and went through the victim's heart. *Id.* at 110-111 & 115. The knife traveled slightly from the left to the right and slightly downward. *Id.* at 116-117.

The Appellant was acquitted of Murder but was convicted of Voluntary Manslaughter and Tampering With Evidence. The trial court ordered the two sentences to be served consecutively for a total of ten years. The Appellant appealed her conviction to the Warren County Court of Appeals, Twelfth Appellate District, but the Twelfth District affirmed her conviction in *State v. Smith*, Warren App. No. CA2010-05-047, 2011-Ohio-1476.

ARGUMENT

Response To Propositions Of Law I, II, & III: The Warren County Court of Common Pleas court did not abuse its discretion regarding the victim's alcohol treatment records; regarding the victim's prior criminal conduct; and regarding the limitations placed on the testimony of the Appellant's self-defense expert.

In her first proposition of law, the Appellant claims that the victim's alcohol treatment records from the Sojourner Program were admissible in order to show his violent behavior toward her. In her second proposition of law, the Appellant claims that her self-defense expert should

have been allowed to testify about the reasonableness of using a knife in defense of a chokehold. In her third proposition of law, the Appellant claims that the trial court denied her the right to present a meaningful defense when it refused to admitted into evidence the victim's records from Sojourner; when it refused to admit evidence of the victim's prior criminal conduct; and when it refused to allow the Appellant's self-defense expert to testify about the reasonableness of using a knife in defense of a chokehold.

In criminal cases involving self-defense, a defendant may testify about her knowledge of specific instances of the victim's prior conduct in order to demonstrate the defendant's state of mind. *State v. Baker* (1993), 88 Ohio App. 3d 204, 208, 623 N.E.2d 672, see *State v. Cuttiford* (1994), 93 Ohio App. 3d 546, 553-554, 639 N.E.2d 472. According to the Lorain County Court of Appeals, Ninth Appellate District, the defendant may testify regarding her personal knowledge of the victim's past specific instances of violent conduct. *Baker*, 88 Ohio App. 3d at 208 and *Cuttiford*, 93 Ohio App. 3d at 554. Furthermore, the Ninth District held that a defendant may present corroborating evidence regarding the defendant's state of mind. *Baker*, 88 Ohio App. 3d at 208 and *Cuttiford*, 93 Ohio App. 3d at 554. However, while the Ninth District recognized that corroborating evidence is admissible to help shore up the defendant's testimony about the victim's prior conduct, the Ninth District held that a trial court can properly exclude such corroborating evidence as cumulative. *Baker*, 88 Ohio App. 3d at 208.

After the State's case-in-chief, the trial court allowed the Appellant to call Darryl Short, a primary clinician at Sojourner, to the stand. Trial, 1/27/2010, T.p., p. 71. Mr. Short testified that the victim was at Sojourner to receive treatment for alcohol dependence. *Id.* at 73. During Mr. Short's testimony, the trial court stated on the record before the jury that the victim was in treatment at Sojourner due to a court order. *Id.* The Appellant used Mr. Short to introduce a one-page record regarding one of the victim's treatment sessions at Sojourner. *Id.* at 74. So the trial court allowed

the Appellant to introduce some of the victim's Sojourner records but not all of them.

The Appellant called Deputy Robert Reiff of the Butler County Sheriff's Department to the stand. Trial, 1/27/2010, T.p., pp. 36-44. Deputy Reiff testified that, on October 12, 2008, he arrested Robert Takach because the Appellant had told the deputy that Takach had hit her in the face. *Id.* at 39. The deputy testified that he charged the victim with domestic violence, a felony of the fifth degree. *Id.*

The Appellant also called Officer Kathy Masako Jones of the Middletown Police Department to the stand. *Id.* at 44-70. Officer Jones testified that on October 24, 2007, she investigated a report of a male beating a female. *Id.* at 46. Officer Jones testified that she arrested the victim, Takach, after the Appellant told the officer that the victim had assaulted her. *Id.* at 48-49. Officer Jones testified that the Appellant had bruises around her eyes. *Id.* at 48. Officer Jones also testified that the victim was moderately intoxicated. *Id.* at 51.

The Appellant called Officer Ed Sensel of the Middletown Police Department to the stand. *Id.* at 113-119. Officer Sensel testified that he transported the victim to jail for discharging a firearm. *Id.* at 114 & 118.

