

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

ARNOLD A. VALENZUELA,  
aka Arnold Andrew Valenzuela,  
Defendant-Appellant.

Multnomah County Circuit Court  
101234863

A148942

Kenneth R. Walker, Judge.

Submitted on February 01, 2013.

Peter Gartlan, Chief Defender, and David O. Ferry, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Kathleen Cegla, Senior Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Duncan, Judge.

PER CURIAM

Convictions on Counts 2 and 3 reversed and remanded with instructions to enter a single conviction for second-degree assault; remanded for resentencing; otherwise affirmed.

1                   PER CURIAM

2                   Defendant was convicted of second-degree assault, ORS 163.175, and  
3 unlawful use of a weapon, ORS 166.220, after he stabbed a victim with a knife. On  
4 appeal, defendant argues that the trial court committed plain error by failing to merge the  
5 guilty verdicts on the two offenses into a single conviction. *See State v. Ryder*, 230 Or  
6 App 432, 434-35, 216 P3d 895 (2009) (accepting the state's concession that the trial court  
7 plainly erred in entering two separate convictions for second-degree assault and unlawful  
8 use of a weapon, where "[b]oth of those charges arose out of defendant's concurrent  
9 conduct against the same victim--that is, defendant unlawfully used a knife, a dangerous  
10 weapon, against that victim and, by doing so, did intentionally and knowingly cause her  
11 physical injury"). The state concedes that this case is materially indistinguishable from  
12 *Ryder* and that the trial court should have merged the guilty verdicts into a single  
13 conviction for second-degree assault. We agree with and accept the state's concession  
14 and, for the reasons expressed in *Ryder*, 230 Or App at 435, exercise our discretion to  
15 correct the error.

16                   Convictions on Counts 2 and 3 reversed and remanded with instructions to  
17 enter a single conviction for second-degree assault; remanded for resentencing; otherwise  
18 affirmed.