

SUPREME COURT OF OREGON

State v. Clegg, 332 Or. 432

31 P.3d 408 (2001) · No. SC S46908 · Decided August 23, 2001

SUMMARY

The Oregon Supreme Court held that testimony recounting the victim's statement about her plans and a recent telephone conversation was admissible under Oregon Evidence Code 803(3) as state-of-mind evidence. The court also concluded that, because the defendant did not request a limiting instruction, the testimony could be used to infer his participation in the murder-for-hire scheme. The court affirmed the Court of Appeals and the circuit court judgment.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Leeson, Justice
JURISDICTION	Oregon
DECIDED	August 23, 2001
DOCKET	SC S46908
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant sought review of a divided en banc Court of Appeals decision affirming his convictions after the trial court admitted challenged hearsay testimony.
STANDARD OF REVIEW	The court viewed the evidence in the light most favorable to the state because the jury convicted defendant on all counts. It reviewed the evidentiary ruling concerning hearsay admissibility as a question of law.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Oregon
PARTIES	Grover Cleveland Clegg, Jr. v. State of Oregon

TOPICS

- hearsay
- evidence
- relevance
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Christina Clegg's out-of-court statement to Kendra Hughes recounting her telephone conversation with defendant was hearsay.
2. Whether Christina's statement was admissible under Oregon Evidence Code 803(3) as a statement of the declarant's then-existing state of mind or intent.
3. Whether the statement was relevant to prove defendant's participation in the murder-for-hire scheme.
4. Whether, absent a limiting-instruction request, the prosecution could use the admitted testimony for its rationally persuasive value in proving defendant's participation in the murder.

HOLDINGS

1. The statements made by Christina to defendant during their telephone conversation were not hearsay because they were not offered to prove the truth of their contents. Christina's statement to Hughes recounting that conversation was hearsay because it was offered to prove that defendant called Christina and attempted to persuade her to remain at the office.
2. Christina's statement was admissible under OEC 803(3) because it asserted or reflected her then-existing intent or plan to go to the bank with Gladys.
3. The statement was relevant because evidence that Christina planned to leave the office before lunch, considered with evidence that defendant immediately sought to change that plan, tended to make it more probable that defendant participated in a plan requiring her presence at the office when the gunmen arrived.
4. Because defendant did not request a limiting instruction, the prosecution could use Hughes's testimony for any purpose supported by its rational persuasive force, including proving defendant's participation in the murder-for-hire plan.

KEY QUOTATIONS

“Therefore, even if a statement merely reflects the declarant's state of mind or reasonably supports an inference as to the declarant's state of mind, it constitutes an assertion of the declarant's state of mind for purposes of OEC 803(3).” (at 413)

“The prosecution was entitled to use Hughes's testimony to establish that defendant had participated in the murder-for-hire plan by persuading Tina not to go to the bank but, instead, to wait at her desk, thereby ensuring that she would be present when the gunmen arrived.” (at 414)

FACTUAL BACKGROUND

Christina Clegg was shot and killed at her workplace by masked gunmen, and evidence indicated that the attack was a planned murder rather than a robbery. The state presented circumstantial evidence that her husband, Grover Clegg, arranged the murder to avoid divorce-related financial consequences and collect life-insurance

proceeds. Shortly before the shooting, Christina told coworker Kendra Hughes that she had spoken with defendant and that he had insisted she remain at the office rather than go to the bank with another coworker.

PROCEDURAL HISTORY

Defendant was convicted in Multnomah County Circuit Court of aggravated murder and other crimes and sentenced to life imprisonment without the possibility of parole. The Court of Appeals held that the challenged testimony was inadmissible hearsay but affirmed the convictions because the error was harmless. The Oregon Supreme Court allowed review, held that the testimony was admissible under the state-of-mind exception and relevant, and affirmed both the Court of Appeals and the circuit court.

DISPOSITION

affirmed

CASES CITED

- State v. Clegg, 161 Or. App. 201, 984 P.2d 332 (1999)
- State v. Hayward, 327 Or. 397, 399, 963 P.2d 667 (1998)
- State v. Titus, 328 Or. 475, 481, 982 P.2d 1133 (1999)
- State v. Hampton, 317 Or. 251, 255 n. 8, 855 P.2d 621 (1993)
- American Produce Co. v. Marion Creamery & Poultry Co., 214 Or. 103, 112, 327 P.2d 1104 (1958)
- State v. Clegg, 153 Or. App. 718, 957 P.2d 1231 (1998), rev. den. 327 Or. 431, 966 P.2d 222 (1998)
- State v. Steward, 151 Or. App. 804, 960 P.2d 394 (1997), rev. den. 326 Or. 465, 952 P.2d 65 (1998)

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