At trial, the Appellant testified in her own defense. *Id.* at 121-253. The Appellant testified that the victim had a problem with drugs and alcohol that made him aggressive. *Id.* at 127. She testified that he would curse at her, attempt to gouge out her eyes, punch and slap her in the face, kick her in the stomach, and pull her hair. *Id.* at 127 & 129. She testified that, after the birth of their oldest child, the victim had beaten her approximately twenty times. *Id.* at 130. She attested that the victim put a gun to her head and threatened to kill her. *Id.* at 131. She testified that the victim abused alcohol, marijuana, Xanax, Valium, and Klonopin on a daily basis. *Id.* at 128-129. She testified that, on October 24, 2007, the victim choked her, spat in her face, and attempted to gouge out her eyes. *Id.* at 134. The Appellant testified that the victim was charged with domestic

violence as a result of the October 24, 2007 incident. *Id.* at 140. The Appellant testified regarding the victim's treatment at Sojourner. *Id.* at 141-144. She testified that she attended at least one of the victim's sessions, and she told the victim's counselor that she was afraid of the victim and that she supported the victim's sobriety due his violent nature. *Id.* at 141 & 143. The Appellant testified that, on October 12, 2008, the victim cursed at her, pushed her, and smacked her in the face. *Id.* at 148-149. She testified that, as a result of the October 12, 2008 incident, the victim was charged with felony domestic violence. *Id.* at 151.

As can be seen, the trial court allowed the Appellant to testify about the victim's abuse of alcohol and drugs; allowed the Appellant to testify about specific instances where the victim was violent to the Appellant; and allowed the Appellant to testify as to her fear of the victim. The trial court allowed the Appellant to introduce one of the Sojourner documents and allowed the Appellant to elicit testimony from Mr. Short that the victim was receiving court-ordered treatment for alcohol dependence. The trial court also allowed the Appellant to present three police officers, and each testified to the victim's past criminal conduct. So, the record reveals that the trial court allowed the Appellant to present evidence to corroborate her testimony regarding her state of mind. Any further evidence of the victim's past conduct that might be contained in the other Sojourner records and any further evidence of the victim's past criminal conduct would have been merely cumulative. Consequently, in light of the holding in *Baker*, the trial court did not abuse it discretion when it excluded the remaining Sojourner records and when it excluded any further evidence regarding the victim's past criminal conduct.

In addition, since the Appellant was allowed to testify to past specific instances of the victim such has his violent behavior and his substance abuse and was allowed to present corroborating evidence, the trial court did not violate the Appellant right to present a meaningful defense.

According to Evid.R.[3] 702(A), a witness may testify as an expert if the subject matter of the witness's testimony is beyond the knowledge and experience of the jury. In this present case, the Appellant wanted her expert to testify about the reasonableness of using a knife in defense of a chokehold. That issue was not beyond the knowledge and experience of the jury as there was no evidence adduced at trial that this issue was beyond the knowledge and experience of the jury.

The Appellant's first, second, and third propositions of law are without merit, and this Court should not accept jurisdiction regarding them.

Response To Proposition Of Law IV: The Appellant had more than adequate notice regarding Voluntary Manslaughter. Thus, the Warren County Court of Common Pleas did not err when it denied the Appellant's motion to dismiss the Voluntary Manslaughter charge.

Prior to trial, the Appellant moved to dismiss the Voluntary Manslaughter charge because the State's second bill of particulars did not give adequate notice as to serious provocation. Defendant's Motion to Dismiss Count Two, Voluntary Manslaughter, T.d. 92. The trial court denied the Appellant's motion. Entry Overruling Defendant's Motion to Dismiss Count Two of the Indictment, Voluntary Manslaughter, T.d. 134.

In the Appellant's fourth proposition of law, she claims that the trial court erred in denying her motion to dismiss since her due process rights were violated because the State did not give her adequate notice of the charge of Voluntary Manslaughter in order to mount a defense. According to the Appellant, the State's second bill of particulars did not adequately set forth the facts regarding serious provocation.

The State's second bill of particulars gave the Appellant adequate notice of serious provocation. The second bill of particulars read,

> IF the Defendant's version of the story is to be believed, the victim and the defendant engaged in an argument over the defendant leaving the home which

[3] Ohio Rules of Evidence.

escalated to a physical confrontation, rising to the level to seriously provoke the defendant to stab the victim, thereby causing his death.

Second Bill of Particulars, T.d. 67, p. 1.

