

**FILED: January 9, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Appellant  
Cross-Respondent,

v.

WENDELL KENNETH TATE,  
Defendant-Respondent  
Cross-Appellant.

Clackamas County Circuit Court  
CR0700655

A144935

Ronald D. Thom, Judge.

Argued and submitted on November 27, 2012.

Matthew J. Lysne, Assistant Attorney in Charge, Criminal Appeals, argued the cause for appellant-cross-respondent. With him on the opening brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General. With him on the answering brief on cross-appeal were John R. Kroger, Attorney General, and Anna M. Joyce, Solicitor General.

Marc D. Brown, Deputy Public Defender, argued the cause for respondent-cross-appellant. With him on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Before Ortega, Presiding Judge, and Haselton, Chief Judge, and Sercombe, Judge.

PER CURIAM

On appeal, order arresting judgment on Count 1 reversed and remanded, amended judgment vacated and remanded with instructions to reinstate conviction for aggravated murder, and for resentencing; on cross-appeal, affirmed.

1 PER CURIAM

2 A jury convicted defendant of aggravated felony murder, ORS  
3 163.095(2)(d); murder, ORS 163.115, and first-degree burglary, ORS 164.225. The trial  
4 court later granted defendant's motion in arrest of judgment with respect to the  
5 aggravated murder conviction, vacated that conviction, and entered an amended judgment  
6 dismissing that charge. The state appeals, asserting that, in light of [State v. Dasa](#), 234 Or  
7 App 219, 227 P3d 228, *rev den*, 349 Or 173 (2010), the trial court erred in granting  
8 defendant's motion in arrest of judgment and in dismissing the aggravated felony murder  
9 charge.<sup>1</sup> Defendant cross-appeals and raises seven assignments of error. We reject all of  
10 defendant's assignments of error on cross-appeal without discussion.

11 With respect to the state's contention that the trial court erred in granting  
12 the motion in arrest of judgment and in dismissing the aggravated felony murder charge,  
13 defendant acknowledges that *Dasa* controls. However, he asserts that *Dasa* was  
14 incorrectly decided and asks that it be overruled. We decline defendant's invitation and  
15 adhere to our analysis in *Dasa*. Accordingly, the trial court erred in granting defendant's  
16 motion in arrest of judgment and in entering an amended judgment dismissing the  
17 aggravated felony murder charge.

18 On appeal, order arresting judgment on Count 1 reversed and remanded,  
19 amended judgment vacated and remanded with instructions to reinstate conviction for

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<sup>1</sup> In view of our resolution of that issue, we need not address the state's sentencing-related assignment of error.

1 aggravated murder, and for resentencing; on cross-appeal, affirmed.