

SUPREME COURT OF OREGON

State v. Davis, 351 Or. 35

261 P.3d 1197 (2011) · No. SC S058641; CA A134216; CC 02C45953 · Decided September 22, 2011

SUMMARY

The Supreme Court of Oregon reviews evidentiary rulings in Terry Dean Davis's murder and manslaughter prosecution arising from the death of his 15-month-old daughter. The court considers the admissibility and relevance of evidence concerning the child's prior injuries and a witness's observations and statements about the child's condition before death, as well as harmless error. The excerpt states that the court affirmed in part and reversed in part the Court of Appeals.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Oregon                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Walters, J.                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | Oregon                                                                                                                                                                                                                                                                                                                 |
| DECIDED               | September 22, 2011                                                                                                                                                                                                                                                                                                     |
| DOCKET                | SC S058641; CA A134216; CC 02C45953                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | The State petitioned for review of the Court of Appeals' reversal of a criminal judgment based on the exclusion of evidentiary testimony. Davis conditionally challenged other evidentiary rulings that the Court of Appeals had affirmed.                                                                             |
| STANDARD OF REVIEW    | The Supreme Court reviewed relevance-based evidentiary rulings for errors of law. It applied a harmless-error inquiry asking whether there was little likelihood that the particular error affected the verdict, considering the nature and context of the error without independently weighing the evidence of guilt. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                         |
| PARTIES               | State of Oregon v. Terry Dean Davis                                                                                                                                                                                                                                                                                    |

TOPICS

- evidence
- relevance
- expert testimony
- harmless error
- appellate procedure

## PRACTICE AREAS

criminal law

evidence

appellate procedure

## QUESTIONS PRESENTED

1. Whether the nurse's statement that the victim reminded her of the nurse's brain-injured daughter was relevant and admissible when offered to show the mother's knowledge or the truth of an earlier brain injury.
2. Whether the nurse's opinion that the victim resembled her daughter when suffering from brain pressure or dehydration was admissible lay opinion under OEC 701.
3. Whether evidence of the victim's prior physical abuse and injuries was relevant and admissible to explain the bases of defense experts' opinions that the fatal injuries occurred before June 29.
4. Whether the exclusion of the lay opinion and prior-injury evidence was harmless under Oregon's constitutional and statutory harmless-error standards.

## HOLDINGS

1. The trial court did not err in excluding the nurse's statement that she told the victim's mother that the victim reminded her of the nurse's daughter. Even assuming the mother understood the statement as suggesting a possible brain injury, her belief or fear did not make it more probable that the victim actually had suffered the fatal injury on June 25 rather than on June 29 or 30.
2. The trial court erred by excluding the nurse's lay opinion that the victim looked like the nurse's daughter when the daughter was suffering from pressure on the brain or dehydration. The opinion was rationally based on the nurse's personal perceptions and experience and was helpful to the jury under OEC 701; certainty was not required.
3. The trial court erred by excluding evidence of the victim's prior physical abuse and injuries when the evidence was offered to explain the bases of defense experts' opinions that the fatal injuries occurred several days before the victim's death. The evidence was not offered to prove a person's character or conduct in conformity with character and was admissible under OEC 703 and OEC 705 for the permissible purpose of explaining expert opinions.
4. The exclusion of the nurse's lay opinion and the prior-injury evidence was not harmless because there was more than a little likelihood that each error affected the jury's verdict.

## KEY QUOTATIONS

*"Oregon's constitutional test for affirmance despite error consists of a single inquiry: Is there little likelihood that the particular error affected the verdict?" (1212)*

*"Even under the low threshold for relevance, Ecklund's belief in the possibility of a brain injury on June 25 does not, even slightly, either increase the probability that the defense rebleed theory was the correct one, or decrease the probability that the fatal injuries occurred on June 29 or 30, while the victim was in defendant's care." (1208)*

*“OEC 701 does not require certainty, as long as it is clear that the witness's opinion is based on personal knowledge and not guesswork.” (1210)*

## FACTUAL BACKGROUND

Terry Dean Davis was charged with murder and manslaughter after his 15-month-old daughter died from abdominal and brain injuries. Davis argued that the fatal injuries had been inflicted several days before the child's death and that the child's condition deteriorated or the injuries re-bled on the night of her death, rather than being caused by Davis on June 29 or 30, 2002. The trial court excluded evidence of the child's prior physical abuse and injuries, a nurse's lay opinion that the child looked like the nurse's daughter when suffering from brain pressure or dehydration, and the nurse's statement that the child reminded her of that daughter.

## PROCEDURAL HISTORY

Davis was convicted of murder and manslaughter after the trial court excluded evidence concerning the victim's prior physical abuse, a nurse's lay opinion about the victim's appearance, and the nurse's statement that the victim reminded her of her daughter. The Court of Appeals reversed in part, holding that the exclusion of the nurse's statement was erroneous and not harmless, but affirmed the exclusions of the other evidence. The Oregon Supreme Court affirmed in part and reversed in part, concluding that the nurse's statement was properly excluded but that the lay opinion and evidence of prior injuries should have been admitted and that their exclusion was not harmless.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The judgment of the circuit court was affirmed in part and reversed in part, and the case was remanded for further proceedings consistent with the opinion. On remand, the court must reconsider the exclusion of Payne's lay opinion and the prior-injury evidence; the opinion did not require admission of the nurse's statement to the mother or determine the outcome of any OEC 403 balancing.

## CASES CITED

- State v. Davis, 235 Or. App. 327, 230 P.3d 987 (2010)
- State v. Salas-Juarez, 349 Or. 419, 427-28, 245 P.3d 113 (2010)
- State v. Sparks, 336 Or. 298, 307-08, 83 P.3d 304 (2004)
- State v. Barone, 329 Or. 210, 238, 986 P.2d 5 (1999)
- State v. Lerch, 296 Or. 377, 383-84, 387-88, 677 P.2d 678 (1984)
- State v. Tucker, 315 Or. 321, 340, 845 P.2d 904 (1993)
- State v. Wright, 323 Or. 8, 17, 913 P.2d 321 (1996)
- State v. Wright, 315 Or. 124, 132, 843 P.2d 436 (1992)
- State v. Clark, 286 Or. 33, 38-40, 593 P.2d 123 (1979)

- Ritter v. Sivils, 206 Or. 410, 413, 293 P.2d 211 (1956)
- Uris v. Compensation Department, 247 Or. 420, 424, 427 P.2d 753 (1967)
- Spivey v. Atteberry, 205 Okla. 493, 494, 238 P.2d 814 (1951)
- State v. Willis, 348 Or. 566, 571, 236 P.3d 714 (2010)
- State v. Walton, 311 Or. 223, 231, 809 P.2d 81 (1991)
- State v. Hansen, 304 Or. 169, 180, 743 P.2d 157 (1987)
- State v. Parker, 317 Or. 225, 233, 855 P.2d 636 (1993)
- State v. Davis, 336 Or. 19, 30-34, 77 P.3d 1111 (2003)
- State v. Yielding, 238 Or. 419, 423, 395 P.2d 172 (1964)