The facts regarding serious provocation were based on the Appellant's interview with Detective Stewart. During the interview, the Appellant told the detective that the victim was angry because she was pregnant with another man's child. Trial, 1/26/2010, pp. 224-225. She told the detective that she and the victim argued because the victim thought she was leaving in order to call the father of her unborn child. *Id.* at 220-221. She told the detective that the victim forcefully pushed on her stomach causing her pain. *Id.* at 224-225. And that the victim grabbed her from behind, choked her, and attempted to pull her into the bedroom. *Id.* at 224.

Obviously, these facts constituted serious provocation. Furthermore, since these facts came from the Appellant's interview with Detective Stewart, she was aware of them. In other words, she had, by necessity, adequate notice of her own statement. Thus, the State's second bill of particulars set forth more than adequate facts concerning serious provocation. Therefore, the trial court did not err when it denied the Appellant's motion to dismiss the voluntary manslaughter charge.

The Appellant's fourth proposition of law is without merit, and this Court should not accept jurisdiction regarding it.

Response To Propositions Of Law V & VI: The Appellant's convictions for Voluntary Manslaughter and Tampering With Evidence were supported by sufficient evidence and were not against the manifest weight of the evidence.[4]

In her fifth proposition of law, the Appellant argues that her conviction for Voluntary Manslaughter was not supported by sufficient evidence. Specifically, she claims that there was no

[4] The State has combined its response to Appellant's fifth and sixth propositions of law for the purpose of judicial economy.

evidence that she was under the influence of sudden passion or in a sudden fit of rage brought on by the victim's provocation. The Appellant also argues that her conviction for Tampering With Evidence was not supported by sufficient evidence. In her sixth proposition of law, the Appellant claims that her convictions were against the manifest weight of the evidence.

When an appellate court reviews the sufficiency of the evidence, it will examine the evidence adduced at trial to determine whether the evidence, if believed, would be sufficient to convince the mind of an average person that the defendant was guilty beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St. 3d 259, 263, 574 N.E.2d 492. The appellate court must decide, after viewing the evidence in a light most favorable to the State, whether substantial evidence was presented from which a rational trier of fact could have found that the State had proved, beyond a reasonable doubt, the essential elements of the crime. *Id.* and *State v. Benge*, 75 Ohio St. 3d 136, 142, 1996-Ohio-227, 661 N.E.2d 1019. Furthermore, the appellate court will not substitute its judgment regarding the credibility of the witnesses for that of the trier of fact. *Benge*, 75 Ohio St. 3d at 143; see also *State v. Carmen*, Clinton App. No. CA2007-05-028, 2008-Ohio-5841, ¶15.

It has long been recognized in Ohio that there is no distinction between direct evidence and circumstantial evidence. *Jenks*, 61 Ohio St. 3d at 272. Circumstantial evidence has the same probative value as direct evidence, and may, at times, be more certain, satisfying, and persuasive than direct evidence. *Id.*

When an appellate court reviews the manifest weight of the evidence, it must review the entire record; evaluate the evidence and all reasonable inferences; consider the credibility of the witnesses; and decide whether the trier of fact, in resolving conflicts in the evidence, clearly lost its way and created such a manifest miscarriage of justice that the defendant's conviction must be reversed and remanded for a new trial. *State v. Thompkins*, 78 Ohio St. 3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. However, the trier of fact is primarily responsible for weighing the evidence

and judging the credibility of the witnesses. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 231, 227 N.E.2d 212.

According to the evidence adduced at trial, the Appellant and the victim argued because the victim believed that the Appellant was leaving in order to call the father of her unborn child. Trial, 1/26/2010, T.p., pp. 220-221. The victim was angry with the Appellant because she was pregnant with another man's child. *Id.* at 224-225. He began pushing forcefully on her stomach. *Id.* He grabbed her from behind and choked her. *Id.* at 224. The Appellant stabbed the victim with a knife. *Id.* at 233-234. When this circumstantial evidence is viewed in a light most favorable to the prosecution, it was sufficient to convince the mind of an average person, beyond a reasonable doubt, that the Appellant acted in a sudden fit of rage or was under the influence of sudden passion when she stabbed the victim. Furthermore, given the evidence, the jury did not lose its way and did not create a manifest miscarriage of justice when it found the Appellant guilty of Voluntary Manslaughter.

