

COURT OF APPEALS OF OREGON

State v. Barnes, 150 Or. App. 128

945 P.2d 627 (1997) · No. CA A91415; 95-1165 · Decided September 17, 1997

SUMMARY

The Oregon Court of Appeals held that the trial court improperly instructed the jury on the knowledge element of second-degree assault under ORS 163.175(1)(a). Because the offense requires knowledge that the defendant's conduct would cause serious physical injury, an instruction defining knowledge only as awareness of the nature of the conduct was insufficient and the error was not harmless. The court affirmed the resisting-arrest conviction and reversed and remanded the second-degree assault conviction for a new trial.

CASE DETAILS

|                       |                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Oregon                                                                                                                                                                                           |
| WRITING FOR THE COURT | De Muniz, J.; Deits, C.J.; Haselton, J.                                                                                                                                                                              |
| JURISDICTION          | Oregon                                                                                                                                                                                                               |
| DECIDED               | September 17, 1997                                                                                                                                                                                                   |
| DOCKET                | CA A91415; 95-1165                                                                                                                                                                                                   |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Defendant appealed jury-trial convictions for resisting arrest and assault in the second degree, challenging the jury instructions concerning the knowledge element of second-degree assault.                        |
| STANDARD OF REVIEW    | The adequacy of jury instructions is reviewed as a question of law; instructional error is reversible when it could have allowed the jury to convict without finding an element of the offense and was not harmless. |
| PRECEDENTIAL VALUE    | Published Oregon Court of Appeals opinion; precedential.                                                                                                                                                             |
| PARTIES               | Edward Forrest Barnes v. State of Oregon                                                                                                                                                                             |

TOPICS

- jury instructions
- statutory interpretation
- criminal procedure
- harmless error
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the trial court's instruction defining knowingly solely as awareness of the nature of one's conduct adequately instructed the jury on the knowledge element of second-degree assault under ORS 163.175(1)(a), which requires knowingly causing serious physical injury.
2. Whether the instructional error was harmless.
3. Whether an instruction equating intentional conduct with the knowledge mental state was proper when the indictment alleged knowledge.

## HOLDINGS

1. For second-degree assault under ORS 163.175(1)(a), which is a result offense, the jury must be instructed that the defendant acted with knowledge concerning the result—serious physical injury—not merely with awareness of the nature of the defendant's conduct.
2. The instructional error was not harmless because the instruction could have permitted the jury to convict without finding that Barnes knew his act would likely cause serious physical injury.
3. In a prosecution charged on a knowledge theory, an instruction stating that intentional conduct establishes the knowledge mental state should not be given because intent and knowledge are distinct concepts under Oregon's criminal code.

## KEY QUOTATIONS

*“It is the result that must be proved for the offense of assault in the second degree, and an instruction using only the statutory definition of “knowingly” does not sufficiently inform the jury of the nexus between conduct and knowledge of the result of the conduct to satisfy the elements of ORS 163.175(1)(a).”* (150 Or. App. at 130)

*“Because the instruction that was given could have allowed the jury to find defendant guilty without finding that defendant knew his act would likely cause the prohibited result, the error was not harmless.”* (150 Or. App. at 130-31)

## FACTUAL BACKGROUND

At the Newport Seafood and Wine Festival, police removed Dana Chase from a crowded marina area after she resisted and attempted to flee. During the ensuing struggle, Barnes jumped onto Officer Simpson and struck security guard Paul Rose in the face. Rose suffered a blow-out fracture of the eye socket, resulting in double vision, a sunken eye, and surgery.

## PROCEDURAL HISTORY

Barnes was tried before a jury and convicted of resisting arrest and second-degree assault. The trial court instructed the jury that knowingly meant awareness that conduct was of a particular nature and instructed that the State had to prove that Barnes knowingly caused serious physical injury. The Court of Appeals affirmed the

resisting-arrest conviction, remanded for resentencing on that conviction, and reversed and remanded the assault conviction for a new trial because the jury instruction did not adequately require knowledge of the prohibited result.

#### **DISPOSITION**

reversed\_and\_remanded

#### **REMAND INSTRUCTIONS**

The resisting-arrest conviction was affirmed and remanded for resentencing. The second-degree-assault conviction was reversed and remanded for a new trial.

#### **CASES CITED**

- State v. Jantzi, 56 Or. App. 57, 60 n. 1, 641 P.2d 62 (1982)
- State v. Mayer, 146 Or. App. 86, 89-91, 932 P.2d 570 (1997)
- State v. Harper, 132 Or. App. 29, 33, 888 P.2d 19 (1994), rev den 322 Or. 193, 903 P.2d 887 (1995)
- State v. Francis, 284 Or. 621, 626, 588 P.2d 611 (1978)
- State v. Van Walchren, 112 Or. App. 240, 246, 828 P.2d 1044, rev den 314 Or. 574, 840 P.2d 1296 (1992)