

# SUPREME COURT OF OREGON

## State v. Sines

359 Or. 41 (2016) · No. CC 06FE1054AB; CA A146025; SC S062493 · Decided April 14, 2016

### SUMMARY

The Oregon Supreme Court considered whether a private citizen's seizure of a child's underwear became state action under Article I, section 9, of the Oregon Constitution because of communications and conduct by Department of Human Services and law enforcement officials. The court adopted an agency-based approach focused on whether state officials manifested an intent that the private citizen act on the state's behalf. It held that the conduct was private, reversed the Court of Appeals, and remanded for consideration of other issues.

### CASE DETAILS

|                       |                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Oregon                                                                                                                                                                                               |
| WRITING FOR THE COURT | Balmer, C. J.; Balmer, Chief Justice; Kistler, Justice; Walters, Justice; Linder, Justice; Landau, Justice; Baldwin, Justice; Sercombe, Judge of the Court of Appeals, Justice pro tempore                            |
| JURISDICTION          | Oregon                                                                                                                                                                                                                |
| DECIDED               | April 14, 2016                                                                                                                                                                                                        |
| DOCKET                | CC 06FE1054AB; CA A146025; SC S062493                                                                                                                                                                                 |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | The State petitioned for review of the Oregon Court of Appeals' decision reversing defendant's convictions and remanding for suppression of evidence obtained through the seizure and testing of a child's underwear. |
| STANDARD OF REVIEW    | The court reviewed the trial court's denial of the motion to suppress for errors of law.                                                                                                                              |
| PRECEDENTIAL VALUE    | Published Oregon Supreme Court opinion; binding statewide precedent on the Article I, section 9, state-action agency analysis stated in the opinion.                                                                  |
| PARTIES               | State of Oregon v. John Albert Sines                                                                                                                                                                                  |

### TOPICS

search and seizure

suppression of evidence

criminal procedure

constitutional law

appellate procedure

## PRACTICE AREAS

Criminal law

Constitutional law

Criminal procedure

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the private employees' warrantless search and seizure of the child's underwear constituted state action subject to Article I, section 9, of the Oregon Constitution.
2. What legal framework governs whether a private citizen acts as an instrument or agent of the state for purposes of Article I, section 9.
3. Whether the Supreme Court should decide the separate Fourth Amendment, later seizure, testing, and other assignments of error.

## HOLDINGS

1. Whether a private citizen's search or seizure constitutes state action is determined by applying common-law agency principles, examining objective statements and conduct to determine whether state officials manifested that the private person could or should act on the state's behalf and subject to the state's control.
2. The employees' search for and seizure of the underwear was private conduct and did not constitute state action under Article I, section 9.
3. The court did not decide the independent Fourth Amendment issue, the legality of the police acquisition or laboratory testing of the underwear, or defendant's other assignments of error; those matters were left for the Court of Appeals on remand.

## KEY QUOTATIONS

*“In our view, too, common-law agency principles can provide substantial assistance in determining when a private citizen’s search or seizure should be considered state action for purposes of Article I, section 9.” (55)*

*“We conclude, based on the facts explicitly and implicitly found by the trial court, that the actions of defendant’s employees in searching for and seizing the underwear constituted private conduct and therefore did not violate Article I, section 9.” (62)*

## FACTUAL BACKGROUND

A housekeeper anonymously reported suspected sexual abuse of defendant's nine-year-old adopted daughter to the Department of Human Services after observing unusual discharge on the child's underwear. During the call, the housekeeper said she was considering taking underwear for testing; the DHS employee said he could connect her with law enforcement and a laboratory but repeatedly stated that he could not tell her to take the underwear. The housekeeper and another employee independently obtained a pair of underwear and delivered it to authorities, who tested it, obtained a search warrant based in part on the results, and seized additional evidence from defendant's home.

## PROCEDURAL HISTORY

The Deschutes County Circuit Court denied defendant's motion to suppress evidence derived from the warrantless taking and testing of the underwear and convicted him on four counts of first-degree sexual abuse. The Oregon Court of Appeals reversed, holding that the private employees' conduct constituted state action under Article I, section 9, of the Oregon Constitution. The Oregon Supreme Court reversed the Court of Appeals and remanded for consideration of defendant's other assignments of error.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The Court of Appeals was instructed to consider defendant's other assignments of error, including any Fourth Amendment issue and other issues not previously addressed, as appropriate.

## CASES CITED

- State v. Ehly, 317 Or. 66, 75, 854 P.2d 421 (1993)
- State v. Waterbury, 50 Or. App. 115, 120, 622 P.2d 330 (1981), rev. den., 290 Or. 651 (1981)
- State v. Tucker, 330 Or. 85, 89-90, 997 P.2d 182 (2000)
- State v. Owens, 302 Or. 196, 206, 729 P.2d 524 (1986)
- State v. Tanner, 304 Or. 312, 321, 745 P.2d 757 (1987)
- State v. Luman, 347 Or. 487, 492-93, 223 P.3d 1041 (2009)
- State v. Nagel, 320 Or. 24, 29, 880 P.2d 451 (1994)
- State v. Smith, 310 Or. 1, 14-15, 791 P.2d 836 (1990)
- State v. Lowry, 37 Or. App. 641, 588 P.2d 623 (1978)
- United States v. Miller, 688 F.2d 652, 657 (9th Cir. 1982)
- United States v. Cameron, 699 F.3d 621, 637-38 (1st Cir. 2012), cert. denied, 133 S. Ct. 1845 (2013)
- United States v. Richardson, 607 F.3d 357, 364 (4th Cir. 2010)
- United States v. Smythe, 84 F.3d 1240, 1242-43 (10th Cir. 1996)
- United States v. Walther, 652 F.2d 788, 792 (9th Cir. 1981)
- United States v. Jarrett, 338 F.3d 339, 344, 346-47 (4th Cir. 2003)
- United States v. Koenig, 856 F.2d 843, 847, 850 (7th Cir. 1988)
- Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 614, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989)
- State v. Sines, 263 Or. App. 343, 328 P.3d 747 (2014)
- United States v. Souza, 223 F.3d 1197, 1202 (10th Cir. 2000)

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