Regarding the offense of Tampering With Evidence, the Appellant admitted that she stabbed the victim. *Id.* at 233-234. The Appellant admitted that she threw the knife in the sink and claimed that she had no memory of washing it. Trial, 1/27/2010, T.p., pp. 172-173. Steven M. Wiechman, a forensic scientist assigned to the serology DNA section of the Miami Valley Regional Crime Lab, testified that he visually inspected the knife and chemically tested the knife for blood and found none. Trial, 1/26/2010, pp. 136-137 & 145-146. He further testified given that the knife had been stabbed into the victim's heart, he would have expected to find blood on it. *Id.* at 146. When this evidence is viewed in a light most favorable to the prosecution, it was sufficient to convince the mind of the average juror, beyond a reasonable doubt, that the Appellant cleaned the knife. In addition, in light of the evidence adduced at trial, the jury did not lose its way and did not create a manifest miscarriage of justice when it found the Appellant guilty of Tampering With

Evidence.

The Appellant's fourth and fifth propositions of law lack merit, and this Court should not accept jurisdiction regarding them.

Response To Proposition Of Law VII: The trial court did not abuse its discretion by admitting into evidence the Appellant's prior bad acts.

At trial, Brandy Whitlock testified that she witnessed an argument between the Appellant and the victim. Trial, 1/26/2010, T.p., 176-177. The argument escalated and the Appellant, who was behind the wheel of a car at the time, drove the car into Ms. Whitlock's yard and hit the victim with the car. *Id.* at 177. Deputy Reiff, who testified for the Appellant, testified that, while he was investigating a domestic violence incident between the Appellant and the victim that occurred on October 12, 2008, Takach told the deputy that the Appellant had hit him with a frying pan. Trial, 1/27/2010, T.p., pp. 42-43. The deputy charged the Appellant with domestic violence as a result. *Id.* at 42. At trial, the Appellant called Officer Jones to testify. *Id.* at 44-70. Officer Jones testified that, while she was investigating a domestic violence incident between the Appellant and the victim that occurred on October 24, 2007, she learned that Takach had assaulted the Appellant, and the Appellant had tried to stab Takach with a butter knife. *Id.* at 48-49.

In her seventh proposition of law, the Appellant argues that these prior bad acts were not admissible at trial to show the Appellant's intent or motive. The Appellant argues that her intent and/or motive were never at issue because she admitted that she intentionally stabbed the victim in order to stop the victim's attack.

In this present case, it is undisputed that the Appellant stabbed Takach with a knife, killing him. The Appellant claimed and, still claims, that she acted in self-defense. The State claimed that she committed Murder or, at the very least, Voluntary Manslaughter. Obviously, the Appellant's intent and/or motive were issues in this case. Furthermore, the Appellant's story to Detective

Stewart was that she was attempting to stab Takach in the arm in order to stop his attack but missed and accidentally stabbed him in the heart.

According to Evid.R.[5] 404(B), a criminal defendant's prior bad acts are admissible to show motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident. The State offered evidence of the Appellant's prior bad acts to show the Appellant's intent and motive and to show that the Appellant did not stab the victim by accident. Consequently, the trial court did not abuse its discretion by allowing the State to introduce evidence of the Appellant's prior bad acts.

The Appellant's seventh proposition of law is without merit and, this Court should not accept jurisdiction regarding it.

Response To Proposition Of Law VIII: The trial court did not abuse its discretion by allowing the introduction of statements made by the Appellant's and the victim's young son as excited utterances.

During the State's case-in-chief, Detective Stewart testified that shortly after he arrived at the Appellant's apartment on January 29, 2009 to investigate the stabbing, the Appellant's and the victim's young son, Bradyn, told the detective that his mommy had stabbed his daddy and had put the knife in the sink. Trial, 1/26/2010, p. 201. At trial, the Appellant called Lauren McCoy to the stand, and Ms. McCoy testified that shortly after the stabbing, while she was in the apartment, Bradyn told her that his father, the victim, was hurting his mother, the Appellant.[6] Trial, 1/27/2010, T.p., p. 16.

Prior to trial, the trial court ruled that both of Bradyn's statements were the result of

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[5] Ohio Rules of Evidence.

[6] Prior to this testimony, Ms. McCoy spontaneously testified that shortly after she arrived at the apartment, Bradyn had told her that his daddy, the victim, had choked Bradyn. Ms. McCoy claimed to have seen red marks on Bradyn's neck. Trial, 1/27/2010, T.p., p. at 14.

impulse, not reflection, after he had witnessed the stabbing death of his father. Conference with the Court, 11/19/19, 2009, T.p., pp. 21-22. Thus, the trial court decided that both statements were admissible as excited utterances. *Id.*

In her eighth proposition of law, the Appellant argues that the trial court erred in admitting Bradyn's statement to Detective Stewart. The Appellant claims the statement could not have been an excited utterance because the detective testified that the child appeared happy. The Appellant also complains that the trial court prohibited her from using another, more favorable statement that was made by Bradyn a few days after the stabbing.[7]

According to Evid.R. 803(2), a statement, which relates to a startling event or condition that was made while the declarant was under the stress of excitement caused by the startling event or condition, is admissible under the excited utterance exception to the hearsay rule. As the trial court noted, Bradyn had just witnessed his mother stab his father. That was a startling event. And, despite the fact that he may have seemed happy when he made the statement to Detective Stewart, Bradyn was still under the stress of that startling event when he made the statement just as he was still under the stress of that startling event when he made his statement to Lauren McCoy just prior to the detective's arrival. Bradyn's statements were the product of impulse not reflection. Thus, the trial court did not abuse its discretion when it allowed both of Bradyn's statements to be introduced at trial.

In addition, the State contends there was no error in admitting Bradyn's statement to the detective. But, if Bradyn's statement to Detective Stewart was error, then it was nothing more than harmless error. Bradyn's statement was that his mother stabbed his father and placed the knife in

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[7] At the November 19, 2009 conference, Mr. Longano, one the Appellant's trial attorneys and one of her appellate attorneys, stated, "Now, with regards to statements made sometime later in another environment with a social worker where a little boy was questioned, that is not an excited utterance[.]" Conference with the Court, 11/19/2009, T.p., p 21.

the sink. The Appellant admitted as much to Detective Stewart when she told him that she had stabbed Takach and had placed the knife in the sink. In fact, she reiterated that statement when she testified at trial. The introduction of Bradyn's statement at trial could not have prejudiced the Appellant in light of her own testimony.

The Appellant's eighth proposition of law is without merit and, this Court should not accept jurisdiction regarding it.

Response To Proposition Of Law IX: The Warren County Court of Common Pleas did not err regarding the Appellant's sentence.

In her ninth proposition of law, the Appellant submits that her nine-year sentence for Voluntary Manslaughter was unreasonable and disproportionate. Furthermore, the Appellant submits that the trial court should not have ordered her sentences for Tampering With Evidence and Voluntary Manslaughter to be served consecutively in light of *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517.

According to R.C. § 2929.14(A)(1), the sentencing range for a first-degree felony is three to ten years. The trial court sentenced the Appellant to nine years which falls within the statutorily-mandated sentencing range. The Appellant's sentence for voluntary manslaughter comports with the law; thus, it is neither unreasonable nor disproportionate.

This Court of Ohio held in *State v. Hodge*, 128 Ohio St. 3d 1, 2010-Ohio-6320, paragraph two of the syllabus, 941 N.E.2d 768, that the holding in *Ice* did not revive Ohio's former consecutive sentencing statutes, R.C. § 2929.14(E) and R.C. § 2929.41(A), which were held to be unconstitutional in *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470. The Supreme Court of Ohio also held that trial courts are not required to make findings of fact before imposing consecutive sentences unless the legislature enacts new legislation requiring such findings. *Hodge*, 2010-Ohio-6320 at paragraph three of the syllabus. Thus, the trial court acted

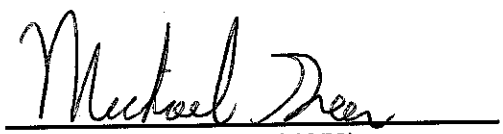
well within its discretion when it ordered the Appellant's sentences for Voluntary Manslaughter and Tampering With Evidence to be served consecutively.

The Appellant's ninth proposition of law is without merit and, this Court should not accept jurisdiction regarding it.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Warren County Court of Appeals, Twelfth Appellate District, and neither accept jurisdiction nor grant leave for the appeal of Shannon N. Smith since her propositions of law lack merit. Moreover, this Court should not accept jurisdiction over this appeal because the Appellant has neither raised a substantial constitutional question nor presented an issue of public or great general interest.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing was mailed by ordinary U.S. mail to Appellant's attorneys, Mr. Michael K. Allen and Mr. Thomas P. Longano, Michael K. Allen & Associates, 810 Sycamore Street, Fourth Floor, Cincinnati, Ohio 45202 on this 26th day of May, 2011.

Michael Greer

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